

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
vs.	)	No. 17 LA 377
)	
THE LAW OFFICES OF THOMAS J.)	
POPOVICH, P.C., and HANS MAST,)	
)	
Defendants.)	

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS
MAST'S MOTION/MEMORANDUM IN SUPPORT OF
THEIR MOTION FOR SUMMARY JUDGMENT**

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Mast") (sometimes collectively "Popovich") by and through their attorneys Karbal, Cohen, Economou, Silk, & Dunne, LLC, pursuant to 735 ILCS 5/2-1005, submit this Motion/Memorandum in Support of their Motion for Summary Judgment, and state as follows:

I. INTRODUCTION

Plaintiff Paul Dulberg ("Dulberg") was allegedly injured on June 28, 2011 when he was assisting a friend, David Gagnon ("Gagnon"), trim a tree with a chainsaw in the backyard of a home owned by Dulberg's neighbors, Bill and Carolyn McGuire ("The McGuires"). Gagnon, who is Carolyn McGuire's son, and Dulberg were both over the age of 40 at the time of the accident. Dulberg retained defendant Popovich to prosecute a personal injury lawsuit against Gagnon and the McGuires. Defendant Hans Mast was the primary handling attorney. Eventually, in Mast's legal opinion, the case against the property owners was weak because the evidence showed they did not control the work. Mast recommended Dulberg accept the McGuires' settlement offer. Dulberg deliberated and accepted the McGuires' offer in January 2014. Thus

McGuires were dismissed from the lawsuit in January 2014, and Dulberg continued to prosecute the case against Gagnon.

Popovich and Mast withdrew from representing Dulberg on March 13, 2015. Dulberg later settled with Gagnon, and waited until November 28, 2017 to sue Popovich and Mast. In an unavailing attempt to excuse the late filing of his lawsuit, Dulberg alleges that he did not become aware of a claim against defendants until he sought a legal opinion in December of 2016. He has never been able to explain what legal opinion he received or how it caused him to “discover” his claim and damages, or why he still waited almost another year after December 2016 to file his lawsuit. Summary judgment must be entered because Dulberg’s claims are barred by the two-year statute of limitations for Illinois legal malpractice claims under 735 ILCS 13/214.3(b).

II. STATEMENT OF CLAIM

The following facts can be gleaned from the Complaint (Exhibit A), Amended Complaint (Exhibit B) and Second Amended Complaint (Exhibit C).^{1 2}

On or about June 28, 2011, Dulberg was involved in an accident while assisting David Gagnon in the cutting down of a tree on the McGuire property. Exhibit A, ¶6. Gagnon lost control of the chainsaw he was using causing it to strike Dulberg. Exhibit A, ¶7. In May 2012, Dulberg retained the Law Offices of Thomas J. Popovich. Exhibit A, ¶8. In late 2013 or early 2014, Mast met with Dulberg and agreed with Mast to accept \$5,000, releasing William and Caroline McGuire. Exhibit A, ¶13. Mast and Popovich continued to represent Dulberg through March of 2015. Exhibit A, ¶14. Thereafter, Dulberg retained other attorneys and proceeded to a binding

¹ The Complaint and Amended Complaint were filed by The Gooch Firm and signed by attorney Thomas W. Gooch, III.

² Dulberg denied the material allegations contained in Popovich’s Affirmative Defenses, including its Second Affirmative Defense based on the two-year statute of limitation. (Dulberg Answer to Affirmative Defenses, Exhibit D).

mediation where he received an award. Exhibit A, ¶16. Dulberg alleges that following the execution of the mediation agreement and final mediation award, he realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Following the mediation Dulberg was advised to seek an independent opinion from an attorney handling malpractice matters, and received that opinion on or about December 16, 2016. Exhibit A, ¶20.

In his First Amended Complaint, Dulberg modified his “discovery” allegations and alleged “it was not until the mediation in December 2016, based on the expert’s opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000 on an “all or nothing” basis. Exhibit B, ¶29. In ¶30 he reiterates that “Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.” Exhibit B, ¶30.

Dulberg’s first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that “after accepting a \$5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that “I trust your judgment.” Exhibit C, ¶48. He further alleges in ¶55 of Ex. C that “only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.” Exhibit C, ¶55. He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and Popovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Exhibit C, ¶56. He alleged that it was not until the mediation in December 2016 based on the expert’s opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and

coercing him to accept a settlement for \$5,000 on an "all or nothing" basis. Exhibit C, ¶57. Dulberg's allegations of Popovich' breaches of the standard of care are contained in Exhibit C, ¶58 as follows:

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:
 - a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
 - b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
 - c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only \$100,000" and no insurance company would pay close to that;
 - d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;
 - e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the[sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;
 - f) Coerced Dulberg, verbally and through emails, into accepting a settlement with the McGuires for \$5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

III. UNDISPUTED MATERIAL FACTS

A. Paul Dulberg Testimony

Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past. (Dulberg Deposition, Exhibit E, pp.8, 9). He was injured on June 28, 2011 while assisting David Gagnon with a chainsaw cutting up some branches after they were removed from a tree. (Exhibit E, pp.12, 13). He hired Popovich to sue Gagnon and Bill and Carolyn McGuire in connection with his June 28, 2011 injury. (Exhibit E, pp. 9, 30). Hans Mast was the primary handling attorney. (Exhibit E, p. 30). Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. (Exhibit E, p. 35). Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted. (Exhibit, E, p. 36). Dulberg fired Balke prior to the binding arbitration, and he was then represented by the Baudin Law Firm. While Brad Balke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate. (Exhibit E, p. 42). At some point, Dulberg hired The Daley Disability Law Firm to assist him with a Social Security disability claim. A criminal lawyer represented him in a guilty plea for drug possession in 1990. (Exhibit E, pp.34-35) (Exhibit E, p. 43). At some point during the case, it was Hans Mast's opinion that the McGuires did not have liability because they did not control the work David Gagnon was doing. (Exhibit E, pp. 50, 51). Mr. McGuire was inside the house for 45 minutes before the accident happened. (Exhibit E, pp. 51, 52).

On November 18, 2013, Mast emailed Dulberg and relayed a \$5,000 settlement offer from the McGuires. (Exhibit E, p.52). Mast suggested that the \$5,000 offer be accepted. Dulberg testified that at one point, "Mast defined what an independent contractor is and he said that David was an independent contractor and the McGuires weren't liable because they had hired somebody

outside even though it's their own son, he is an adult, outside to do the work and that they weren't responsible." (Exhibit E, p.55). Dulberg believed that Mast was relying on his honest legal opinion at the time. (Exhibit E, p.59). Dulberg did not accept the settlement offer on November 8, 2013. Dulberg met with Mast on November 20, 2013. (Exhibit E, p.61). Then Dulberg reviewed the depositions of the McGuires and David Gagnon before he accepted the offer. (Exhibit E, p.63). Eventually Dulberg told Mast that he would agree to accept the \$5,000 settlement offer from the McGuires, just before Christmas in December of 2013. (Exhibit E, p.66) Dulberg received a letter with a settlement release from Mast on January 29, 2014 and signed it and sent it back. (Exhibit E, p.69). From December 25 until he received the settlement release, he contacted Mast again to discuss whether it would be appropriate to let the McGuires out for \$5,000. (Exhibit E, p.70). Dulberg did not talk to any other lawyers and there was nothing preventing him from seeking a second opinion from some other lawyer at the time. (Exhibit E, p.71). Dulberg emailed Mast with a question about the release on January 29, 2014, and then put a stamp on the envelope with the executed release, put it in his mailbox, put the flag up, and waited for the mailman. (Exhibit E, pp. 71, 72). Mast did not force him to take the settlement. (Exhibit E, p.73).

The case continued against Gagnon through discovery and some of Dulberg's doctors were deposed. (Exhibit E, pp. 78, 79). Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw." Dulberg already started looking for new lawyers in the summer of 2014. Mast thought the case against David Gagnon was difficult. (Exhibit E, p.81). Mast told Dulberg that he did not make a good witness at his deposition. (Exhibit E, p.82). Dulberg and Gagnon were the only people who witnessed the accident. (Exhibit E, p.83). There were differences between the factual testimony provided by Gagnon and Dulberg in the underlying

case. (Exhibit E, p.83). His relationship with Mast was deteriorating over the fall and winter of 2015, even long before that. (Exhibit E, p.86). On February 22, 2015, Dulberg wrote in an email to Mast "Now I'm left wondering... how hard it is to sue an attorney?" (Exhibit F). When asked what the reference to suing an attorney meant he replied:

A. That was me being angry.

Q. With Hans?

A. Yes. I was seeing red.

Q. You're suggesting that you may sue him?

A. Yeah. I didn't know that I could. I'm wondering about it.

Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?

A. Yes.

Q. You, ultimately, sued him for legal malpractice, right?

A. Yes.

On February 22, 2015, Mast wrote in an email to Dulberg "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case." (Exhibit E, p.91). Mast speculated that seven out of ten times he would lose the case outright. (Exhibit E, p.92). Dulberg filed for bankruptcy. He was ordered by the bankruptcy trustee to participate in binding mediation on December 8, 2016. (Exhibit E, p.96). Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake. (Exhibit E, p.103). Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters. (Exhibit E, p.108). The lawyer he received the legal opinion on December 16, 2016 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p.108). It was confirmed by Gooch on December 16,

2016 that Dulberg had a valid case against Popovich. (Exhibit E, p.113). He did not file a lawsuit until nearly a year later because “Thomas Gooch had some health issues and that his wife had some health issues. It took a while.” (Exhibit E, p.114). Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. 1 from Dulberg’s answers to Mast’s Interrogatories. (Exhibit E, pp.125, 126). The legal opinion Dulberg received from Gooch was verbal. (Exhibit E, p.130). Gooch simply stated, “You have a case here. You have a valid case.” (Exhibit E, p.130). When asked did he tell you exactly what they did wrong in connection with your – their representation of you, Dulberg replied “He probably did. I’m not recalling it right now. I’m pulling a blank.” (Exhibit E, p.131).

Dulberg was questioned further: “Other than you have a case, what did Gooch say to you?” Dulberg responded, “He said they definitely committed malpractice.” When asked whether Gooch ever put this in writing, Dulberg replied, “I think he backed it up by filing a suit. That’s documented.” (Exhibit E, p.136). Dulberg was asked, “As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to the McGuires’ liability? Answer: They were definitely liable. He tried to say that – like Popovich and Mast were first – or second year lawyers and that they may have made a mistake here.” (Ex. E, pp.139-140).

B. Hans Mast Testimony

Mast graduated from Kent Law School in 1991 and has been admitted to practice law in Illinois since 1991. (Mast Deposition, Exhibit G, p.10). He joined the Popovich firm in 2001 and worked there for approximately 18 years. (Exhibit G, p.12). He testified that every time he met with Dulberg: “Every time we met, we talked about this because this was the subject at the time with the McGuires and the testimony of the McGuires, given Paul’ testimony, given the lack of

any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk at moving forward on that claim.” (Exhibit G, p.43). Mast thought Paul’s case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove. (Exhibit G, p.77). Gagon’s testimony regarding the facts surrounding the accident differed from Paul Dulberg’s version of the facts. (Exhibit G, p.77). Mast took that difference in testimony into account in his evaluation and his analysis of the case. (Exhibit G, p.77). Mast also took into account Paul Dulberg’s poor performance as a witness at his discovery deposition. Mast’s analysis and evaluation of the case hinged in part on whether the McGuires controlled the method of the use of the chainsaw. Mast testified that the McGuires were inside the house and not paying attention to what was going on outside at the time of the accident. (Exhibit G, p.78). Mast’s recommendation or suggestion that Dulberg settle the case for \$5,000 against the McGuires was based on his analysis of the entire case, including the risks and benefits of going forward and potentially losing the case at trial. (Exhibit G, pp.78,79). Based on his professional judgment, Mast suggested that Dulberg attempt to settle the matter as opposed to taking it to trial against the McGuires. (Exhibit G, p.79).

IV. LEGAL STANDARD

The purpose of summary judgment is not to try a question of fact but to determine whether there is a genuine issue of material fact. *N. Ill. Emergency Physicians v. Landau, Omahana, & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). Summary judgment is proper if, when viewed in the light most favorable to the nonmovant, the pleadings, depositions, admissions, and affidavits on record establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.* A defendant moving for summary judgment may meet the initial burden of production by either affirmatively showing that some element of the case must be resolved in

defendant's favor, or by showing the absence of evidence supporting the plaintiff's position on one or more elements of the cause of action. *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill App. 3d 351, 355 (4th Dist.,2000). The plaintiff is not required to prove his case at the summary judgment stage; in order to survive a motion for summary judgment, he must present a factual basis that would arguably entitle him to a judgment. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002).

V. ARGUMENT

Dulberg's legal malpractice claim against Popovich is time barred by the two (2) year statute of limitations set forth in 735 ILCS 5/2-614.3.

735 ILCS 5/13-214.3(b) reads as follows:

- (b) 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).

While Popovich denies breaching any standard of care or proximately causing Dulberg any damages, assuming *arguendo* there was malpractice, Dulberg knew or should have known of his injury and that it was wrongfully caused when Popovich withdrew. In the alternative, Dulberg should have investigated any potential claims when he questioned the appropriateness of settling with the McGuires.

In his various pleadings, Dulberg alleged that Popovich concealed his malpractice and coerced him to settle with the McGuires, but his own testimony does not bear out any such concealment. He also attempts to plead that he did not discover the malpractice and his injury until December 12, 2016, but his anticipatory pleading is not supported by his own testimony. Under any analysis, Dulberg knew or should have known of the alleged malpractice

and his injury by the time Popovich withdrew. Dulberg fails to meet his burden of proving a discovery date that would toll the limitations period.

To state a cause of action for legal malpractice, the plaintiff must allege facts to establish (1) the defendant attorney owed the plaintiff client a duty of due care arising from an attorney-client relationship, (2) the attorney breached that duty, (3) the client suffered an injury in the form of actual damages, and (4) the actual damages resulted as a proximate cause of the breach." *Nelson v. Quarles & Grady*, 2013 IL App (1st) 123122 at [*P28], citing *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). A legal malpractice suit is by its nature dependent upon a predicate lawsuit. *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 122 (1st Dist. 1986). Thus, a legal malpractice claim presents a "case within a case." *Id.* "[N]o malpractice exists unless counsel's negligence has resulted in the loss of an underlying cause of action, or the loss of a meritorious defense if the attorney was defending in the underlying suit."

The two-year statute of limitations for legal malpractice under 735 ILCS 5/13-214.3(b) incorporates the discovery rule which delays commencement of the statute of limitations until the plaintiff knows or reasonably should have known of the injury or that it may have been wrongfully caused. *Scheinblum v. Schain Banks Kenny & Schwartz, Ltd.*, 2021 IL App. (1st) 200798 at [*P24], quoting *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666 (1st Dist. 1997). Under this rule, the statute of limitations begins to run when the injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Scheinblum* at [*P24] citing *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989. Under the discovery rule, "a statute of limitations may run despite the lack of actual knowledge of negligent conduct." *SK Partners I, LP*, 408 Ill. App. 3d at 130 (1st Dist. 2011). A "person knows or reasonably should know an injury is 'wrongfully caused' when

he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct had occurred.” *Janousek* at [*p13]. Under Illinois law, the burden is on the injured party to inquire further as to the existence of a cause of action. “When a plaintiff uses the discovery rule to delay the commencement of the statute of limitations, the burden is on the plaintiff to prove the date of discovery.” *Dancor* at 673. Identification of one wrongful cause of the plaintiff’s injuries initiates his limitations period as to all other causes. *Carlson v. Fish*, 2015 IL App (1st) 140526 at ¶39.

In *Blue Water Partners, Inc. v. Mason*, 2012 IL App (1st) 102165, the Appellate Court again had the occasion to examine the discovery rule under the two-year legal malpractice statute of limitations. The court ruled that the 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* at [*P51]. In that case, the court found little dispute that the plaintiff acted on its obligation to inquire further on possible wrongful conduct when consulting with an attorney about potential claims, albeit the Plaintiff lacked diligence in filing the suit.

In the recent Illinois Supreme Court case *Suburban Real Estate Servs. v. Carlson*, 2022 IL 126935, the court distinguished between transactional malpractice and legal malpractice arising out of litigation. The court explained that when the attorney’s negligence arises out of underlying litigation, no injury exists, and therefore no actionable claim arises, unless and until the attorney’s negligence results in a loss of the underlying cause of action. The court explained that in “this type of legal malpractice claim, commonly referred to as a ‘case within a case,’ the allegation is that the client suffered a monetary loss and but for the attorney’s negligence the client would have recovered in the underlying litigation.” *Suburban Real Estate* at [*P19] and [citing *Tri-G, Inc. v. Burke*,

Bosselman & Weaver, 222 Ill. 2d 218 (2006). In *Fox v. Seiden*, 382 Ill. App. 3d 288 (1st Dist. 2008), the appellate court analyzed the requirement of actual damages and held that where malpractice was alleged in the prosecution of a case, the entry of judgment in that underlying case, as opposed to the payment of judgment, is sufficient to establish the element of damages in order to state a legal malpractice claim. *Fox* at 297, 299. Here, the settlement with the McGuires was executed by January 29, 2014, and they were dismissed with prejudice in January 2014. (Dismissal Order, Exhibit H).

On its face, Dulberg's legal malpractice complaint is time barred. He bears the burden of proving a date of discovery that can salvage his claim, but Dulberg has not and can never meet that burden. Dulberg's deposition testimony and pleadings are vague and inconsistent with respect to how Popovich breached the standard of care, and when and how he became aware that his injury was wrongfully caused. As discussed, Dulberg's own testimony refutes many of his allegations of concealment, undue influence and coercion.

Dulberg has fiddled with his "discovery" allegations, going back and forth as to when and how he became aware of his malpractice claim and damages. First, he plead that he sought a legal opinion, and received that opinion on December 16, 2016. The legal opinion was supplied by the same attorney who filed his first two pleadings in this case. Then he changed his pleading and theory and attempted to rely on discovery by virtue of the report of a "chainsaw expert" he read in connection with the December 2016 mediation. However, he actually received the opinion (Exhibit I) in July 2016 but "you don't catch everything the first time you read it." (Exhibit D, p.141). Notably the report from Dr. Lanford is dated much earlier, February 27, 2016 and was addressed to Dulberg's then attorney, Randy Baudin.

Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 2021 transcript from hearing).

Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015. Dulberg, no "babe in the woods" when it comes to experience with litigation retention, met with "hundreds" of attorneys and had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires). The many cases cited above establish the Plaintiff's duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. His contrived late discovery of his claims and damages should not be countenanced by this court. He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively. Nothing prevented him from seeking a second opinion. Likewise, nothing prevented him from inquiring of Mr. Balke or the Baudin firm whether his injury was wrongfully caused. Summary Judgment must be entered as his claims are barred by the two-year statute of limitations.

VI. CONCLUSION

Wherefore, Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, pray that the motion for summary judgment be granted, that summary judgment be entered in its favor and against Plaintiff, and for any other relief that this court deems just and appropriate.

Dated: September 15, 2022

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: /s/ George K. Flynn

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 1711117451
17LA000377
11/26/2017
McHenry County, Illinois
22nd Judicial Circuit

COMPLAINT AT LAW
(Legal Malpractice)

NOTICE
THIS CASE IS HEREBY SET FOR A
SCHEDULING CONFERENCE IN
COURTROOM 201 ON
02/27/2018, AT 9:00 AM.
FAILURE TO APPEAR MAY RESULT IN
THE CASE BEING DISMISSED OR AN
ORDER OF DEFAULT BEING ENTERED.

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as

"DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint
against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as
"POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the
following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was
such a resident at all times complained of herein.
2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm
operating in McHenry County, Illinois, and transacting business on a regular and daily basis in
McHenry County, Illinois.
3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW
OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of
Illinois, and was so licensed at all times relevant to this Complaint.

4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.
5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.
6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.
-
7. At this time, Gaguon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of \$260,000.00, along with lost wages in excess of \$250,000.00, and various other damages.
8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as Exhibit A.
9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as Exhibit B, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.
10. An implied term of the retainer agreement attached hereto as Exhibit A, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

11. That as Exhibit B reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.
12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.
13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of \$5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of \$5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.
14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.
15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of \$660,000.00 in gross, and a net award of \$561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to \$300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as Exhibit D.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois.

McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

- a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;
- b) Failed to thoroughly investigate liability issues against property owners of the subject property;
- c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;
- d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;
- e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;
- f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;
- g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;


j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of \$5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

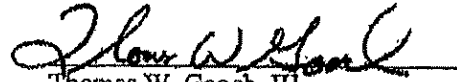
WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys THE GOOCH FIRM,


Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.


Thomas W. Gooch, III

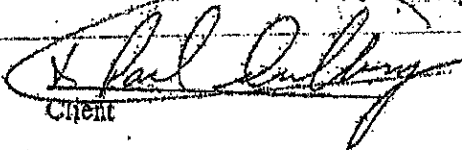
Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20____.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3 %) of my recovery from my claim by suit or settlement; this will increase to ~~44~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: 

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797



STATE OF ILLINOIS)
COUNTY OF McHENRY)

COPY
MAY 15 2012
KATHARINE M. KAPPE
McHENRY CITY CLERK

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,

vs.

No. 17LA178

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,
Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE, Individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,
County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE
lived, controlled, managed and maintained a single family home, located at 1016 W. Elder
Avenue, in the City of McHenry, County of McHenry, Illinois.

ALL-STATE LEGAL
PLAINTIFF'S
EXHIBIT
B

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 20 AT 1:00 PM
ON 7/18/12
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 20 AT 1:00 PM
ON 7/18/12
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scared and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

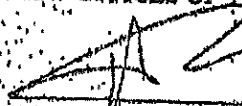
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

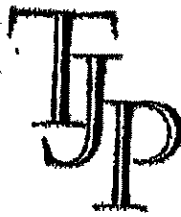
WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 05203684



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KONIAR

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smg
Enclosure



WAUKEGAN OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #171111174517 Case #17LA000377
Page 16 of 19

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012-LA-178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

- c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below,

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

Notary Public



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:

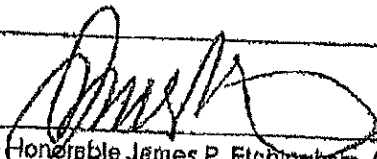
15

% (if applicable)

Net Award:

\$561,000

Comments/Explanation

Medical\$ 60,000.Future medical\$ 200,000.Lost wages\$ 250,000.P & S75,000.L & L75,000.

 The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 28 • Chicago, IL 60602
 312.960.2280 • info@adrsystems.com • www.adrsystems.com

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000

Page 19 of 19



THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17 LA 377

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111186062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit

FIRST AMENDED COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.
2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.
3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.
5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.
6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.
7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of \$260,000.00, along with lost wages in excess of \$250,000.00, and various other damages.
8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.
9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.
10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.
12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.
13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only \$100,000.00, when in reality the policy was \$300,000.00.
14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for \$5,000.00.
15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the \$5,000.00, "the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the \$5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of \$5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of \$5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D.**

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the \$5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only \$100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only

alternative is to take the case to trial and I am not interested in doing that.” (See Email attached as **Exhibit F.**)

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

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

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.

28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

- a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
- b) Failed to thoroughly investigate liability issues against property owners of the subject property;
- c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;
- d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;
- e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only \$100,000.00" and no insurance company would pay close to that;

- f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;
- g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;
- h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;
- i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;
- j) Coerced DULBERG, verbally and through emails, into accepting the settlement with the McGuires for \$5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".
- k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of \$5,000.00 for what was a grievous injury;
- l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;
- m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;

- n) Failed to retain a liability expert to prove DULBERG's damages;
- o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS:



Thomas W. Gooch, III

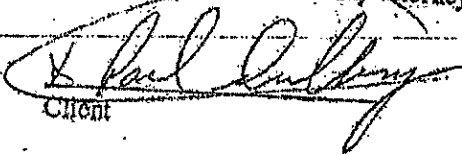
Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20____.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~33 1/3~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: 

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT

A

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA00

Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA00

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STATE OF ILLINOIS)
COUNTY OF McHENRY) SS

COPY

MAY 15 2012

KATHARINE M. KELLY
McHENRY CITY, ILL. CLK.

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.:

17LA178

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,
County of McHenry, Illinois.
2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE
lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 20 ON
JUNE 20, 2012, AT 2:00 PM.
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.10
ONCE TO HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 20
AT 2:00 PM.
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

EXHIBIT

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711117451 / Case #17LA000377

Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

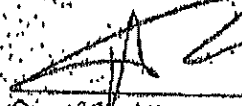
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.


One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 05203684

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Dave's Best and oldest friend John
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:

Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGulres, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave welded the chain saw and cut you. Its that simple. We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
Subject: Re: Dave's Best and oldest friend John

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul
Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

Sent from my iPhone

On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Only 5, That's not much at all.
Is this a take it or leave it or do we have any other options?

If you want a negligence case for the homeowners ask what happened immediately after the accident.

Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 1:20 PM, Hans Mast <hansmast@comcast.net> wrote:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc, but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

Hans

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>

To: Hans Mast <hansmast@comcast.net>

Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

Subject: Dave's Best and oldest friend John

Hans,

Just spoke with John Choyinski again about talking with you.

I am leaving your number with him as he has agreed to talk with you about David Gagnon.

I believe he will try and call sometime tomorrow.

Paul

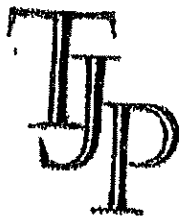
Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

Sorry for the rant but Dave was a complete ass all the way and deserves this.

Paul Dulberg

847-497-4250

Sent from my iPad



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KONIAR

MARK J. VOOG
JAMES P. TUTAJ
ROBERT J. LUMBKE
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smg
Enclosure



WAUKEGAN OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377

Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012-LA-178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

- c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

Notary Public

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: McGuire settlement
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuire's fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuire's from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:

SSD has to be part of it...its not going to effect anything...
We can't prevent disclosure of the amount...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
Subject: Re: McGuire settlement
What and why do those questions have any relevance at all and why do they need to be part of this agreement?
Particularly the one about being eligible.
Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
Is it possible to make this agreement blind to the McGuire's or David Gagnon?
What I mean is can we make it so that the amount of money cannot be told to them in any way?
It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
Paul Dulberg
847-497-4250
Sent from my iPad

On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:

Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
Subject: McGuire settlement
Here is a copy of the first page.
It has check boxes and one of the check boxes says;
I am not eligible to receive SSI or SSDI.
Another says;
I am not receiving SSI or SSDI.
As you know, I have applied for SSDI and SSI



From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Memo
Date: December 27, 2016 8:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:

Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only \$100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.

Sent from my iPhone

On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
I agree showing me the memo is a good idea it's just not the accuracy I expected.
I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.

What's left for me?
Facebook, scrap booking, crafts, etc... A life of crap...
With ongoing pain and grip issues in my dominate arm/hand that are degenerative.

This is as total as it gets for us in the working class short of being paralyzed or dead.

I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.

What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.





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 wages\$ 250,000.P & S75,000.L & L75,000.

 The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 28 • Chicago, IL 60602
 312.960.2280 • info@adrsystems.com • www.adrsystems.com

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711117451 / Case #17LA000

Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
v.	)	No. 17 LA 377
)	
THE LAW OFFICES OF THOMAS J.)	
POPOVICH, P.C., and HANS MAST,)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

**COUNT I
LEGAL MALPRACTICE**

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.
2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.
3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.
16. Gagnon was acting on behalf of Caroline and William and at their direction.
17. Caroline, William, and Gagnon all knew or should have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.
18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.
19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.
20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.
21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.
22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.
23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.
24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being trained in operating the chainsaw.
25. Gagnon was operating the chain saw in close proximity to Dulberg.
26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.
28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.
29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.
30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of \$260,000, lost wages in excess of \$250,000, and other damages.
31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**
32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**
33. Mast and Popovich entered into an attorney client relationship with Dulberg.
34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.
35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.
36. The claims against Gagnon were resolved later through binding mediation with new counsel.
37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for \$5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the \$5,000.00, "the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their \$5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the \$5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of \$5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for \$5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to \$100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the \$5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

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

53. In December of 2016, Dulberg was awarded a gross amount of \$660,000 and a net award of \$561,000 after his contributory negligence was considered.

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

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

- a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
- b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
- c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing

Dulberg that Gagnon's insurance policy was "only \$100,000" and no insurance company would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and through emails, into accepting a settlement with the McGuires for \$5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

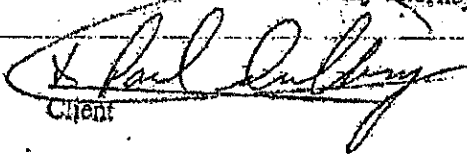
Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20____.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~44~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: 

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT

A

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

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STATE OF ILLINOIS)
COUNTY OF McHENRY) SS

COPY

MAY 15 2012

KATHARINE M. KEENE
McHENRY CTS. CLERK

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.

12LA178

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,
County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE
lived, controlled, managed and maintained a single family home located at 1016 W. Elder
Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.13

THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 20 ON
JUNE 28, 2012, AT 2:00 PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.13
ON JUNE 28, 2012, AT 2:00 PM
CONFERENCE IN COURTROOM 20
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

EXHIBIT

B

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711117451 / Case #17LA000377

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and reallleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.


21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE; in an amount in excess of \$50,000.00, plus costs
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Dave's Best and oldest friend John
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Shella today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:

Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.

— Original Message —

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
Subject: Re: Dave's Best and oldest friend John
I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul
Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

Sent from my iPhone

On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Only 5, That's not much at all.
Is this a take it or leave it or do we have any other options?

If you want a negligence case for the homeowners ask what happened immediately after the accident.

Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

Hans

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>

To: Hans Mast <hansmast@comcast.net>

Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

Subject: Dave's Best and oldest friend John

Hans,

Just spoke with John Choyinski again about talking with you.

I am leaving your number with him as he has agreed to talk with you about David Gagnon.

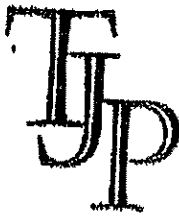
I believe he will try and call sometime tomorrow.

Paul

Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

Sorry for the rant but Dave was a complete ass all the way and deserves this.

Paul Dulberg
847-497-4250
Sent from my iPad



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KONNAR

MARK J. VOOG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smg
Enclosure



WAUKESHA OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKESHA, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #171111174517 Case #17LA000377

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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- c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
COUNTY OF MCHENRY) SS.

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

Notary Public

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: McGuire settlement
Date: December 28, 2013 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.

Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.

I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:

SSD has to be part of it...its not going to effect anything...
We can't prevent disclosure of the amount...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
Subject: Re: McGuire settlement

What and why do those questions have any relevance at all and why do they need to be part of this agreement?

Particularly the one about being eligible.

Also, I cannot warrant against what SSDI, Medicare or any other government institution wishes to do.

Is it possible to make this agreement blind to the McGuires or David Gagnon?

What I mean is can we make it so that the amount of money cannot be told to them in any way?

It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.

Paul Dulberg
847-497-4250

Sent from my iPad

On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:

Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
Subject: McGuire settlement

Here is a copy of the first page.

It has check boxes and one of the check boxes says;

I am not eligible to receive SSI or SSDI.

Another says;

I am not receiving SSI or SSDI.

As you know, I have applied for SSDI and SSI



From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Memo
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of course he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:

Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only \$100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.

Sent from my iPhone

On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Let's not be harsh. We have a couple of weeks till dr Kujawa's billing arrives.
I agree showing me the memo is a good idea it's just not the accuracy I expected.
I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.

What's left for me?

Facebook, scrap booking, crafts, etc... A life of crap...

With ongoing pain and grip issues in my dominate arm/hand that are degenerative.

This is as total as it gets for us in the working class short of being paralyzed or dead.

I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.

What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.





Binding Mediation Award

Paul Dulberg

V.

David Gagnon

ADR Systems File # 33301BMAG

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.I.S75,000.L.N.L75,000.

 The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 25 • Chicago, IL 60602
 312.960.2260 • info@adrsystems.com • www.adrsystems.com

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Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed



17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	COAA
Description	COMPLAINT - AMENDED
Date Filed	12/6/2018
Image Link	View Document Image
Doc Type	NOTF
Description	NOTICE - FILING
Date Filed	12/6/2018
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS**

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 17 LA 377
)	
THE LAW OFFICE OF THOMAS J.)	
POPOVICH, P.C. and HANS MAST,)	
)	
Defendants.)	

PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIVE DEFENSES

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
 - (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
 - (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than \$100,000.
 - (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
 - (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

EXHIBIT D

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awarded damages as requested in his Second Amended Complaint.

**SECOND AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS**

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiff v. David Gagnon, et al., Defendants*, Case No. 12 LA 178, McHenry County, Illinois (the "Underlying Action").

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
 - (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
 - (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than \$100,000.
 - (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
 - (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.

ANSWER: Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awarded damages as requested in his Second Amended Complaint.

AFFIRMATIVE DEFENSES
THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause of Dulberg's damages.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awarded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 Washington Street, Suite 2400
Chicago, IL 6002
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

<p style="text-align: right;">Page 1</p> <p>1 IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT 2 McHENRY COUNTY, ILLINOIS 3 4 PAUL DULBERG,) 5 Plaintiff,) 6 vs.) 17 LA 377 7 THE LAW OFFICES OF THOMAS J.) 8 POPOVICH, P.C., and HANS MAST,) 9 Defendants.) 10 11 The deposition of PAUL DULBERG, called for 12 examination, taken pursuant to the provisions of the 13 Code of Civil Procedure and the rules of the Supreme 14 Court of the State of Illinois pertaining to the 15 taking of depositions for the purpose of discovery, 16 taken before KAREN PILEGGI, a Notary Public within 17 and for the County of DuPage, State of Illinois, and 18 a Certified Realtime Reporter of said state, at 150 19 South Wacker Drive, Chicago, Illinois, 20 February 19, 2020, at the approximate hour of 1:00 21 p.m. 22 23 24</p>	<p style="text-align: right;">Page 3</p> <p>1 (WHEREUPON, the witness was 2 duly sworn.) 3 PAUL DULBERG, 4 called as the plaintiff herein, having been first 5 duly sworn, was examined and testified as follows: 6 EXAMINATION 7 BY MR. FLYNN: 8 Q. Let the record reflect that this is the 9 discovery deposition of Paul Dulberg taken by 10 agreement of the parties and pursuant to notice. 11 This deposition is being taken pursuant 12 to the Rules of the Illinois Supreme Court, the 13 Illinois Code of Civil Procedure and any applicable 14 local rules in McHenry County. 15 Sir, could you state your name and spell 16 your last name for the record. 17 A. Palm Dulberg, D-u-l-b-e-r-g. 18 Q. What is your address? 19 A. 4606 Hayden Court, McHenry, 20 Illinois 60051. 21 Q. How long have you lived there? 22 A. Forty-nine years. 23 Q. Who do you live there with now? 24 A. Mike McArtor.</p>
<p style="text-align: right;">Page 2</p> <p>1 PRESENT: 2 THE CLINTON LAW FIRM, 3 111 West Washington Street, Suite 1437, 4 Chicago, Illinois 60602, 5 312-357-1515, by: 6 MS. JULIA C. WILLIAMS, 7 julia.williams@clintonlaw.net, 8 appeared on behalf of the Plaintiff: 9 10 KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC, 11 150 South Wacker Drive, Suite 1700, 12 Chicago, Illinois 60606, 13 312-431-3700, by: 14 MR. GEORGE K. FLYNN, 15 g.flynn@karballaw.com, 16 appeared on behalf of the Defendants. 17 18 19 20 21 22 23 REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR, 24 CSR License No. 84-3404</p>	<p style="text-align: right;">Page 4</p> <p>1 Q. Did your mother live there at some point 2 throughout the history of this case? 3 A. Yes. 4 Q. I'm just going to go over a few rules for 5 the deposition. I know you've testified at least 6 one time in a deposition before because you 7 testified in the underlying personal injury case, 8 correct? 9 A. Correct. 10 Q. Have you testified in any other 11 depositions before? 12 A. No. 13 Q. I'll just remind you of a few rules that 14 I'm sure you were aware of back then when you gave 15 your deposition. 16 The court reporter is here to take down 17 everything that you and I say. She can only take 18 down one at a time so I'd ask that before you answer 19 a question, let me finish the entire question. 20 Okay? 21 A. Yes. 22 Q. I'll try to do the same. I'll try to let 23 you respond before I ask a follow-up question. 24 You just nodded your head. That's</p>



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EXHIBIT E

Page 5

1 another good point to make. She can't take down
2 nods of the head, shrugs of the shoulders or other
3 hand gestures. Your answers need to be verbal.
4 From time to time we forget those rules
5 and I may just point to the court reporter as a
6 reminder, if that's okay.
7 A. Yes.
8 Q. If you need to take a break at any time,
9 feel free to stop me. I just ask that it's not
10 while a question is pending that has not been
11 answered. Fair enough?
12 A. I'll try to do that.
13 Q. If you've answered a question, I will
14 assume you understood it. Okay?
15 A. Yes.
16 Q. I was asking you about your mother. She
17 lived at the house during the pendency of the
18 underlying case?
19 A. Yes.
20 Q. Is she still alive?
21 A. Yes.
22 MS. WILLIAMS: Can we define "underlying case"?
23 BY MR. FLYNN:
24 Q. The underlying case is a personal injury

Page 6

1 case that you filed against Bill and Caroline
2 McGuire and David Gagnon.
3 A. That sounds correct.
4 Q. We'll get into the dates of the filing a
5 little bit later. We'll call that, generally, the
6 underlying case.
7 Your mother lived at the house at that
8 time?
9 A. Yes.
10 Q. Did she own the house?
11 A. No.
12 Q. Do you own the house currently?
13 A. Yes.
14 Q. Does anyone else own the house?
15 A. No.
16 Q. How long have you owned it?
17 A. I think I first purchased it off my
18 parents in '97, '98, something like that.
19 Q. Did you hire a lawyer in connection with
20 that transaction?
21 A. No.
22 Q. Were your parents represented by a
23 lawyer?
24 A. No.

Page 7

1 Q. The building, as I understand it, is a
2 duplex; is that right?
3 A. No.
4 Q. Were there two apartments in the building
5 at one time?
6 A. No.
7 Q. Was there a point in time where you and
8 your mother lived in one half of the house and
9 Mike McArtor lived in the other half?
10 A. Yes.
11 Q. How was that arrangement with respect to
12 the location of the living spaces, if you can
13 describe it?
14 A. It has a walkout basement. He had the
15 downstairs with an exit out the back. We had the
16 upstairs with an exit out the front.
17 Q. Have you ever been convicted of a crime
18 of fraud, dishonesty or deceit?
19 A. No.
20 Q. Besides the hiring of the Popovich firm
21 in connection with the underlying personal injury
22 case, up to that point in time had you ever had an
23 occasion to hire a lawyer?
24 A. I did during a traffic accident, and I

Page 8

1 don't remember the year.
2 Q. Were you injured in about 2002? Does
3 that sound right?
4 A. Roughly.
5 Q. Who did you hire?
6 A. I might get the name wrong because it's
7 been a long time. I think it was Weiss and Michling
8 and something else. It was a lawyer right outside
9 the courthouse in Woodstock.
10 Q. A McHenry County lawyer?
11 A. Yeah.
12 Q. It was a personal injury case?
13 A. Yeah. It was a car accident.
14 Q. Did you file a lawsuit in that case?
15 A. I don't think we needed to.
16 Q. You just filed an insurance claim?
17 A. They did, yes.
18 Q. You settled it?
19 A. Yes.
20 Q. Any other occasions to hire a lawyer
21 between that time and the time you hired the
22 Popovich firm?
23 A. May I consult for a minute because I'm
24 not sure how to answer that.



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<p style="text-align: right;">Page 9</p> <p>1 Q. Why don't you just tell me why you can't 2 answer it. 3 A. Because I've hired lawyers, but they were 4 for the company that I had. That's different. 5 Q. I'm asking general questions about any 6 interaction you've had with hiring lawyers. Any 7 experience you've had with hiring lawyers. 8 A. I had a corporate lawyer. My mom and dad 9 hired a lawyer for me when I was a kid. It was 10 something. And myself, just the corporate lawyer, 11 the car accident lawyer and the Popovich firm. 12 Q. Have you ever been married? 13 A. No. 14 Q. So you never hired a divorce lawyer. 15 Good. How old are you now? 16 A. Forty-nine. 17 Q. The underlying case arose out of an 18 injury that occurred on June 28, 2011, correct? 19 A. That sounds correct. 20 Q. How old were you at that time? 21 A. Forty-one. 22 Q. Besides the underlying lawsuit against 23 the McGuires and Mr. Gagnon, had you ever filed any 24 other lawsuit up until that point in time?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I missed morning call, roll call. If 2 you're not there, you're AWOL. 3 Q. Absent without leave? 4 A. Yes. 5 Q. What is the highest level of education 6 that you've attained? 7 A. I do not have a degree. Two years of 8 college. 9 Q. You graduated from high school? 10 A. Yes. 11 Q. Was that in Johnsbury in 1988? 12 A. Yes. 13 Q. Did you know Mr. Gagnon from Johnsbury 14 High School? 15 A. Not from high school but just after high 16 school. 17 Q. Just coincidentally you attended the same 18 high school? 19 A. He was three years older than I was. I 20 didn't know who he was until after high school. 21 Q. You had some education after high school 22 but did not receive a degree, correct? 23 A. Correct. 24 Q. Where did you study?</p>
<p style="text-align: right;">Page 10</p> <p>1 A. No. 2 Q. Have you filed any lawsuits since that 3 time besides the lawsuit against Popovich and Mast? 4 A. No. 5 Q. Do you have any military experience? 6 A. Yes. 7 Q. Please tell me about that. 8 A. Army National Guard. Illinois Army 9 National Guard. 10 Q. How long have you been in the National 11 Guard? 12 A. I'm not currently in it. 13 Q. When were you, from when to when? 14 A. I may not get the year correct. '88 or 15 '89 to '92 or '93, somewhere in there. 16 Q. What was your highest rank when you were 17 discharged from the National Guard? 18 A. When I was discharged? 19 Q. Correct. 20 A. I don't know. I've gotten moved up and 21 moved down. I don't know where I ended up. 22 Q. How was it that you were discharged? 23 A. Less than honorable. 24 Q. What was the cause?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I had a couple classes at McHenry County 2 College and McMurray College. 3 Q. What did you study? 4 A. The first two years. The basics. 5 Q. General studies? 6 A. Yeah. I did a criminal justice course. 7 I did a macro/microeconomics. I did psychology, 8 sociology. The normal stuff. 9 Q. How did you meet David Gagnon? 10 A. Through a mutual friend. 11 Q. When was that? 12 A. I want to say, roughly, 1990. 13 Q. Was your home located somewhere fairly 14 close to his parents' home or his mom and stepdad's 15 home? 16 A. Two streets away. 17 Q. That's where you were injured on June 28, 18 2011, was at David Gagnon's mom's house and his 19 stepdad's house? 20 A. Yes. 21 Q. And their name is McGuire? 22 A. Yes. 23 Q. Generally speaking, you were injured 24 assisting David with a chainsaw trying to cut down a</p>



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<p style="text-align: right;">Page 13</p> <p>1 tree?</p> <p>2 A. He was cutting a branch.</p> <p>3 Q. Cutting branches off a tree, correct?</p> <p>4 A. Cutting up the branches after they were</p> <p>5 off the tree.</p> <p>6 Q. Could you tell me a little bit about your</p> <p>7 work history. Do you have any licenses or</p> <p>8 certifications?</p> <p>9 A. I'm certified to run printing presses.</p> <p>10 Or at least I was.</p> <p>11 Q. You worked for Sharp Printing, Inc. from</p> <p>12 '91 to 2011; is that right?</p> <p>13 A. Ninety-one? No. I would say 1999.</p> <p>14 Q. Did you own that corporation?</p> <p>15 A. Yes. Well, partner. I was a partner. I</p> <p>16 didn't own like...</p> <p>17 Q. It was an Illinois corporation?</p> <p>18 A. Yes.</p> <p>19 Q. Were you —</p> <p>20 A. A stockholder.</p> <p>21 Q. Let me just finish my question so she can</p> <p>22 take us down.</p> <p>23 You were a stockholder in Sharp Printing,</p> <p>24 Inc.?</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. What was the name of that attorney?</p> <p>2 A. McAndrews, and I don't remember the rest</p> <p>3 of it. It was McAndrews in McHenry. I can get you</p> <p>4 the rest of that information.</p> <p>5 Q. They are based in Crystal Lake, Illinois?</p> <p>6 A. It used to be in McHenry when we did</p> <p>7 that.</p> <p>8 Q. Patrick McAndrews, he was also identified</p> <p>9 as the registered agent of that corporation?</p> <p>10 A. Yes.</p> <p>11 Q. It was voluntarily dissolved on April 8,</p> <p>12 2011; is that right?</p> <p>13 A. That's what the Secretary of State's</p> <p>14 Office has, yes.</p> <p>15 Q. Is that your understanding as well?</p> <p>16 A. I was corrected. My partners — I was</p> <p>17 corrected. It was actually after the accident. How</p> <p>18 it got to end up with that date, I'm not sure.</p> <p>19 Q. What was corrected, exactly?</p> <p>20 A. Well, do you want me to — Mike read my</p> <p>21 deposition and he said, "You got that wrong." I</p> <p>22 said, "What do you mean?" because I answered it</p> <p>23 twice in that deposition.</p> <p>24 I was thinking that Juskie happened</p>
<p style="text-align: right;">Page 14</p> <p>1 A. Yes.</p> <p>2 Q. Who else were the stockholders?</p> <p>3 A. Mike McArtor and Scott Dulberg and at</p> <p>4 that time it was Herbert Dulberg.</p> <p>5 Q. What does that mean? Do you mean Scott's</p> <p>6 name was Herbert?</p> <p>7 A. No. Scott Dulberg was an owner and</p> <p>8 Herbert Dulberg was an owner. Three different</p> <p>9 Dulbergs: me, my brother, my dad.</p> <p>10 Q. And Mike McArtor?</p> <p>11 A. Yes.</p> <p>12 Q. There were four owners at what time?</p> <p>13 A. Until my dad died and then it went to</p> <p>14 three.</p> <p>15 Q. Was that business incorporated?</p> <p>16 A. Yes.</p> <p>17 Q. Did a lawyer assist the corporation with</p> <p>18 setting up the corporation?</p> <p>19 A. Yes.</p> <p>20 Q. When did that happen?</p> <p>21 A. 1999.</p> <p>22 Q. Did you hire the lawyer yourself?</p> <p>23 A. All three of us did. All four of us.</p> <p>24 Sorry.</p>	<p style="text-align: right;">Page 16</p> <p>1 before the accident. Sharp Printing wasn't actually</p> <p>2 dissolved until after the accident when we decided</p> <p>3 to sell off the equipment and end it all. That's</p> <p>4 the honest truth.</p> <p>5 Q. I will represent to you that the Illinois</p> <p>6 Secretary of State's Website as of today shows that</p> <p>7 the company was involuntarily dissolved on April 8,</p> <p>8 2011. So it's your testimony that that is not true?</p> <p>9 A. I don't know how they come up with that.</p> <p>10 Q. Why don't we break it down and start with</p> <p>11 why the corporation was involuntarily dissolved. Do</p> <p>12 you know that?</p> <p>13 A. Involuntarily? I don't know. It may be</p> <p>14 that I was late on paying the corporate licensing</p> <p>15 thing, which we just pay a fine and did it. We</p> <p>16 didn't renew it because we decided to end it.</p> <p>17 We had a ten-year thing, I think, on it.</p> <p>18 I may be wrong. I've got to go back and look at the</p> <p>19 records.</p> <p>20 Q. Is it possible that the corporation was</p> <p>21 actually involuntarily dissolved by the Illinois</p> <p>22 Secretary of State on April 8, 2011?</p> <p>23 A. Sure.</p> <p>24 Q. Did Sharp Printing, Inc. file corporate</p>



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<p style="text-align: right;">Page 17</p> <p>1 tax returns while it was a going concern?</p> <p>2 A. We had a problem the couple of years</p> <p>3 before the accident because I was not up in Illinois</p> <p>4 and I usually did that with the lawyer and the</p> <p>5 accountant and things got screwed up while I was</p> <p>6 taking care of a loved one who was dying down in</p> <p>7 Florida.</p> <p>8 Q. Did the corporation ever file tax</p> <p>9 returns?</p> <p>10 A. Oh, yes.</p> <p>11 Q. When did they file?</p> <p>12 A. Quarterly and annually.</p> <p>13 Q. Until what year?</p> <p>14 A. Roughly somewhere in 2008. I was missing</p> <p>15 things because I was not here. I know we missed a</p> <p>16 few.</p> <p>17 Q. I believe you testified in your</p> <p>18 underlying deposition that Sharp Printing, Inc. was</p> <p>19 not dissolved as a result of your June 28, 2011</p> <p>20 chainsaw accident, correct?</p> <p>21 A. Yes, I did. I stood corrected by my</p> <p>22 partners.</p> <p>23 Q. So is it your testimony that the</p> <p>24 corporation was dissolved because of your personal</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Can you estimate what the yearly revenues</p> <p>2 were for Sharp Printing in the year 2007?</p> <p>3 A. In 2007? I'd have to look at the books,</p> <p>4 to be honest with you.</p> <p>5 Q. Was it more than \$5,000?</p> <p>6 A. Yes.</p> <p>7 Q. Was it more than \$100,000?</p> <p>8 A. No.</p> <p>9 Q. Was it more than \$20,000?</p> <p>10 A. Yes.</p> <p>11 Q. Same line of questioning with respect to</p> <p>12 2008. Do you know what the revenues were for Sharp</p> <p>13 Printing in '08?</p> <p>14 A. Are you asking me what we reported or</p> <p>15 what we made and put into accounts for equipment?</p> <p>16 Q. I'm asking you about revenues.</p> <p>17 A. Total sales?</p> <p>18 Q. Total revenues.</p> <p>19 A. In two thousand...?</p> <p>20 Q. 2008.</p> <p>21 A. I'd have to go back and look.</p> <p>22 Q. Can you estimate what they were?</p> <p>23 A. No, because I wasn't there.</p> <p>24 Q. Do you know how many customers the</p>
<p style="text-align: right;">Page 18</p> <p>1 injury?</p> <p>2 A. I don't know how to answer that without</p> <p>3 going back and looking at records.</p> <p>4 Q. Was the company winding down up until</p> <p>5 about the time you were hurt?</p> <p>6 A. The company books got screwed up when I</p> <p>7 was down in Florida and I was back up in Illinois in</p> <p>8 2010 getting back on my feet and I was going to pick</p> <p>9 things back up, get everything paid up, the fines</p> <p>10 and everything.</p> <p>11 Q. Who were you taking care of in Florida?</p> <p>12 A. My grandmother.</p> <p>13 Q. You were gone from when until when?</p> <p>14 A. I want to say from the mid to end of 2007</p> <p>15 until somewhere in the beginning of 2010.</p> <p>16 Q. Was anyone running Sharp Printing during</p> <p>17 that period of time?</p> <p>18 A. Mike McArtor.</p> <p>19 Q. Did Sharp Printing have any customers for</p> <p>20 that three-year period?</p> <p>21 A. Yes, they did.</p> <p>22 Q. How many?</p> <p>23 A. I'm not sure, without looking at the</p> <p>24 books.</p>	<p style="text-align: right;">Page 20</p> <p>1 company had in 2008?</p> <p>2 A. We had a few, I know that. I don't know</p> <p>3 how many. Mike was handling it and it got messed</p> <p>4 up.</p> <p>5 Q. What types of customers did Sharp</p> <p>6 Printing have in 2007 and 2008?</p> <p>7 A. What kind of customers?</p> <p>8 Q. Right. What did you do?</p> <p>9 A. We printed on t-shirts. We printed on</p> <p>10 CDs. We printed on anything that wasn't wet. We</p> <p>11 printed on glass, all different stuff.</p> <p>12 Q. Were there any full-time employees of</p> <p>13 Sharp Printing in '07 and '08?</p> <p>14 A. In '07 and '08, no.</p> <p>15 Q. Just the owners?</p> <p>16 A. Just the owners.</p> <p>17 Q. Did all the owners operate the business?</p> <p>18 A. Yes.</p> <p>19 Q. Including your brother?</p> <p>20 A. Yes.</p> <p>21 Q. What were the yearly revenues of Sharp</p> <p>22 Printing in 2009?</p> <p>23 A. I don't know.</p> <p>24 Q. What about 2010, do you know?</p>



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<p style="text-align: right;">Page 21</p> <p>1 A. No.</p> <p>2 Q. When did Sharp Printing start selling its</p> <p>3 equipment?</p> <p>4 A. I put up the ad in August. I think</p> <p>5 August. I might be off by a month or two. August</p> <p>6 of 2011.</p> <p>7 Q. Did you sell any equipment prior to</p> <p>8 August 2011?</p> <p>9 A. No.</p> <p>10 Q. What type of equipment did Sharp</p> <p>11 Printing, Inc. have or own?</p> <p>12 A. Mostly textile screen printing equipment,</p> <p>13 but we had other screen printing stuff too. Paper.</p> <p>14 Q. Where was the equipment located?</p> <p>15 A. My home.</p> <p>16 Q. Did you require a license to conduct this</p> <p>17 business out of your home?</p> <p>18 A. We had what was called a temporary --</p> <p>19 we're in a rural area so we didn't have to have</p> <p>20 that.</p> <p>21 Q. In any event, you didn't have a license,</p> <p>22 correct?</p> <p>23 A. We had a license to do business there,</p> <p>24 yes.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. You did not earn a salary from Sharp</p> <p>2 Printing, correct?</p> <p>3 A. No.</p> <p>4 Q. You did not earn an hourly wage, correct?</p> <p>5 A. No.</p> <p>6 Q. I think your interrogatory answers</p> <p>7 indicate you didn't take a profit or a draw,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. How much, if any, money did you earn from</p> <p>11 Sharp Printing in 2011?</p> <p>12 A. Can I ask how to define that? In 2011 I</p> <p>13 didn't pull any.</p> <p>14 Q. Did you earn any income whatsoever from</p> <p>15 Sharp Printing in 2010?</p> <p>16 A. I don't think so.</p> <p>17 Q. You were down in Florida for '07 to 2010?</p> <p>18 A. Sometime in early 2010, yes.</p> <p>19 Q. Did you earn any income from Sharp</p> <p>20 Printing from 2007 to 2010?</p> <p>21 A. No.</p> <p>22 Q. Were you working in Florida?</p> <p>23 A. No.</p> <p>24 Q. Is it fair to say you were unemployed</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. In that location?</p> <p>2 A. Yes.</p> <p>3 Q. Did customers ever come to the shop?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall how many customers the</p> <p>6 business had in 2010?</p> <p>7 A. Not in 2010.</p> <p>8 Q. Was it more than five?</p> <p>9 A. Yes.</p> <p>10 Q. Was it more than 100?</p> <p>11 A. It might be around that. I don't know,</p> <p>12 specifically.</p> <p>13 Q. In 2010 you may have had 100 customers</p> <p>14 that you did t-shirt screen prints for?</p> <p>15 A. Possibly. I'm not saying that is the</p> <p>16 number, but it's possible.</p> <p>17 Q. Did Sharp Printing have any customers in</p> <p>18 2011?</p> <p>19 A. Mike was finishing up one customer's</p> <p>20 thing in the spring of 2011, yes. We don't -- I'll</p> <p>21 give you -- we don't typically get much work between</p> <p>22 January 1st and the first warm days of Spring. We</p> <p>23 sell t-shirts and not a lot of people buy during</p> <p>24 that period. They just don't.</p>	<p style="text-align: right;">Page 24</p> <p>1 from 2007 to 2010?</p> <p>2 A. Yes. I was not officially collecting</p> <p>3 unemployment.</p> <p>4 Q. You weren't an employee of any business</p> <p>5 or working for any individual, correct?</p> <p>6 A. I did do some work for Mark. I did some</p> <p>7 traveling back and forth from Florida to Illinois</p> <p>8 back and forth during that time. When I was up</p> <p>9 here, I did do some work for Juskie Printing. Not</p> <p>10 much, though.</p> <p>11 Q. What is Juskie Printing?</p> <p>12 A. Juskie Printing is another one that I had</p> <p>13 listed as an employer in the underlying case.</p> <p>14 Q. What are they?</p> <p>15 A. Another print broker.</p> <p>16 Q. Where are they located?</p> <p>17 A. I don't know the exact address, but it's</p> <p>18 off of Chicago Avenue off of 355 going south.</p> <p>19 MS. WILLIAMS: I think he's asking what city.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't know how the cities break up down</p> <p>22 there.</p> <p>23 BY MR. FLYNN:</p> <p>24 Q. Somewhere in the western suburbs of</p>



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<p style="text-align: right;">Page 25</p> <p>1 Chicago?</p> <p>2 A. Yes.</p> <p>3 Q. How long did you have a relationship with</p> <p>4 Juskie Printing?</p> <p>5 A. Since the early 2000s.</p> <p>6 Q. What type of printing did Juskie do?</p> <p>7 A. Offset, mostly.</p> <p>8 Q. What does that mean?</p> <p>9 A. Prints on paper.</p> <p>10 Q. Did you have a set schedule at any time</p> <p>11 working for Juskie?</p> <p>12 A. I don't know what you mean by "a set</p> <p>13 schedule."</p> <p>14 Q. Did you have a particular number of hours</p> <p>15 per week?</p> <p>16 A. No. The jobs I got were project based.</p> <p>17 Q. How many projects did you have from 2007</p> <p>18 to 2011 for Juskie?</p> <p>19 A. Probably a few hundred quick little</p> <p>20 things, yeah. At least.</p> <p>21 Q. Do you know what you earned from working</p> <p>22 at Juskie in 2007?</p> <p>23 A. Not without looking at the returns, I</p> <p>24 don't know offhand.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. Who is Mark?</p> <p>2 A. Mark owns Juskie Printing.</p> <p>3 Q. I think your interrogatory answers</p> <p>4 indicated from 1999 through 2006 you were employed</p> <p>5 in a barter situation; is that right?</p> <p>6 A. With Mark, yes.</p> <p>7 Q. What does that mean, exactly?</p> <p>8 A. Well, he would owe me money and he would</p> <p>9 give me printing equipment instead of cash.</p> <p>10 Q. He owed you money for working for him?</p> <p>11 A. Well, he owed both Sharp Printing and me,</p> <p>12 personally, money. They are two different things.</p> <p>13 But he would just pay by saying, hey, I've got this</p> <p>14 or I've got this paper cutter or this or that. It</p> <p>15 was a barter.</p> <p>16 Q. So you worked for him from 1999 to 2006</p> <p>17 but did not earn any income in the traditional</p> <p>18 sense?</p> <p>19 A. No money changed hands.</p> <p>20 Q. He gave you things to pay you for</p> <p>21 projects?</p> <p>22 A. Correct.</p> <p>23 Q. You gave a deposition in the underlying</p> <p>24 case on January 24, 2013. Does that sound right?</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. How often were you in the Chicago area in</p> <p>2 2007?</p> <p>3 A. I didn't leave here until, I want to say,</p> <p>4 August or September of '07.</p> <p>5 Q. And then thereafter?</p> <p>6 A. I was not back that year.</p> <p>7 Q. You didn't work for Juskie in 2008,</p> <p>8 correct?</p> <p>9 A. I might have done some stuff.</p> <p>10 Q. You're not sure?</p> <p>11 A. I'd have to go back and look.</p> <p>12 Q. Were you in Florida?</p> <p>13 A. Part of the time, yeah.</p> <p>14 Q. How often did you come back and forth</p> <p>15 between --</p> <p>16 A. About every three months I tried to get</p> <p>17 back up here.</p> <p>18 Q. For how long?</p> <p>19 A. Sometimes a few weeks. Sometimes a</p> <p>20 month.</p> <p>21 Q. Did you come back and work or did you</p> <p>22 take care of other things?</p> <p>23 A. If I'd let Mark know I was back, "I've</p> <p>24 got something for you or I don't."</p>	<p style="text-align: right;">Page 28</p> <p>1 A. If it says it on there, yes.</p> <p>2 Q. You took an oath that day?</p> <p>3 A. Yes.</p> <p>4 Q. You told the truth?</p> <p>5 A. I tried to, to the best of my knowledge,</p> <p>6 on that day, yes.</p> <p>7 Q. You told the truth in response to all of</p> <p>8 the questions that day, correct?</p> <p>9 A. I tried to, yes.</p> <p>10 Q. You testified you were last employed</p> <p>11 prior to the accident in May of 2011?</p> <p>12 A. That would be with Juskie, yes.</p> <p>13 Q. It's accurate --</p> <p>14 A. Actually, I wasn't employed. I was a</p> <p>15 1099 so I was self-employment.</p> <p>16 Q. When in May did you stop working for</p> <p>17 Juskie, whether it be as an employee or an</p> <p>18 independent contractor?</p> <p>19 A. I believe it was the end of May.</p> <p>20 Q. Then from the beginning of June until</p> <p>21 your accident on June 28, 2011, you were not</p> <p>22 employed; is that an accurate statement?</p> <p>23 A. Correct.</p> <p>24 Q. You were not even acting as an</p>



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<p style="text-align: right;">Page 29</p> <p>1 independent contractor for any business from that 2 period of time, correct? 3 A. Not during that month, no. 4 Q. Your deposition testimony from 2013 is 5 typed up on 175 pages. I don't intend to go back 6 over each of those details. 7 A. Okay. 8 Q. It's fair to say you were injured, your 9 arm was injured on June 28, 2011, correct? 10 A. Correct. 11 Q. Which arm was that? 12 A. My right arm. 13 Q. As a result of the injury, you hired the 14 Popovich law firm to explore a recovery in the case? 15 A. I hired them to represent me, yes. 16 Q. You hired them to represent you and file 17 a lawsuit against David Gagnon who was operating the 18 chainsaw that injured you, correct? 19 A. He was one of them, yes. 20 Q. I'm asking you if you hired him to – 21 listen to the question, please. 22 David Gagnon was operating the chainsaw, 23 correct? 24 A. Correct.</p>	<p style="text-align: right;">Page 31</p> <p>1 of 2012, is that the correct time period? 2 A. I don't think so. I don't think they 3 filed it until then, but I might be wrong. I'd have 4 to go back and look. 5 Q. Was there a retainer agreement executed 6 in May 2012? 7 A. I don't think I paid a retainer. 8 Q. Did you execute an attorney engagement 9 agreement in May 2012? 10 A. I believe it was much earlier than that. 11 Q. You only executed one engagement letter 12 or engagement agreement with Popovich, correct? 13 A. Yeah. 14 Q. Before you executed or came to an 15 arrangement with Popovich, had you talked to any 16 other lawyers about investigating – 17 A. One. 18 Q. Let me finish the question. 19 – investigating or filing the lawsuit? 20 A. Yes. 21 Q. Who was that? 22 A. I went back to the same firm that handled 23 the car accident for me years earlier. 24 Q. What was the name of that firm?</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. No one else was operating the chainsaw? 2 A. Correct. 3 Q. You also hired Popovich to sue Bill and 4 Caroline McGuire, correct? 5 A. Correct. 6 Q. They were the land owners where your 7 accident occurred? 8 A. They did own the land, yes. 9 Q. The accident occurred at their house, 10 correct? 11 A. Correct. 12 Q. This was in the backyard, so to speak? 13 A. Yes. 14 Q. Hans Mast was the primary handling 15 attorney at the Popovich firm for your case? 16 A. That's who I met with, yes. 17 Q. Did any other lawyer communicate with you 18 while Popovich was handling your case? 19 A. The lady who sat in on my deposition. 20 Ms. Freeman I think it is. I'm not sure about that. 21 Q. Generally speaking, Hans Mast, though, 22 was the primary handling attorney? 23 A. Yes. 24 Q. Before you hired the Popovich firm in May</p>	<p style="text-align: right;">Page 32</p> <p>1 A. They changed names when I went back 2 there. It was Weiss – I have to go back through 3 paperwork and get you the actual name. 4 Q. They are known as a personal injury firm; 5 is that right? 6 A. Yes. 7 Q. Why did you not hire them to take your 8 case? 9 A. The man who handled my case previously 10 with the car accident was no longer with the firm 11 and they said go find somebody else. 12 Q. I'm not sure what one has to do with the 13 other. 14 A. I don't either. I just said okay and I 15 went and found somebody else. 16 Q. Did you meet with an attorney at that 17 firm? 18 A. Yes. 19 Q. Did you tell them what happened with your 20 incident? 21 A. Yes. 22 Q. They told you that they did not want to 23 take the case; is that right? 24 A. Yes.</p>



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<p style="text-align: right;">Page 33</p> <p>1 Q. They declined the case?</p> <p>2 A. They declined the case.</p> <p>3 Q. Did they tell you why they declined the</p> <p>4 case?</p> <p>5 A. No.</p> <p>6 Q. You next went to the Popovich firm?</p> <p>7 A. Yes.</p> <p>8 Q. They took the case?</p> <p>9 A. Yes.</p> <p>10 Q. They, ultimately, filed a lawsuit against</p> <p>11 Gagnon and the McGuires on May 15, 2012; is that</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. You reviewed the lawsuit and approved it,</p> <p>15 correct?</p> <p>16 A. I didn't — I never got anything to</p> <p>17 review.</p> <p>18 Q. Did you ever read the lawsuit?</p> <p>19 A. No. I was never given any paperwork.</p> <p>20 Q. Back to the incorporation of Sharp. What</p> <p>21 interaction did you have with corporate lawyers when</p> <p>22 they were first retained?</p> <p>23 A. McAndrews?</p> <p>24 Q. Correct.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. What was the general nature of the reason</p> <p>2 for the need for a lawyer?</p> <p>3 A. Drug possession.</p> <p>4 Q. Were you convicted of it?</p> <p>5 A. Yes. I pled guilty.</p> <p>6 Q. That was a Cook County case, then?</p> <p>7 A. No. It was a McHenry County case.</p> <p>8 Q. The lawyer was in Des Plaines, though?</p> <p>9 A. Yes.</p> <p>10 Q. But he represented you in McHenry County</p> <p>11 in criminal court?</p> <p>12 A. Yes.</p> <p>13 Q. Throughout the case you met with the</p> <p>14 lawyer?</p> <p>15 A. A few times.</p> <p>16 Q. While Popovich represented you in the</p> <p>17 underlying personal injury case, did you ever</p> <p>18 communicate with any other lawyers about your case?</p> <p>19 A. At the end, yes.</p> <p>20 Q. Popovich withdrew sometime in March 2015?</p> <p>21 A. Correct.</p> <p>22 Q. And Brad Balke entered his appearance on</p> <p>23 March 19, 2015. Does that sound correct?</p> <p>24 A. That is correct.</p>
<p style="text-align: right;">Page 34</p> <p>1 A. What relationship?</p> <p>2 Q. What experience did you have with</p> <p>3 McAndrews when you first retained them?</p> <p>4 A. He was good.</p> <p>5 Q. How often did you meet with him or speak</p> <p>6 to him?</p> <p>7 A. Once a year.</p> <p>8 Q. Did he file corporate returns or other</p> <p>9 documents for the company?</p> <p>10 A. No. I had to file them. He just made</p> <p>11 sure they were all done right, I believe.</p> <p>12 Q. Have you ever had occasion to hire a</p> <p>13 criminal lawyer?</p> <p>14 A. I did in 1990. My mom and dad had to</p> <p>15 hire one. Not me.</p> <p>16 Q. Did you hire a criminal lawyer for your</p> <p>17 mom and dad?</p> <p>18 A. No. They hired one for me.</p> <p>19 Q. Who was that?</p> <p>20 A. Give me a second. You're digging back</p> <p>21 far in my memory. Driscoll was the last name.</p> <p>22 Q. This was a McHenry County-based criminal</p> <p>23 lawyer?</p> <p>24 A. No. Des Plaines.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Popovich also withdrew that day, right?</p> <p>2 A. I don't know if it was on the same day.</p> <p>3 I'd have to look at the paperwork.</p> <p>4 Q. Besides Mr. Balke, had you talked to any</p> <p>5 other lawyers towards the end of the relationship</p> <p>6 with Popovich?</p> <p>7 A. Yes.</p> <p>8 Q. How many?</p> <p>9 A. Hundreds.</p> <p>10 Q. Hundreds of lawyers?</p> <p>11 A. I'm not kidding. Yes.</p> <p>12 Q. Did you ask those lawyers to take your</p> <p>13 case?</p> <p>14 A. I asked them to review it.</p> <p>15 Q. Did any of them take the case?</p> <p>16 A. No.</p> <p>17 Q. They all reviewed it, though?</p> <p>18 A. Yes. Most took the time to review it.</p> <p>19 Q. Did any of them tell you why they didn't</p> <p>20 want to take the case?</p> <p>21 A. There were different reasons I got from</p> <p>22 various. Some people just didn't get back to me and</p> <p>23 some people wrote me letters. I think I gave you</p> <p>24 some of those. But I got various reasons back from</p>



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<p style="text-align: right;">Page 37</p> <p>1 attorneys.</p> <p>2 Q. I don't recall seeing any lawyers, but I</p> <p>3 would ask you to search for those.</p> <p>4 MS. WILLIAMS: We'll search for those. I'll</p> <p>5 make a note.</p> <p>6 BY MR. FLYNN:</p> <p>7 Q. As you sit here, do you recall the basis</p> <p>8 for any attorney declining to take your personal</p> <p>9 injury case over from Popovich?</p> <p>10 A. Say that again.</p> <p>11 Q. As you sit here today, do you recall any</p> <p>12 of the reasons why any attorney declined to take</p> <p>13 your personal injury case over from the Popovich</p> <p>14 firm?</p> <p>15 A. Yes.</p> <p>16 Q. What were those reasons?</p> <p>17 A. I remember a few. One I was looking at</p> <p>18 local lawyers in McHenry County and I was told</p> <p>19 like -- I can name them. My sister was married to</p> <p>20 him.</p> <p>21 Anyway, I was told if Tom Popovich says</p> <p>22 you don't have a case, you don't have a case and</p> <p>23 we're not even going to look at it. That I got a</p> <p>24 lot of it.</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. Who was that?</p> <p>3 A. There was at least three firms downtown</p> <p>4 here right near the Daley Center that I came down to</p> <p>5 see and I don't remember their names, but they -- I</p> <p>6 got the same thing out of all three of them.</p> <p>7 Q. Did any of the lawyers give you any other</p> <p>8 reason for declining your case?</p> <p>9 A. Mostly it was because they knew Popovich</p> <p>10 or it was the McGuire settlement.</p> <p>11 Q. Did any lawyer tell you that they didn't</p> <p>12 want to take your case because there was</p> <p>13 questionable liability against David Gagnon?</p> <p>14 A. No.</p> <p>15 Q. Did any lawyer tell you that there was</p> <p>16 questionable liability against the property owners,</p> <p>17 the McGuires?</p> <p>18 A. No.</p> <p>19 Q. We're jumping ahead, but did you have</p> <p>20 different lawyers that handled a binding arbitration</p> <p>21 or binding mediation for you in the underlying case?</p> <p>22 A. Yes.</p> <p>23 Q. Their name was Baudin?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. That's one reason. Any others?</p> <p>2 A. That I got locally a lot of. As I</p> <p>3 started to work away from local further out finding</p> <p>4 attorneys, the thing was your decision to settle</p> <p>5 with the McGuires was a mistake and we don't take it</p> <p>6 because of that.</p> <p>7 Q. Who said that?</p> <p>8 A. Sal Ferris.</p> <p>9 Q. When did you speak to Sal Ferris?</p> <p>10 A. I don't know the exact date.</p> <p>11 Q. When did he --</p> <p>12 A. He wasn't the only one.</p> <p>13 Q. When did he say that to you, that you</p> <p>14 just described?</p> <p>15 A. He said it in a letter and he said it on</p> <p>16 the phone and he sent me an e-mail, I think. I</p> <p>17 don't remember the ways that he contacted me. I'd</p> <p>18 have to go back and look.</p> <p>19 MS. WILLIAMS: We'll find it.</p> <p>20 BY MR. FLYNN:</p> <p>21 Q. Besides Sal Ferris, can you recall any</p> <p>22 other attorney, specifically, that told you they</p> <p>23 wouldn't take the case because of your settlement</p> <p>24 with the McGuires?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Why did Brad Balke not handle the binding</p> <p>2 arbitration?</p> <p>3 A. I fired him.</p> <p>4 Q. When did you fire Brad Balke?</p> <p>5 A. I'd have to look at the dates. I'm not</p> <p>6 sure, exactly.</p> <p>7 Q. Why did you fire him?</p> <p>8 A. Because he forced me to undergo the exact</p> <p>9 mediation at the McHenry County court in front of</p> <p>10 Judge Meyer that Hans Mast set up that I</p> <p>11 specifically said no to.</p> <p>12 Q. When was this mediation?</p> <p>13 A. I'd have to look at the dates again.</p> <p>14 Q. Was it a pretrial conference?</p> <p>15 A. Yes.</p> <p>16 Q. You actually attended this pretrial</p> <p>17 conference?</p> <p>18 A. Yes, I did.</p> <p>19 Q. What happened?</p> <p>20 A. I said no.</p> <p>21 Q. You said no about what?</p> <p>22 A. They offered an amount of money and I</p> <p>23 said no.</p> <p>24 Q. The defendants offered an amount of</p>



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1 money?
2 A. Yes.
3 Q. Was this before or after the McGuires
4 settled out of the case?
5 A. They were settled.
6 Q. So there was an offer of settlement from
7 David Gagnon or his insurer?
8 A. Yes.
9 Q. Do you recall what that amount of money
10 was?
11 A. \$50,000.
12 Q. You refused the offer?
13 A. Yes.
14 Q. Why did that cause you to fire
15 Brad Balke?
16 A. He wouldn't take it any further than that
17 and he agreed to when I hired him. He agreed that
18 that was not going to be the end of it and then he
19 changed his tune, and I said, you know what -- and
20 the other thing was, I finally got through to the
21 Baudins who I wanted to take the case because they
22 had helped my family -- his dad helped my family
23 many eons earlier.
24 Q. Did you ever talk to Brad Balke about the

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1 liability or lack of liability by the McGuires, the
2 property owners in the case?
3 A. I don't think so. We were on the Gagnon
4 case.
5 Q. You didn't discuss the McGuires?
6 A. There may have been a word or something,
7 but that's not what he was there for.
8 Q. He never gave you an opinion one way or
9 the other whether the settlement was appropriate?
10 A. I don't believe Brad did, no. Like I
11 said -- I don't think he did.
12 Q. At some point after your accident did you
13 hire the Daley Disability Law Firm?
14 A. Yes.
15 Q. Was that for --
16 A. I didn't hire.
17 Q. I know you're anticipating what I'm
18 saying.
19 A. I was trying to correct myself. I did
20 not hire.
21 Q. Either way, let me try to get out my
22 question before you raise any kind of response, just
23 so she can take down --
24 A. Count before I answer.

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1 Q. That's a good idea.
2 Did you ever retain the Daley Disability
3 Law Firm?
4 A. NO.
5 Q. Did you have any relationship with Daley
6 Disability --
7 A. Yes.
8 Q. -- Law? Let me finish it before you
9 answer. I know you're anticipating what you think
10 I'm going to say, but it might not come out the way
11 you think. Either way, she can't take down both of
12 us talking over each other.
13 What relationship did you ever have with
14 the Daley Disability Law Firm?
15 A. They stepped in as a substitute counsel
16 for the law firm that I did hire.
17 Q. You originally hired some other law firm
18 to represent you in connection with social security
19 disability?
20 A. Yes.
21 Q. What was the name of that original law --
22 A. The lady's ladies name was
23 Margaret Bradshaw.
24 Q. You terminated your relationship with her

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1 one way or another?
2 A. No.
3 Q. Why did Daley Disability Law substitute
4 in for her?
5 A. I was told by -- I have to go back and
6 look at the communications exactly how it happened,
7 but I was told that, basically, they are going to be
8 taking over the hearing part of it. I don't know
9 why. I don't know whether they sub out work. I
10 don't know how it works.
11 Q. Would it be fair to say that you first
12 retained Ms. Bradshaw in 2012 sometime?
13 A. I'd have to go back and look.
14 Q. Is that approximately when you applied
15 for social security?
16 A. It sounds like it.
17 Q. The Daley Disability Law Firm came in
18 sometime in 2012 as well?
19 A. I don't know exactly when. I don't know.
20 Q. Would it be 2012 or 2013?
21 A. I know that they were there and -- I know
22 that something had to be signed when we went in for
23 the hearings. Margaret Bradshaw had to sign
24 something for the judge allowing Daley Disability to



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1 represent me at the hearings. I don't know when
2 exactly they got involved. That's behind the
3 scenes. I didn't have anything to do with that.
4 Q. Did you file for bankruptcy while your
5 personal injury case was pending?
6 A. Yes.
7 Q. When did you file for bankruptcy?
8 A. I'd have to look at the paperwork again,
9 but I don't believe that was until, I want to say,
10 about eight or nine months, but I'm guessing, after
11 the McGuire settlement.
12 MS. WILLIAMS: The question was what month and
13 year.
14 BY THE WITNESS:
15 A. I don't know exactly. I'd have to go
16 back and look at the paperwork.
17 BY MR. FLYNN:
18 Q. Did you hire a lawyer to represent you in
19 a bankruptcy?
20 A. Yes.
21 Q. Who was that lawyer?
22 A. David Stretch.
23 MS. WILLIAMS: If it helps, we can stipulate to
24 the date the bankruptcy was filed.

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1 MR. FLYNN: That's fine. I think we've got
2 some e-mails that may reflect when it was. I just
3 wondered if he knew offhand.
4 MS. WILLIAMS: I can stipulate, at least, that
5 it was 2014.
6 BY MR. FLYNN:
7 Q. You filed for bankruptcy while the
8 Popovich firm was still representing you —
9 A. Yes.
10 Q. — in the underlying case, correct?
11 A. Yes.
12 Q. Sometimes I'll still pause in my question
13 so if you could please pause before you answer.
14 In the underlying case you answered
15 written discovery; is that true?
16 A. I believe so.
17 Q. Then you later testified at your
18 deposition January 24, 2013, correct?
19 A. If that's the date, yes.
20 Q. Ultimately, David Gagnon was also
21 deposed, true?
22 A. Yes.
23 Q. Were you present for his deposition?
24 A. No.

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1 Q. Did Caroline McGuire give a deposition in
2 that case?
3 A. I believe so, yes.
4 Q. Were you present for that dep?
5 A. No.
6 Q. What about Bill McGuire's deposition?
7 A. I was not present.
8 Q. Did you e-mail back and forth with
9 Hans Mast a fair amount during the Popovich firm's
10 representation of you?
11 A. By "fair amount," what do you mean?
12 Q. Did you regularly e-mail with Hans Mast?
13 A. Yes.
14 Q. Those e-mail communications have all been
15 produced in this case?
16 A. Yes.
17 Q. On to the exhibits. This will be 1.
18 (WHEREUPON, a certain document was
19 marked Exhibit No. 1, for
20 identification, as of 02/19/2020.)
21 BY MR. FLYNN:
22 Q. Let me show you what's been marked as
23 Exhibit 1. These are one set of your Answers to
24 Interrogatories in our case, the current legal

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1 malpractice case you filed against the Popovich firm
2 and Hans Mast.
3 Do you recognize this document?
4 A. Yes.
5 Q. We've been providing you with various
6 copies of the signature page in the case that's been
7 back and forth between me and your counsel.
8 I don't, frankly, know if this
9 verification that's attached is the one that went
10 with this document, but I'll just ask you, for the
11 record, if these are your answers, that's your
12 signature, and that this verification is accurate?
13 A. That is my signature on there, yes.
14 Q. What was the e-mail address you used
15 in the communication with Hans Mast?
16 A. Primarily it was pdulberg@comcast.net.
17 Q. His address was hansmast@comcast.net?
18 A. And he switched it to at&t.net.
19 Q. Did you use some other e-mail address as
20 well?
21 A. I may have accidentally e-mailed him a
22 couple of times from a Yahoo account.
23 Q. In answering discovery in our case, the
24 legal malpractice case, did you search through both



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1 of those e-mail accounts of yours?
2 A. I no longer have the Yahoo account.
3 Q. Did you search through the Comcast
4 account?
5 A. Yes.
6 Q. Did you search for PDFs or attachments to
7 those e-mails that you produced?
8 A. Everything that I got, I turned over. I
9 had converted the e-mails to PDFs because Comcast
10 started purging the e-mails after so many years, so
11 I turned them all into PDFs.
12 MS. WILLIAMS: The question was what did you
13 search in your in box.
14 BY THE WITNESS:
15 A. What did I search?
16 BY MR. FLYNN:
17 Q. Let me ask you a different question.
18 You produced e-mails in this case?
19 A. Yes.
20 Q. You turned e-mails into PDFs and sent
21 them to your lawyer; is that right?
22 A. Yes.
23 Q. Some of the e-mails I reviewed have an
24 icon that indicates there was a PDF or some other

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1 attachment to the e-mail. Do you understand that?
2 A. Yes.
3 Q. Did you produce the attachments to each
4 of the e-mails in this case?
5 A. We went through that. I produced the
6 attachments that I still had.
7 Q. There were some that were not available,
8 correct?
9 A. Yeah. When I looked at them, 99 percent
10 of them were already part of some other document
11 that we turned over. I think 100 percent of them.
12 Q. At some point in time while Hans was
13 handling your case, did he start to communicate with
14 you relative to his analysis of the McGuires'
15 liability in the case?
16 A. Yes.
17 Q. Did he start to generally advise you that
18 he didn't believe that there was a strong case for
19 liability against the McGuires?
20 A. Yes.
21 Q. Is it fair to say that Hans' opinion was
22 that the McGuires did not have liability in the case
23 because they did not control the work that
24 David Gagnon was doing?

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1 A. Yes.
2 Q. That's generally a fair summary of Hans'
3 opinion?
4 A. Not quite exactly those words, but yeah.
5 Q. The McGuires' liability as property
6 owners was questionable because based on Hans'
7 analysis of the evidence, they did not control the
8 work or the manner of work of David Gagnon on the
9 date of the accident; is that a fair summary?
10 A. Depends on which time he said that.
11 Q. Did he say things like that over and over
12 again?
13 A. He did say things like that, yes.
14 Q. Again, I don't want to go over the facts
15 you already testified to with regards to the date of
16 the accident. At some point in time was
17 William McGuire swimming in the swimming pool?
18 A. Yes.
19 Q. Was that an above ground pool or --
20 A. Above ground.
21 Q. Was there a fair amount of time during
22 the day that Mr. McGuire was inside the house
23 watching television?
24 A. Maybe -- he went inside the house for

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1 probably about 45 minutes before the accident
2 happened. I don't know that he was watching
3 television.
4 MR. FLYNN: Let's mark the next exhibit as 2.
5 (WHEREUPON, a certain document was
6 marked Exhibit No. 2, for
7 identification, as of 02/19/2020.)
8 BY MR. FLYNN:
9 Q. Showing you what's been marked as
10 Exhibit 2, which is an e-mail chain including
11 e-mails from November 18, 2013, are these e-mails
12 between you and Hans Mast?
13 A. It looks like it, yes.
14 Q. I think the time stamps on these e-mails
15 go from the bottom, which would be page 2, to the
16 top of the first page, correct?
17 A. It's backwards, yes.
18 Q. In the original e-mail at 1:28 p.m., did
19 Hans Mast relay to you a \$5,000 settlement offer
20 from the McGuires?
21 A. Which -- where are you at?
22 Q. We're on Exhibit 2, which is also labeled
23 as Bates label POP 181. At the bottom of the page,
24 does Hans relay to you a settlement offer for



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1 \$5,000?
2 A. Yes.
3 Q. He was telling you that the McGuires'
4 attorney offered to settle the case for \$5,000?
5 A. Yes.
6 Q. Did you have an understanding that that
7 was a settlement just for the McGuires, not
8 including David Gagnon?
9 A. Yes.
10 Q. In the e-mail Hans says, quote, "As we
11 discussed, they have no liability in the case for
12 what Dave did as property owners. So they will
13 likely get out of the case on a motion at some
14 point, so my suggestion is to take the \$5,000 now."
15 Is that an accurate reading?
16 A. Of that sentence, yes.
17 Q. Is it fair to say that he suggested that
18 you take the \$5,000 but didn't force you to take it?
19 A. It says, "So my suggestion is..."
20 Q. Then did you respond to the e-mail?
21 A. Yes.
22 Q. Hans replied again at 8:07 p.m. that same
23 day, right?
24 A. Yes.

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1 Q. He said, "Paul, whether you like it or
2 not, they don't have a legal liability for your
3 injury because they were not directing the work."
4 Is that right?
5 A. Part of it, yes.
6 Q. Was my prior summary of Hans' legal
7 analysis a fair summary in view of these e-mails and
8 his opinion that he relayed to you?
9 A. I think it went further than this, and
10 other things, but yes.
11 Q. As far as these e-mails, I've
12 accurately --
13 A. This e-mail, yes.
14 Q. What else did he tell you about the
15 McGuires and why he didn't think they would be found
16 liable in the case?
17 A. I'm pulling out of memory because I can't
18 quote which document it's off of.
19 Q. That's what we're here for.
20 A. I can only give you the gist.
21 Q. I'll ask you for the exact language, but
22 if you don't have it --
23 A. At one point he defined what an
24 independent contractor is for me and he said that

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1 David was an independent contractor and that the
2 McGuires weren't liable because they had hired
3 somebody outside even though it's their own son,
4 he's an adult, outside to do the work and that they
5 weren't responsible.
6 Q. By the way, how old was David at the time
7 that this accident occurred?
8 A. I'm adding. If I was 41 -- I don't know
9 what his birthday is, but I'm assuming he would be
10 44, 45.
11 Q. Is it fair to say that there were two
12 40-plus-year-olds, a 41- and a 44-year-old trimming
13 trees with a chainsaw in David's parent's backyard
14 that day, correct?
15 A. I was not using it. There was one
16 44-year-old using a chainsaw.
17 Q. You, the 41-year-old was holding some
18 branches for him?
19 A. Yes. Just before the accident, yes.
20 Q. Up until this point in time when Hans is
21 providing this legal analysis to you, you had a fair
22 number of occasions to interact with lawyers, as
23 we've discussed today, correct?
24 A. At this point, the only lawyer that I

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1 interacted with was the first one.
2 Q. I'm talking about in your lifetime. You
3 had a corporate lawyer, you had a criminal lawyer,
4 another personal injury lawyer --
5 A. I didn't hire --
6 Q. Let me finish. You had experience with
7 lawyers representing you up to this point in time?
8 A. Yes.
9 Q. Did you have an understanding that
10 lawyers evaluate cases differently?
11 A. Yes.
12 Q. And judges evaluate cases differently?
13 A. Sure. That's fair.
14 Q. Would it be fair to say that some laws in
15 our country are clearer and some are open to
16 interpretation?
17 A. I think all of them are.
18 MS. WILLIAMS: Objection. Calls for
19 speculation.
20 If you understand the question, you can
21 answer it.
22 BY MR. FLYNN:
23 Q. Would you say, for example, that the tax
24 code is a little more clearcut than common law



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1 that's created by cases and case precedent?
2 A. I'm not real familiar with tax law. I
3 have accountants for that.
4 Q. How about an easier question. The stop
5 sign means that you stop, and if you go through it,
6 it's pretty clear that you're liable for a traffic
7 violation?
8 A. I'll agree with that.
9 Q. The legal liability for a property owner
10 in Illinois might be a little more complicated; is
11 that a fair statement?
12 A. I don't know.
13 Q. Would it be fair to say, in your opinion
14 or your knowledge of the law, the property owner
15 isn't necessarily liable because somebody is injured
16 on their property?
17 A. Are you talking about what I know now or
18 what I knew back when this was?
19 Q. At any time.
20 A. What I know now is in the circumstances
21 that we were in, they were very liable.
22 Q. I'm just asking if — just because
23 somebody is injured on a property owner's property,
24 they are not necessarily liable, correct? Other

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1 factors are required too.
2 MS. WILLIAMS: I'm going to object for — he's
3 not an expert and can't testify to legal analysis.
4 BY MR. FLYNN:
5 Q. As you sit here today, do you know
6 whether a premises liability case involves multiple
7 factors to prove liability against the property
8 owner?
9 A. I don't know. I'd say that's fair.
10 You're asking the wrong person for that.
11 Q. It was Hans' opinion that the McGuires
12 did not control the work based on the evidence,
13 correct?
14 A. In my opinion?
15 Q. That's not what I'm asking.
16 Was it Hans' opinion —
17 A. I can't —
18 Q. Let me just finish.
19 Did Hans tell you that it was his opinion
20 that the McGuires were not liable because they did
21 not control the work?
22 A. He said that right there, yes.
23 Q. Do you believe that he truly felt that
24 way? That was his legal opinion?

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1 A. Do you want the Monday morning
2 quarterbacking version or at the time?
3 Q. I'm asking if at that time you felt that
4 he truly believed that the McGuires did not have
5 liability?
6 A. At the time I trusted him, yes. I hired
7 him to represent me, and yeah.
8 Q. You believed that he was relying his
9 honest legal opinion to you at that time?
10 A. Yes.
11 Q. Including on November 18, 2013?
12 A. Yes.
13 Q. You did not accept the settlement offer
14 of \$5,000 that he relayed to you on that day,
15 correct?
16 A. Correct.
17 Q. Did you ultimately meet with Hans to
18 discuss the settlement offer?
19 A. I think it was the day before this, but
20 I'm not sure. It was either the day before or the
21 day after.
22 MS. WILLIAMS: I think the question was, did
23 you meet with him, at all, not the date.
24

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1 BY THE WITNESS:
2 A. Yes.
3 MR. FLYNN: Can we mark this as Exhibit 3,
4 please.
5 (WHEREUPON, a certain document was
6 marked Exhibit No. 3, for
7 identification, as of 02/19/2020.)
8 BY MR. FLYNN:
9 Q. Showing you what's been marked as
10 Exhibit 3. Do you recognize this memorandum?
11 A. Yes.
12 Q. You may have seen it from the document
13 production that we made in this case. This is a
14 memorandum drafted by Hans Mast, which purportedly
15 memorializes a meeting that he had with you on
16 November 20, 2013.
17 Does this refresh your memory as to when
18 you met with him or if you met with him?
19 A. If he took the memorandum on the same
20 day, then sure.
21 Q. In the memo Hans says, "I met with Paul
22 and his friend."
23 Do you see that?
24 A. Yes.



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1 Q. Did you meet with Hans and some third
2 person —
3 A. Yes.
4 Q. — at or about this time regarding the
5 case?
6 A. Yes.
7 Q. Who was that friend?
8 A. Tom Kost.
9 Q. Who is Tom Kost?
10 A. My brother.
11 Q. Not that it matters necessarily for
12 privilege purposes, but can you tell me how Tom Kost
13 is your brother?
14 A. We have the same mom.
15 Q. He was with you and observed the meeting
16 between you and Hans?
17 A. Yes.
18 Q. The \$5,000 settlement offer was
19 discussed, correct?
20 A. Yes.
21 Q. At that time did Hans, again, relay his
22 opinion as to the questionable liability about the
23 McGuires — strike that.
24 Did he relay to you his opinion about the

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1 questionable nature of the McGuires' liability?
2 A. At the meeting with Tom, yes.
3 Q. He advised you they maintain they were
4 not directing Dave's work. That was the McGuires'
5 position, correct?
6 A. I don't know that he stayed on that at
7 that meeting. At different times he gave different
8 reasons.
9 Q. The next line says, "Paul maintains the
10 McGuires controlled everything that Dave was doing."
11 Is that an accurate reflection of your
12 opinion?
13 A. Yes.
14 Q. As you sit here today, do you know if
15 that statement is consistent with your own
16 deposition testimony from the underlying case?
17 A. Yes.
18 Q. We'll come back to that. Did you tell
19 Hans that you wanted to read the depositions of the
20 McGuires and David Gagnon's depositions?
21 A. Say that again.
22 Q. Did you tell Paul that you wanted to read
23 the depositions of the McGuires and Dave Gagnon's
24 depositions?

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1 A. Did I tell Paul?
2 Q. I'm sorry. Did you tell Hans that?
3 A. That I wanted to read the McGuires and
4 David Gagnon's depositions?
5 Q. Yes.
6 A. Yes, I did.
7 Q. What was the purpose of your wanting to
8 review those depositions?
9 A. Hans had told me that what they said in
10 their depositions meant that they had no liability.
11 Q. You wanted to review the testimony to
12 determine whether you wanted to consider the \$5,000
13 settlement offer; is that correct?
14 A. Right.
15 Q. Did you do that?
16 A. Eventually, yes.
17 Q. Before you accepted the offer?
18 A. I think so.
19 Q. So sometime after this meeting on
20 November 20, 2013 and before you accepted the
21 settlement offer on January 29, 2014, did you review
22 those three deposition transcripts?
23 A. I'll correct you. I did not accept the
24 offer on January 20th. I signed a release on

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1 January 29th.
2 Q. Fair point. Did you read the depositions
3 between those two dates, November 20, 2013 and
4 January 29, 2014?
5 A. Yes.
6 Q. Those are —
7 A. I believe I asked him — I don't know —
8 it may be a little earlier because I don't know that
9 I asked him before or after the meeting. I don't
10 remember. I'd have to go back in the e-mails to
11 give the date.
12 Q. Some point in time between those two
13 dates you read the depositions?
14 A. I may have asked for them before. I
15 don't know without seeing the e-mail. It was,
16 roughly, in the last quarter of that year, yes. Or
17 the first month. I don't remember the first time
18 that I asked to read them. I don't remember off the
19 top of my head.
20 Q. At any point in time did you ever grant
21 Hans authority to make a settlement demand in the
22 case?
23 A. No.
24 MR. FLYNN: Mark this as Exhibit 4.



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<p style="text-align: right;">Page 65</p> <p>1 (WHEREUPON, a certain document was 2 marked Exhibit No. 4, for 3 identification, as of 02/19/2020.) 4 BY MR. FLYNN: 5 Q. Showing you what's been marked as 6 Exhibit 4. This is a copy of the original complaint 7 in this instant case. It reflects a filing date of 8 November 28, 2017. 9 Is this your original legal malpractice 10 complaint against the Popovich firm and Hans Mast? 11 A. I believe so. 12 Q. Did you review and approve the 13 allegations in this complaint? 14 A. For the most part. I wanted to reword 15 some things, but the lawyer, they do their thing. 16 Q. At the time you were represented by the 17 Gooch firm is when you filed this lawsuit, correct? 18 A. Yes. 19 Q. Directing your attention back to 20 Exhibit 1, if you still have it. If you could turn 21 to page 10. 22 The answer to Interrogatory No. 24 23 indicates that on November 4, 2013, Mast was granted 24 authority to investigate a settlement but a specific</p>	<p style="text-align: right;">Page 67</p> <p>1 offer to Hans Mast before Christmas Day, which would 2 be December 25, 2013? 3 A. Right. 4 Q. Then did Hans mail to you a settlement 5 release by letter dated January 24, 2014? 6 A. I'd like to see the letter, but yeah, I 7 believe so. 8 Q. I believe it's — 9 A. I believe he had to mail it a couple 10 times because I didn't get it. 11 MR. FLYNN: Let's mark Exhibit 5. 12 (WHEREUPON, a certain document was 13 marked Exhibit No. 5, for 14 identification, as of 02/19/2020.) 15 BY MR. FLYNN: 16 Q. Showing you what's been marked as 17 Exhibit 5. I'll represent to you that this is a 18 copy of the second amended complaint that you filed 19 in this case by your new lawyers, your current 20 lawyers. If I could direct your attention to 21 Exhibit D attached to this Exhibit 5. 22 Is Exhibit D a January 24, 2014 cover 23 letter from Hans Mast to you enclosing the general 24 release and settlement agreement from defense</p>
<p style="text-align: right;">Page 66</p> <p>1 dollar amount was never provided. Do you see that? 2 A. He was verbally granted authority to 3 investigate, yes. 4 Q. Who did you want him to investigate a 5 settlement with? 6 A. The McGuires. 7 Q. Just the McGuires or the McGuires and — 8 A. He wanted to do it. I didn't. I said, 9 "If you want to look at that, go ahead." 10 Q. Did you grant him authority to 11 investigate a settlement with David Gagnon as well? 12 A. I don't know if I did or not, off the top 13 of my head, but that would have been much later. 14 Q. Eventually did you tell Hans that you 15 would agree to accept the \$5,000 settlement offer 16 from the McGuires? 17 A. Eventually did I tell him that? 18 Q. Yes. 19 A. Yes. 20 Q. When did you tell him that? 21 A. I want to say just before Christmas in 22 December of 2013. 23 Q. There's no doubt in your mind that you 24 relayed your acceptance of the \$5,000 settlement</p>	<p style="text-align: right;">Page 68</p> <p>1 counsel for Caroline and Bill McGuire? 2 A. That's what it says. 3 Q. In the letter did he ask you to — it 4 looks like it might be a typo. It says, "Please 5 release and return it to me in the enclosed 6 self-addressed stamped envelope at your earliest 7 convenience." 8 A. Right, but I believe it was just a 9 release — it was all tied into one. 10 Q. This letter is unsigned. Did you receive 11 the letter unsigned? 12 A. Did I receive this unsigned? 13 Q. Yes. 14 A. Yes. 15 Q. Have you ever seen a signed copy of this 16 letter? 17 A. No. 18 Q. If I could direct your attention to the 19 next page of Exhibit D. Is that page 1 of the 20 general release and settlement agreement? 21 A. Exhibit D? 22 Q. Correct. 23 MS. WILLIAMS: Turn the page. 24</p>



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<p style="text-align: right;">Page 69</p> <p>1 BY MR. FLYNN:</p> <p>2 Q. Is this what you received attached to the</p> <p>3 cover letter?</p> <p>4 A. I don't think so. Let me see. Yes, this</p> <p>5 looks like it because it's got these things I</p> <p>6 remember.</p> <p>7 Q. When did you receive this letter and the</p> <p>8 attachment?</p> <p>9 A. I would say I wrote back on January 29th</p> <p>10 and I probably got it that day, signed it and sent</p> <p>11 it back.</p> <p>12 Q. The copy of the release is also unsigned.</p> <p>13 It's attached as exhibit -- part of Exhibit D to</p> <p>14 your second amended complaint.</p> <p>15 Do you see the signature lines and the</p> <p>16 notary signature here that's missing?</p> <p>17 A. Yes.</p> <p>18 Q. Is this the document that you signed and</p> <p>19 sent back to Hans Mast?</p> <p>20 A. The document that I signed had my</p> <p>21 signature.</p> <p>22 Q. I'm asking if this is the same document</p> <p>23 that you signed and sent back to him?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 71</p> <p>1 A. I believe I contacted Hans again.</p> <p>2 Q. Besides Hans, did you talk to anyone</p> <p>3 else?</p> <p>4 A. No.</p> <p>5 Q. Was there anything preventing you from</p> <p>6 seeking a second opinion from some other lawyer at</p> <p>7 that time?</p> <p>8 A. No.</p> <p>9 Q. Directing your attention to Exhibit E</p> <p>10 attached to the second amended complaint, the second</p> <p>11 amended complaint, again, being Exhibit 5. Is this</p> <p>12 an e-mail from you to Hans on January 29, 2014?</p> <p>13 A. This is the e-mail chain between me and</p> <p>14 Hans, yes.</p> <p>15 Q. Down below at the bottom of the page,</p> <p>16 January 29 at 10:51 a.m., it appears that you were</p> <p>17 questioning Hans regarding some of the language in</p> <p>18 the release, including social security disability</p> <p>19 check boxes. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Hans responded to you and then at the top</p> <p>22 of the page here at 1:59 p.m. it says, "Okay, it's</p> <p>23 signed and in the mail."</p> <p>24 A. Correct.</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. Right now we don't have a signed copy. I</p> <p>2 don't know that I've seen one in the case.</p> <p>3 MS. WILLIAMS: Can we go off the record for a</p> <p>4 second?</p> <p>5 MR. FLYNN: Sure.</p> <p>6 (WHEREUPON, discussion was had</p> <p>7 off the record.)</p> <p>8 BY MR. FLYNN:</p> <p>9 Q. Is there any doubt, in your mind, that</p> <p>10 Exhibit D is the letter and attachment that you</p> <p>11 received from Hans Mast?</p> <p>12 A. No. I believe that this is it.</p> <p>13 Q. You signed some copy of this release and</p> <p>14 sent it back to Hans on January 29; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. You accepted the settlement offer prior</p> <p>17 to Christmas and presumably defense counsel or Hans</p> <p>18 drafted the settlement release and then Hans mailed</p> <p>19 it to you, correct?</p> <p>20 A. Yes.</p> <p>21 Q. At any point in time from December 25th</p> <p>22 until you received this settlement release, did you</p> <p>23 contact any lawyer to discuss whether it would be</p> <p>24 appropriate to let the McGuires out for 5,000?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. What did you mean by that?</p> <p>2 A. I signed it and mailed it.</p> <p>3 Q. Did you -- where did you mail it from?</p> <p>4 A. My home.</p> <p>5 Q. How did you do that?</p> <p>6 A. Put a stamp on the envelope and put it in</p> <p>7 the mailbox, put the flag up and waited for the</p> <p>8 mailman.</p> <p>9 Q. Is the mailbox attached to your home or</p> <p>10 is it --</p> <p>11 A. It's out on the street.</p> <p>12 Q. You walked down there and you put the</p> <p>13 mail -- the envelope in the mailbox, put the flag up</p> <p>14 and --</p> <p>15 A. That is correct.</p> <p>16 Q. Your understanding of signing that</p> <p>17 release and sending it back to your lawyer was that</p> <p>18 you would agree to take the \$5,000 settlement,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Hans didn't deliver the letter to you</p> <p>22 personally. He mailed it to you, correct?</p> <p>23 A. He mailed it to me?</p> <p>24 Q. He mailed it to you.</p>



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<p style="text-align: right;">Page 73</p> <p>1 A. Correct. U.S. mail.</p> <p>2 Q. Do you recall an allegation in your</p> <p>3 complaint or amended complaint or second amended</p> <p>4 complaint in this case alleging that you were</p> <p>5 pressured or alleging undue influence by Hans in</p> <p>6 urging you to accept the \$5,000 settlement from the</p> <p>7 McGuires?</p> <p>8 A. Yes.</p> <p>9 Q. How is it, as you sit here today, can you</p> <p>10 tell me how Hans unduly influenced you to accept the</p> <p>11 \$5,000 settlement offer?</p> <p>12 A. I don't know what Hans was thinking. How</p> <p>13 did I feel influenced?</p> <p>14 Q. Unduly influenced.</p> <p>15 Let me put it this way. He didn't put a</p> <p>16 gun to your head?</p> <p>17 A. No.</p> <p>18 Q. He suggested that you take the</p> <p>19 settlement?</p> <p>20 A. Correct.</p> <p>21 Q. He didn't force you to take the</p> <p>22 settlement?</p> <p>23 A. Correct.</p> <p>24 Q. It was your decision?</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. Did you call Hans or e-mail him and</p> <p>2 question him with respect to the evidence, the</p> <p>3 testimony contained in those deposition transcripts?</p> <p>4 A. Yes.</p> <p>5 Q. What did you say to him and what did he</p> <p>6 say to you?</p> <p>7 A. There were many conversations over the</p> <p>8 phone and I'm sure some through e-mails.</p> <p>9 Q. He continued to tell you that it was his</p> <p>10 opinion that the liability on the McGuires is</p> <p>11 questionable because they did not control</p> <p>12 David Gagnon's work that day, correct?</p> <p>13 A. It depends on which time. Sometimes he</p> <p>14 said because they didn't tell them how to squeeze</p> <p>15 the trigger. It depends which time you are talking</p> <p>16 about.</p> <p>17 Q. Again, there was nothing preventing you</p> <p>18 from seeking a second opinion from some other lawyer</p> <p>19 at the time you signed the settlement release and</p> <p>20 sent it back to Hans, correct?</p> <p>21 A. From the time I received it, signed it</p> <p>22 and sent it back?</p> <p>23 Q. Right.</p> <p>24 A. No. It was a matter of hours. I got it</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Correct.</p> <p>2 Q. You signed it and you sent it back to him</p> <p>3 in the mail?</p> <p>4 A. Yes.</p> <p>5 Q. Aside from your e-mails with Hans on</p> <p>6 January 29, did you call him that day?</p> <p>7 A. I believe so.</p> <p>8 Q. Did you also discuss whether it was</p> <p>9 appropriate to accept the McGuires' \$5,000</p> <p>10 settlement offer at that time?</p> <p>11 A. Yes.</p> <p>12 Q. You deliberated on it and decided to take</p> <p>13 it, correct?</p> <p>14 A. There wasn't much — it was take it or</p> <p>15 get nothing.</p> <p>16 Q. You had the opportunity to deliberate on</p> <p>17 it, correct?</p> <p>18 A. For that day, yeah.</p> <p>19 Q. You had reviewed the transcripts of the</p> <p>20 McGuire depositions and David Gagnon's depositions</p> <p>21 in order to provide you with some information in</p> <p>22 order to determine whether to accept the settlement</p> <p>23 offer, correct?</p> <p>24 A. I believe I did try to read those, yes.</p>	<p style="text-align: right;">Page 76</p> <p>1 that morning.</p> <p>2 Q. You decided to mail it that day, right?</p> <p>3 A. He needed it. He said now or you're not</p> <p>4 going to get anything.</p> <p>5 Q. There was nothing preventing you from</p> <p>6 seeking the advice of another attorney at that time?</p> <p>7 A. At that time it was time. It was now or</p> <p>8 nothing.</p> <p>9 Q. You were in the comfort of your own house</p> <p>10 when you received the letter, correct?</p> <p>11 A. Yes.</p> <p>12 Q. You had the ability to go find another</p> <p>13 lawyer and ask them to discuss the case at that</p> <p>14 time. You had done it hundreds of times earlier —</p> <p>15 strike that.</p> <p>16 After the settlement with the McGuires,</p> <p>17 you continued to prosecute the case against Gagnon,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have an understanding as to what,</p> <p>21 if any, insurance coverage he had?</p> <p>22 A. Yes.</p> <p>23 Q. How much was that?</p> <p>24 A. What time frame are you talking about?</p>



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1 Q. What was your initial understanding as to
2 the limits on David Gagnon's insurance coverage?
3 A. Hans Mast told me he had \$100,000.
4 Q. Was that in an e-mail?
5 A. There were — not initially, no, but
6 later on he reiterated that in e-mails, yes.
7 Q. Did you, ultimately, learn that there was
8 some additional amount of coverage with respect to
9 Gagnon's policy?
10 A. Long after Hans Mast was gone, not part
11 of the case.
12 Q. How much was the coverage?
13 A. The Allstate coverage, I believe, was
14 300,000.
15 Q. We'll talk about the settlement later,
16 but did you ultimately settle the case again Gagnon
17 for 300,000?
18 A. I believe it went to binding mediation.
19 Q. Was there an award of \$300,000 based on a
20 high/low agreement?
21 A. Yes.
22 Q. Is it fair to say that if Hans made a
23 mistake about the \$100,000 in coverage, that that
24 was corrected and there was never any harm done as a

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1 result of his —
2 A. No.
3 Q. Explain to me how you were harmed by the
4 representation that there was \$100,000 in coverage.
5 A. You want me to explain?
6 Q. Yes.
7 A. Had I known the value of the case, I
8 would have not filed for bankruptcy.
9 Q. Explain to me why one has something to do
10 with the other.
11 A. Is my family and me going to dump money
12 into a black hole that we can't recover or is there
13 a light at the end of the tunnel where I can pay
14 them back.
15 Q. At the time that you filed for
16 bankruptcy, had any settlement offer been made from
17 David Gagnon or his lawyers to you?
18 A. At the time of when?
19 Q. When you filed for bankruptcy.
20 A. I don't think so. I'd have to check the
21 dates, but I don't think so.
22 Q. As the case was progressing against
23 David Gagnon, were your doctors deposed?
24 A. As the case progressed with David Gagnon,

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1 I believe they were deposed. I don't remember. I'd
2 have to look at the dates.
3 Q. Discovery continued on in the case?
4 A. I believe one doctor was deposed after
5 the McGuire settlement. I'm not sure, though.
6 Q. Did Hans continue to represent you for
7 some period of time?
8 A. Yes.
9 MR. FLYNN: I'll have you mark this as
10 Exhibit 6.
11 (WHEREUPON, a certain document was
12 marked Exhibit No. 6, for
13 identification, as of 02/19/2020.)
14 BY MR. FLYNN:
15 Q. Showing you what's been marked as
16 Exhibit 6. Do you recognize this e-mail chain?
17 A. Yes.
18 Q. This is from September 23, 2014. If we
19 go from the bottom up, it appears that Hans said to
20 you that he wanted to give you the option of finding
21 other counsel at this point if you really want to
22 take the case to trial, which I think ultimately
23 will be necessary. Correct?
24 A. Are we at "before I proceed" or "that's

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1 the very reason"?
2 Q. "That's the very reason."
3 Is it fair to say he was suggesting you
4 find another counsel in the case at that point?
5 A. Yes.
6 Q. He also said, "I just do not believe
7 strongly that defense counsel will offer much in the
8 way of settlement."
9 Do you see that?
10 A. Yes.
11 Q. That's his opinion regardless of what he
12 believed the coverage limits to be; is that a fair
13 statement?
14 A. Yes.
15 Q. You responded to him, he responded to you
16 and then you wrote an e-mail to him at 8:25 p.m.
17 that night?
18 A. Okay.
19 Q. Do you see that? Did you say, "First,
20 I'm sorry that I'm not a better witness to help
21 prove David cut me with a chainsaw"?
22 A. Yes.
23 Q. Did you start to look for other lawyers
24 to help you in your case against Gagnon at that



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1 point in time?
2 A. I believe I did, that summer. This is
3 fall, September.
4 Q. You had already started looking for new
5 lawyers?
6 A. I believe that Hans had told me to start
7 looking for a new lawyer in April of that year.
8 Q. Did he say why?
9 A. We'd have to read his thing. He says
10 why.
11 Q. Do you recall why he said that to you?
12 A. He did not feel that the case was
13 provable against David. He did not feel the value
14 of the case was worth it. He did not feel --
15 actually, this is 2014. The dates are rough.
16 Q. He thought the case against David was
17 difficult, correct?
18 A. Yes.
19 Q. Have you ever described the case as a he
20 said, she said with respect to the facts of the
21 accident?
22 A. He described that to me many times.
23 Q. Have you also --
24 A. And I used that back, yes.

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1 Q. Have you ever described this case as a he
2 said, she said case?
3 A. I may have. I don't know.
4 Q. It is your word against David Gagnon's as
5 to what happened and whose fault it was that day?
6 A. That's what Hans explained to me as what
7 the problem was.
8 Q. Did you ever describe the accident as a
9 he said, she said?
10 A. I don't think I called David a "she said"
11 or me a "she said." I don't know. Right here I do.
12 Q. What do you say there?
13 A. I said, "I'm sorry that I'm not a better
14 witness to help prove David cut me with a chainsaw."
15 Q. He was denying that he even cut you,
16 correct?
17 A. No, he never denied that.
18 Q. What was your reason for writing this
19 sentence in that way?
20 A. Because Hans said that he believed David
21 over me.
22 Q. With respect to what fact at issue?
23 A. His deposition versus mine. He said that
24 I didn't make a good witness.

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1 Q. With respect to what points?
2 A. All of it. He was dumping me and he was
3 coming up with his own excuses.
4 Q. You and David were the only ones that
5 witnessed this accident?
6 A. Correct.
7 Q. Based on your understanding of how the
8 evidence came out in the case, would you agree that
9 there were differences with respect to the version
10 of events?
11 A. Oh, yeah.
12 Q. There were differences between what he
13 said happened and what you said happened?
14 A. Oh, definitely.
15 Q. Would it be fair to say, then, it would
16 be up to the trier of fact, whether it be a judge or
17 a jury, to determine who they believed?
18 MS. WILLIAMS: Objection. Calls for a legal
19 conclusion.
20 You can answer, if you understand.
21 BY THE WITNESS:
22 A. I believe it would be up to a judge or
23 jury, sure.
24

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1 BY MR. FLYNN:
2 Q. At the bottom of Exhibit 7 you say,
3 "Bottom line Hans... do the best you can with what
4 you got."
5 I'm sorry. I didn't mark this one yet.
6 My apologies.
7 (WHEREUPON, a certain document was
8 marked Exhibit No. 7, for
9 identification, as of 02/19/2020.)
10 BY MR. FLYNN:
11 Q. Showing you what's been marked as
12 Exhibit 7. Is this an e-mail chain between you and
13 Hans?
14 A. I don't think it's a chain. I think it's
15 one.
16 Q. Point is well taken. It's you writing to
17 Hans?
18 A. Yes.
19 Q. At the bottom it sounds like you had been
20 in the hospital with a migraine and then you wrote,
21 "Bottom line, Hans... do the best you can with what
22 you got."
23 A. Yes.
24 Q. What did you mean by that?



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1 A. He wanted to settle, and I can tell you
2 right now this letter was written after a very
3 traumatic experience and — let me read it and
4 refresh myself. I'm melting down in this letter.
5 Q. You said after a traumatic experience.
6 Are you referring to the bankruptcy filing from that
7 day?
8 A. That, in combination with migraines, yes.
9 Q. David Stretch was your lawyer that filed
10 bankruptcy for you?
11 A. Yes.
12 Q. Did you meet with Mr. Stretch and discuss
13 the bankruptcy process before you hired him?
14 A. Yes.
15 Q. How long did you meet with him?
16 A. I think I asked about it. I don't know.
17 It may have been a couple of months or a couple
18 weeks before it got filed. I wanted to learn about
19 it.
20 Q. Did you, ultimately, list the case
21 against David Gagnon as an asset in your bankrupt
22 filing?
23 A. Yes, I did.
24 Q. Is that why the bankruptcy trustee became

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1 involved with the binding mediation?
2 A. Yes.
3 Q. Did you ever meet the bankruptcy trustee?
4 A. Yes. The first one.
5 Q. What was the name of that person?
6 A. The first one was Heeg was her last name.
7 H-e-e-g, I think.
8 Q. Again, we established that Brad Balke
9 became your lawyer in the case on March 19, 2015,
10 correct?
11 A. Yes.
12 Q. Is it fair to say that your relationship
13 with Hans Mast was deteriorating over the fall and
14 beginning of the winter of 2015?
15 A. I would say it had been deteriorating
16 long before that. You can see from the last exhibit
17 I'm melting down and it was already started
18 deteriorating.
19 Q. By the time you drafted Exhibit 7, had
20 you talked to other lawyers about taking your case?
21 A. I have to go back and look, but probably.
22 If he told me to look at other lawyers in April
23 before this, yes.
24 Q. How many lawyers would you say you talked

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1 to between April and the time you drafted this
2 e-mail on September 26?
3 A. I couldn't count that high, probably.
4 Q. Quite a few?
5 A. Yeah.
6 Q. Did any of them take your case?
7 A. No.
8 MR. FLYNN: Mark this as Exhibit 8.
9 (WHEREUPON, a certain document was
10 marked Exhibit No. 8, for
11 identification, as of 02/19/2020.)
12 BY MR. FLYNN:
13 Q. Showing you what's been marked as
14 Exhibit 8. Is this an e-mail from you to Hans Mast?
15 A. Yes. It's an e-mail chain, yes.
16 Q. On February 22, 2015 at 7:42 p.m. you
17 wrote to Hans, correct?
18 A. Yes.
19 Q. Halfway down in that e-mail message you
20 said, quote, "Now I'm left wondering... how hard it
21 is to sue an attorney?"
22 A. That is true.
23 Q. You wrote that?
24 A. Yes.

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1 Q. The next line you wrote, "And yes, I am
2 and have been looking for someone who will take this
3 case..."
4 A. That is not in reference to suing the
5 attorney. That was in reference to the Gagnon case.
6 Q. What did the reference to suing an
7 attorney mean?
8 A. That was me being angry.
9 Q. With Hans?
10 A. Yes. I was seeing red.
11 Q. You're suggesting that you may sue him?
12 A. Yeah. I didn't know that I could. I'm
13 wondering about it.
14 Q. You, basically, made a threat, whether it
15 be a veiled threat or an overt threat to sue him,
16 correct?
17 A. Yes.
18 Q. You, ultimately, sued him for legal
19 malpractice, right?
20 A. Yes.
21 Q. Is that what you had in mind when you
22 wrote this?
23 A. No. This was about dropping Gagnon. The
24 malpractice is about dropping the McGuires.



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1 Q. This —
2 A. We're talking — this is 2015.
3 Q. In this 2015 e-mail you are suggesting to
4 Hans that you may sue him because of the McGuire
5 settlement; is that right?
6 A. No.
7 Q. Then what is it that you're saying to
8 him?
9 A. That if he damaged the Gagnon case, I
10 didn't know if he did or didn't, and I'm threatening
11 because I'm angry. You can see, again, I'm melting
12 down here. These are emotional outbursts, I guess.
13 Q. Moving up the page a little bit also on
14 February 22, 2015 at 8:14 p.m., you say, "To be
15 honest, you took this case knowing it was my word
16 versus his."
17 A. Yes.
18 Q. He said, he said, right?
19 A. Yes.
20 Q. Is that a fair characterization of the
21 case, your word against David's?
22 A. That's how Hans kept describing it.
23 That's the way I put it back to him, yes.
24 Q. You didn't correct him or dispute his

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1 characterization, did you?
2 A. No. I used his characterization.
3 Q. You agreed with it?
4 A. He said — how did it go? We had
5 conversations between these e-mails on the phone.
6 Then we would hang up and I would get angry and type
7 it in an e-mail, type whatever it was that bothered
8 me so he had it.
9 Q. Let me ask another question, if that's
10 okay.
11 Did you ever correct Hans if he called
12 this a he said, he said case? Did you ever say it's
13 more than that?
14 A. Do I ever say it's more than that?
15 Q. Did you ever correct him? If he said
16 it's a he said, he said case, did you say no, that's
17 not right?
18 A. He said there's no witnesses. I said,
19 "I'm a witness."
20 Q. You're one of the hes. It's your word
21 against David Gagnon's, as you said in this e-mail?
22 A. Yes.
23 MR. FLYNN: If I could have you mark that as
24 Exhibit 9.

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1 (WHEREUPON, a certain document was
2 marked Exhibit No. 9, for
3 identification, as of 02/19/2020.)
4 BY MR. FLYNN:
5 Q. Exhibit 9, is that Brad Balke's
6 substitute appearance that was filed on March 19,
7 2015 in the case against Gagnon?
8 A. It looks like it, yes.
9 Q. Back to Exhibit 5, which is the second
10 amended complaint. If I could direct your attention
11 to Exhibit F. This appears to be a more complete
12 copy of another e-mail we just talked about. Is
13 Exhibit F more of the February 22, 2015 e-mail
14 chain?
15 A. I'm not sure if that's separate or the
16 same. Oh, it looks like it.
17 Q. At 7:20 p.m. Hans wrote to you and said,
18 "Paul, I can no longer represent you in the case.
19 We obviously have differences of opinion as to the
20 value of the case."
21 Right?
22 A. Yes.
23 Q. He says, "I've been telling you over a
24 year now the problems with the case and you just

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1 don't see them."
2 Correct?
3 A. That's what it says.
4 Q. Obviously, a difference of opinion,
5 right?
6 A. Yes. Are you talking about difference of
7 opinion as to the value or difference of opinion of
8 the problems within the case?
9 Q. Let's go on. He says, "You keep telling
10 me how injured you are and completely ignore that it
11 doesn't matter if you passed away from the accident
12 because we still have to prove that the defendant
13 was at fault. While you think it is very clear, it
14 is not. My guess is that seven out of ten times you
15 will lose the case outright. That means zero.
16 That's why I've been trying to convince you to agree
17 to a settlement. You clearly do not want to."
18 Did I accurately read that?
19 A. Just that part of that paragraph, yes.
20 Q. So Hans is telling you that in his
21 opinion your case against Gagnon you're going to
22 lose it seven out of ten times, correct?
23 A. In this one, yes.
24 Q. He's acknowledging that you may have a



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1 chance.
2 A. I think later on he says nine out of ten.
3 Q. In this e-mail he says seven out of ten
4 you will lose.
5 A. Yes.
6 Q. He's recognizing three times out of ten
7 you may win, right?
8 A. I don't know what Hans is thinking.
9 Q. Is that what he said?
10 A. He says seven out of ten times you lose.
11 Q. You understood that there are risks in
12 taking the case to trial that you could lose?
13 A. There are unforeseen risks, yes.
14 Q. There are always risks, period, in taking
15 a case to trial?
16 A. Yes.
17 Q. Before you hired Brad Balke and after
18 Hans told you he couldn't represent you, did you
19 talk to any other lawyers about taking your case?
20 A. Yes.
21 Q. How many?
22 A. I can't tell you. A lot.
23 Q. Did any of them tell you that they
24 wouldn't take the case because they didn't think you

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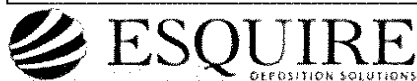
1 could prevail against Gagnon?
2 A. No.
3 Q. Not one?
4 A. No.
5 Q. What are the names of any of the lawyers
6 you talked to about taking your case over from
7 Popovich?
8 A. I can't tell you without looking at
9 documents who it was and what date it was, what it
10 was between these two.
11 Q. I don't think documents I produced would
12 help you in that regard.
13 I'll just ask you based on your memory
14 the names of any lawyers you met with from the time
15 Hans wrote this February 22 e-mail —
16 A. I believe —
17 Q. Let me finish.
18 A. I believe —
19 MS. WILLIAMS: He has not finished his
20 question.
21 THE WITNESS: Sorry.
22 BY MR. FLYNN:
23 Q. From the time that Hans wrote this
24 February 22 e-mail and the time that Brad Balke

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1 enters an appearance on March 19. Just the name of
2 any lawyer you —
3 A. I believe that Sal Ferris that I was
4 talking about was one of the lawyers that I talked
5 to.
6 Q. You're not sure? You believe that he
7 was?
8 A. In between this time and this time?
9 Q. Yes.
10 A. I believe it's right around then.
11 Q. What type of law practice does Sal Ferris
12 have?
13 A. I believe personal injury.
14 Q. Did you ever talk to him about taking
15 your case before that date?
16 A. Before the date of this e-mail?
17 Q. Yes.
18 A. I'd have to look at it.
19 Q. He wasn't one of the original attorneys
20 that you spoke with at the beginning of the case?
21 A. No.
22 Q. Fair to say once Balke entered his
23 appearance on March 19, 2015 that Mast and Popovich
24 were no longer your attorneys, correct?

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1 A. When Balke enters his appearance?
2 Q. Yes.
3 A. I would believe that, yes.
4 Q. They were terminated and Balke stepped
5 in?
6 A. Yes.
7 Q. Can you tell me how the binding mediation
8 which proceeded on December 8, 2015 evolved and came
9 to be.
10 A. I was ordered into it from a bankruptcy
11 court.
12 Q. Why is that?
13 A. I believe that the trustee put a motion
14 up. I don't know who did it. I assume it was the
15 trustee and the court ordered that it be put into
16 binding mediation.
17 Q. Did you appear at the mediation?
18 A. Yes.
19 Q. Do you recall the name of the mediator?
20 A. Not off the top of my head, no.
21 Q. One of the exhibits to your second
22 amended complaint indicates it was retired Judge
23 James Etchingham.
24 A. That sounds familiar.



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1 Q. Do you recall how long the mediation
2 lasted?
3 A. All day.
4 Q. Do you know if the parties submitted
5 mediation briefs or statements to the judge?
6 A. I believe both sides submitted a whole
7 bunch of things.
8 Q. The Boudins represented you in this
9 mediation?
10 A. Yes.
11 Q. Because you had fired Balke by this
12 point?
13 A. Oh, yes.
14 Q. Directing your attention, again, to
15 Exhibit 5, the second amended complaint and Exhibit
16 G. Exhibit G is, apparently, a memorialization of
17 the mediation award. Do you see that?
18 A. It's how the judge decided to break it
19 down, yes.
20 Q. Do you see that there's an award for
21 future medical expenses of \$200,000?
22 A. Yes.
23 Q. Since that date of December 8, 2015, have
24 you received any medical treatment relative to your

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1 injuries —
2 A. Yes.
3 Q. Let me finish. Strike the question.
4 Since that date, December 8, 2015, have
5 you received any medical treatment for your injuries
6 incurred on January 28, 2011?
7 A. You're asking since the date of the
8 binding mediation?
9 Q. That's right.
10 A. Yes.
11 Q. What medical treatment have you received?
12 A. I do an ongoing with the neurologist for
13 the dystonia.
14 Q. That's in your right arm?
15 A. Yes.
16 Q. Have you calculated the medical bills
17 that you've incurred since that day?
18 A. No, I have not.
19 Q. Are they anywhere near \$200,000?
20 A. It depends if you calculate with or
21 without insurance. I know what I pay, but then I
22 have to pay for the insurance that pays for that.
23 Q. How much have you paid out of pocket
24 since that date for medical treatment on your arm?

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1 A. I don't know, offhand.
2 Q. Was there any doctor that opined that you
3 would require \$200,000 in future medical expenses?
4 A. I believe so.
5 Q. Who was that?
6 A. I believe that was Dr. Patel. I don't
7 know that she said \$200,000. She was the doctor
8 that was handling it at the time.
9 Q. Did you discuss your injury with the
10 mediator at the mediation?
11 A. He did ask me a few questions.
12 Q. How much time did you spend with him?
13 A. On and off. He would come in and ask me
14 questions and then go away and then come in and
15 would ask me questions and then go away.
16 I don't remember which one was the
17 mediator, which one was the Allstate adjuster, which
18 one was the — I don't remember.
19 Q. You're not sure which one was the
20 mediator?
21 A. They came in and they said they are going
22 to ask you some questions and I answered them.
23 Q. As you sit here today, you don't know how
24 much face time you had with the mediator that day?

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1 A. I don't remember the face of which one is
2 which.
3 Q. Did the issue of lost wages ever come up?
4 A. At the mediation with me?
5 Q. Yes.
6 A. I don't remember.
7 Q. Did you ever make a claim of lost wages
8 of \$250,000?
9 A. I may have.
10 Q. Do you know what that was based on?
11 A. Yeah.
12 Q. What is that based on?
13 A. Past and future.
14 Q. What past wages had you ever earned that
15 could lead to an award of \$250,000?
16 A. To me, that's not a very high number. I
17 think I asked for more than that. It would be an
18 average over a certain number of years plus benefits
19 and that's all lost.
20 Q. Would it be fair to say that your income
21 would be accurately reflected in the tax returns
22 you've produced in this case, so I don't want to ask
23 you about each one of them?
24 A. I would say my personal income, yeah.



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1 Q. Have you filed personal tax returns since
2 2015?
3 A. Tried.
4 Q. I didn't ask you if you tried.
5 A. No. They won't let me. They said I
6 don't make enough anymore.
7 MR. FLYNN: I believe the next exhibit is 10.
8 (WHEREUPON, a certain document was
9 marked Exhibit No. 10, for
10 identification, as of 02/19/2020.)
11 BY MR. FLYNN:
12 Q. I'm handing you what's been marked as
13 Exhibit 10. This is a six-page binding mediation
14 agreement. The copy I have is unsigned.
15 Do you recognize this as the mediation
16 agreement that governed your December 8, 2016
17 mediation?
18 A. Yes.
19 Q. If I could direct your attention to --
20 first, let me ask you.
21 Do you know why the bankruptcy trustee or
22 the bankruptcy court ordered binding mediation as
23 opposed to nonbinding?
24 A. I have no idea.

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1 Q. On page 4, section F, subsection B -- I'm
2 sorry, 1B. It says, "The parties agree that for
3 this mediation the minimum award to Paul Dulberg
4 will be \$50,000. Also, the maximum award to
5 Paul Dulberg will be \$300,000."
6 Do you see that?
7 A. Yes.
8 Q. Do you know why the parties agreed to
9 this high/low agreement?
10 A. No.
11 Q. Do you recall alleging in your original
12 complaint against Popovich that there was a high/low
13 agreement?
14 A. There is. There was.
15 MS. WILLIAMS: Can you repeat the question,
16 please.
17 (WHEREUPON, the record was read by
18 the reporter as requested.)
19 BY THE WITNESS:
20 A. I don't know. I'd have to read it.
21 MS. WILLIAMS: I asked her to read it. And you
22 had answered it previously.
23 BY MR. FLYNN:
24 Q. Directing your attention back to

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1 Exhibit 4, which is the original complaint in this
2 case. Page 4, paragraph 16.
3 A. Okay.
4 Q. There's a sentence that begins with,
5 "Unfortunately, a high/low agreement had been
6 executed by Dulberg reducing the maximum account he
7 could recover to \$300,000 based upon the insurance
8 policy available."
9 Do you see that?
10 A. Yes.
11 Q. It's not your position or testimony that
12 Popovich had anything to do with the high/low
13 agreement?
14 A. That was a mistake in there. No.
15 Q. You would agree that Popovich had nothing
16 to do with the high/low agreement?
17 A. I believe that events that unfolded the
18 way they did was due to Hans Mast's initial
19 assessment of the value of the case.
20 Q. Let me ask it a different way.
21 Did Popovich have any idea that this
22 high/low agreement existed when it was entered into?
23 A. I don't know.
24 Q. Do you have any reason to believe that he

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1 did?
2 A. I don't know. I don't know how much the
3 Boudins were in contact with them because they
4 worked together. I don't know.
5 Q. What do you mean, "they worked together"?
6 A. They worked together on all different
7 cases. That's a small county out there.
8 Q. Did you ever write to Hans and accuse
9 Popovich of having a conflict of interest because he
10 may have gone to high school with David Gagnon?
11 A. I did learn that.
12 Q. Do you believe the fact that someone went
13 to high school with another person may give rise to
14 a conflict of interest in a lawsuit?
15 A. I was shooting in the dark and guessing
16 why they didn't see this as a viable case.
17 Q. Do you think that was appropriate to send
18 to your lawyer at the time?
19 A. When you're wondering why they are doing
20 what they are doing and you learn that and they were
21 pretty much in the same class and they all knew each
22 other and it's a small town, let me ask you, are you
23 friends with the guy I'm suing? That's an
24 appropriate question.



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1 Q. You didn't say that. You asked if they
2 went to school together.
3 A. Correct.
4 Q. Popovich did not enter into this high/low
5 agreement on your behalf, correct?
6 A. Popovich, no.
7 Q. When I say "Popovich," I mean generally
8 the Popovich firm and your lawyers.
9 A. This was years later. No.
10 Q. They had nothing to do with it, right?
11 A. I wouldn't say anything to do with it.
12 Q. Withdrawn.
13 Who drafted this high/low agreement
14 that's contained in the mediation agreement?
15 A. I'm not sure who drafted it.
16 Q. Would it have been either the mediator,
17 the bankruptcy trustee, your lawyers or the defense
18 attorneys?
19 A. I assume that this would have been an
20 agreement of all of them.
21 Q. You don't think Popovich had anything to
22 do with drafting this high/low agreement, do you?
23 A. I don't know that he did or didn't.
24 Q. Do you have any reason to believe that he

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1 did?
2 A. At this point, no.
3 Q. Continuing on in Exhibit 4. Directing
4 your attention to the bottom of page 4,
5 paragraph 10.
6 A. Exhibit 4. Say it again.
7 Q. The bottom of page 4, paragraph 20. This
8 is your complaint against Popovich and Mast.
9 A. This has been amended since then.
10 Q. I understand. Paragraph 20 reads,
11 "Following the execution of the mediation agreement
12 with the high/low agreement contained therein and
13 the final mediation award, Dulberg realized for the
14 first time that the information Mast and Popovich
15 had given Dulberg was false and misleading and that,
16 in fact, the dismissal of the McGuires was a serious
17 and substantial mistake."
18 Do you see that?
19 A. Yes.
20 Q. Can you tell me, as you sit here today,
21 what false and misleading information did Mast and
22 Popovich give you?
23 A. That I realized on the day of the —
24 following the execution of the mediation agreement?

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1 Q. Correct.
2 A. The liability of the McGuires.
3 Q. What was false about it?
4 A. What made them liable and what didn't.
5 Q. What is it you learned to dispute what
6 you were told?
7 A. I learned from a reliability expert that
8 had the report there that day that the McGuires
9 provided the tools which made Gagnon an agent of the
10 McGuires. He was working at their behest.
11 Q. Who was this liability expert?
12 A. What's his name?
13 Q. He's a doctor?
14 A. Yes.
15 Q. Continue on with that paragraph.
16 "Following mediation, Dulberg was advised to seek an
17 independent opinion from an attorney handling legal
18 malpractice matters and received that opinion on or
19 about December 16, 2016."
20 Do you see that allegation?
21 A. Yeah.
22 Q. Who advised you to seek an independent
23 opinion from an attorney handling legal malpractice
24 matters?

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1 A. I believe that was Boudin.
2 Q. You believe that or you know that?
3 A. I know that.
4 Q. You alleged it in this complaint so it's
5 important that we know who that was.
6 A. Yes, that was Boudin.
7 Q. Boudin told you to seek an independent
8 opinion from an attorney that handles malpractice
9 matters?
10 A. Yes.
11 Q. It says you received that opinion on or
12 about December 16, 2016.
13 A. Yes.
14 Q. That's separate and apart from any
15 opinion you may have received from a liability
16 expert, a doctor, an expert on chainsaws?
17 A. Yes.
18 Q. Who was the lawyer that you received a
19 legal opinion from on December 16, 2016?
20 A. I believe that would be Thomas Gooch.
21 Q. The drafter of this complaint?
22 A. I'd have to look at the dates because I
23 think — December 8th was the mediation; is that
24 right?



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1 Q. Correct.
2 A. So the 16th would sound about right to be
3 meeting with Gooch, but I can get that date.
4 Q. You met with Gooch —
5 A. Soon, within weeks. It was quick.
6 Q. Now that the door has been opened, you
7 fired Gooch in this case, correct?
8 A. Yes.
9 Q. He drafted this complaint and he's also
10 the one that gave you an opinion about legal
11 malpractice liability on the part of my clients?
12 A. Yes.
13 Q. What is it that he told you on
14 December 16, 2016?
15 MS. WILLIAMS: Objection. I don't think we've
16 waived that privilege, but — can we go off the
17 record for a second?
18 MR. FLYNN: I don't want to go off the record.
19 I've asked this interrogatory in about five
20 different ways and it hasn't been answered
21 appropriately.
22 The allegation was made in the complaint.
23 That's why I drafted the interrogatory the way I
24 did. I don't think that there's been a square

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1 answer to it. This is clear that you're talking
2 about a legal opinion.
3 BY THE WITNESS:
4 Q. Is this the same wording as we have in
5 the current complaint?
6 BY MR. FLYNN:
7 Q. It's not exactly.
8 A. What would this be valid for, then?
9 Q. You've raised a response to a statute of
10 limitations defense in this case and placed your
11 knowledge of the malpractice and the date of
12 incurring of an injury at issue.
13 Because your discovery of malpractice has
14 been placed at issue, it's our position that you've
15 waived privilege anyhow with respect to this
16 conversation on December 16, 2016.
17 A. I'm not sure —
18 MS. WILLIAMS: There's not a question pending.
19 I'm going to make a standing objection as to
20 privilege with Gooch.
21 If we can agree that that objection will
22 stand, we can go through this line of questioning
23 and then if we need to later, have a judge determine
24 whether or not that line of questioning is

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1 admissible. Are you agreeable to that?
2 MR. FLYNN: I'm agreeable to continuing on for
3 a few minutes. I want to explore. I'll try to lay
4 foundation for — to confirm this wasn't anyone
5 else, for starters. Why don't we continue on and if
6 you need to raise it again, we can talk.
7 MS. WILLIAMS: Otherwise, I'm just going to
8 raise it to every single question you ask. I just
9 don't want to have to continue to make the objection
10 as to — if questions are asked about advice given
11 by a legal malpractice attorney, I'm going to raise
12 an objection as to that.
13 MR. FLYNN: Okay. But this is why we had the
14 201K conferences, multiple 201K conferences. It was
15 made clear, to me, that there was a waiver with
16 respect to subsequent counsel.
17 MS. WILLIAMS: Tom Gooch isn't subsequent
18 counsel.
19 MR. FLYNN: The allegation has been made in
20 this complaint and apparently this is subsequent
21 counsel subsequent to my client's representation.
22 MS. WILLIAMS: It is a different case. It's
23 not subsequent counsel in the underlying case. It's
24 a new case.

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1 MR. FLYNN: We'll get to the interrogatory in a
2 few minutes. I'll pull that out.
3 BY MR. FLYNN:
4 Q. Let me ask you. Is there any other
5 attorney besides Mr. Gooch that gave you an opinion
6 that's referenced here on December 16?
7 A. No one that isn't privileged.
8 Q. Could it have been anyone else?
9 A. No.
10 Q. So Gooch is the only person that's being
11 referenced here in this allegation that's in your
12 complaint that's a public record?
13 I'm not asking you right now what the
14 opinion is. I'm going to do that later. I'm asking
15 you who gave it to you. It's not anyone besides
16 Mr. Gooch, correct?
17 A. Yes. It was Thomas Gooch.
18 Q. He drafted the very complaint that that
19 allegation is contained in?
20 A. Yes.
21 Q. Dr. Landford was the liability expert
22 that you referenced earlier, correct?
23 A. Yes.
24 Q. Back to the allegation that Gooch and —



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1 that Popovich and Mast provided you false and
2 misleading information. That information was simply
3 their legal opinion on the McGuires' liability;
4 isn't that correct?
5 A. No. There was nothing simple about that.
6 That's a very complex series of things that go all
7 the way back to before the McGuire settlement.
8 Q. They didn't lie to you, did they?
9 A. It depends on how you define lie.
10 Q. How do you define lie?
11 A. If you know better and you say something
12 else, that's a lie. Omission is a lie.
13 Q. Did they provide you with anything other
14 than a legal opinion as to the McGuires' liability?
15 A. Yes. They provided me with case laws.
16 They provided me with all different stuff. Yes.
17 Q. Whatever the advice that was given to you
18 on December 16, 2016, you felt that you were misled
19 by Popovich and Mast at that point in time, correct?
20 A. At that point in time it was confirmed to
21 me that I had a valid case against Popovich.
22 Q. You had a valid malpractice case against
23 Popovich?
24 A. Yes. I did not know before that.

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1 Q. As of December 16, 2016?
2 A. Yes.
3 Q. Why is it that you didn't file that
4 lawsuit until nearly a year later on November 28,
5 2017?
6 A. I believe because Thomas Gooch had some
7 health issues and then his wife had some health
8 issues. It took a while.
9 (WHEREUPON, a certain document was
10 marked Exhibit No. 11, for
11 identification, as of 02/19/2020.)
12 BY MR. FLYNN:
13 Q. I'm handing you what has been marked as
14 Exhibit 11. This is one set of your supplemental
15 Answers to Interrogatories.
16 First, I'll ask you if that is your
17 verification and signature at the end?
18 A. That is my signature.
19 Q. Again, I don't know if that verification
20 was attached to this original document. It may have
21 been. But there's been some confusion with respect
22 to these verification pages. This is your signature
23 and you answered these interrogatories, correct?
24 A. Yeah.

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1 Q. So this is a valid verification page with
2 respect to this discovery document; is that a fair
3 statement?
4 A. This is supplemental to original answers.
5 Q. That's your signature and you agree these
6 are your answers?
7 A. I've reviewed them and we went over them
8 and yes, I agree.
9 Q. And they are accurate?
10 A. As accurate as we can be.
11 Q. If I could direct your attention to
12 Interrogatory No. 26. Do you see that?
13 A. Okay. Yes, I see it.
14 Q. This is similar to what we just talked
15 about a few minutes ago. I'll read the
16 interrogatory to you. "Identify and describe the
17 false and misleading information Mast and Popovich
18 provided to you and explain how you realized for the
19 first time in December of 2016 that the information
20 was false and misleading and the dismissal of the
21 McGuires was a serious and substantial mistake as
22 alleged in paragraph 56 of your second amended
23 complaint."
24 Do you see your supplemental answer here?

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1 A. I see it, yes.
2 Q. You reference the mediation award and
3 then you state, quote, "At that time Dulberg
4 realized that Mast's advice to settle with the
5 McGuires for \$5,000 was incorrect because Mast had
6 cited Dulberg being able to recover in full from
7 Gagnon as his reasoning."
8 A. I do.
9 Q. Can you explain what that means because I
10 don't quite understand it.
11 A. Hans Mast assured me — I want to go back
12 to 2013, the Fall between October and the signature
13 of the final release for the McGuires.
14 He assured me that, he said — at that
15 time he didn't tell me what anybody's policies were.
16 He assured me that if we let the McGuires out of the
17 case, Gagnon has enough insurance, you're going to
18 get everything from him, so it doesn't matter that
19 you're carrying the McGuires in the case.
20 Q. The next interrogatory is 27. "Identify
21 and describe the expert opinions provided to you in
22 December 2016 as alleged in paragraph 57 of your
23 second amended complaint including the identity of
24 the expert, any opinions and any other information



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1 provided by the expert which caused you to learn in
2 the summer of 2016 and became reasonably aware that
3 Mast and Popovich did not properly represent you."
4 What does the summer of 2016 have to do
5 with your discovery of malpractice?
6 A. Technically, I was sent Dr. Landford's
7 report — I might be off a little by a couple months
8 here, but I think in July of that year. And I read
9 it, but I didn't — you don't catch everything the
10 first time you read it.
11 It was not until later that I caught the
12 part of the report that was brought to the
13 attention — it caught my eye when I was sitting
14 there and reading it.
15 Q. You didn't read any of this interrogatory
16 or the original interrogatory as requesting legal
17 opinions that you had alleged that gave you notice
18 that there was a malpractice claim against Mast and
19 Popovich?
20 A. Excuse me?
21 MR. FLYNN: Can you read that back.
22 (WHEREUPON, the record was read by
23 the reporter as requested.)
24

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1 BY THE WITNESS:
2 A. The way she said it, I don't understand.
3 BY MR. FLYNN:
4 Q. I'll rephrase it.
5 We've known about this allegation in the
6 original complaint since it was filed. You received
7 some legal opinion in 2016. That's why you didn't
8 know you had a malpractice case against Mast and
9 Popovich.
10 We asked you in discovery answers a
11 couple different ways what those legal opinions are.
12 You didn't read 26 and 27 as requesting information
13 about legal opinions?
14 A. I don't know that an expert witness would
15 be considered a legal opinion. Wouldn't that be
16 more like an attorney?
17 Q. I'll ask you again. Why is it that you
18 first became aware of a legal malpractice matter
19 against Mast and Popovich on or about December 16,
20 2016?
21 A. December 16th I was talking to a legal
22 malpractice attorney.
23 Q. You were told that there was a case
24 against —

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1 A. A valid case, yes.
2 Q. — Mast and Popovich?
3 A. Yes.
4 Q. Why is it you didn't know about this
5 valid case prior to that date?
6 A. Because I hadn't talked to anybody that
7 was a lawyer that specialized in that area.
8 Q. Whatever it is that he said to you gave
9 you the basis for believing you had a valid case
10 against Mast and Popovich?
11 A. Very much so, yes.
12 Q. You're withholding that information from
13 me right now, as we sit here. You won't tell me
14 what that expert said, correct?
15 MS. WILLIAMS: Repeat the question.
16 (WHEREUPON, the record was read by
17 the reporter as requested.)
18 MS. WILLIAMS: I'm asserting attorney-client
19 privilege on behalf of my client for Gooch's advice
20 on December — in December of 2016.
21 However, because I want to move forward
22 with this deposition, if he can answer the question,
23 I believe we should go ahead and move forward and
24 have him answer the question.

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1 I'll assert the privilege with the
2 understanding that this may have to be briefed
3 later.
4 MR. FLYNN: To be stricken later?
5 MS. WILLIAMS: Right.
6 MR. FLYNN: The substance of the answer he can
7 put on the record. You're just saying you may move
8 to strike it later?
9 MS. WILLIAMS: Right. I want to maintain the
10 privilege with the objection, but I don't want to
11 have to call the judge right now. I don't think
12 it's something we should have to call the judge
13 about right now.
14 MR. FLYNN: Just for the record, I believe it's
15 been placed at issue by virtue of the first amended
16 complaint. The responses to the statute of
17 limitation defenses that were raised in very
18 dispositive motions before Gooch withdrew from the
19 case, the gist of that is the discovery rule has
20 been raised and, therefore, it's our position that
21 the date of discovery has been placed at issue and,
22 accordingly, any legal opinions that were provided
23 to this plaintiff have been exposed and that we're
24 entitled to know what those are.



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1 MS. WILLIAMS: Can I also note one more thing?
2 MR. FLYNN: Sure.
3 MS. WILLIAMS: In the supplemental — in the
4 request it specifically refers to paragraph 57 of
5 the second amended complaint, which is different.
6 MR. FLYNN: It is different. I'll acknowledge
7 that. I believe that the prior original
8 interrogatories asked for any opinions relative to
9 the discovery of the malpractice. I could be wrong.
10 There was a reason I asked this and that's why I
11 believe that's what it was about.
12 MS. WILLIAMS: So —
13 MR. FLYNN: That particular one I agree with
14 you is not phrased as calling for —
15 MS. WILLIAMS: Right. That's the question that
16 was asked. We answered the question that was asked,
17 which that particular paragraph does not refer to a
18 legal expert. It just merely — I'll read it out
19 loud. "It was not until the mediation in December
20 of 2016 based on the expert's opinion that Dulberg
21 retain for mediation that Dulberg became reasonably
22 aware."
23 I just want it clear that he did answer
24 the question that was asked. I understand your line

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1 of questioning and we'll agree to move forward.
2 MR. FLYNN: I believe there were other
3 discovery requests that did point to that and I
4 think we can take a break here and I can find them
5 fairly quickly because I think we're getting close
6 to the end anyway.
7 MS. WILLIAMS: Okay.
8 BY MR. FLYNN:
9 Q. Did you ever receive any money from the
10 mediation award?
11 A. No. I received money from the bankruptcy
12 itself. It was a surplus bankruptcy.
13 Q. There was a \$300,000 award given in the
14 mediation.
15 A. That did not go to me. That went to
16 bankruptcy.
17 Q. It was collected on your behalf and paid
18 to the bankruptcy trustee, correct?
19 A. Correct.
20 Q. All \$300,000?
21 A. I don't know that because I think — I
22 don't know how exactly it works. I heard attorneys
23 have a lien that's special. I don't know how they
24 break it up. I assume it goes to the trustee.

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1 Q. The Boudins weren't working for free.
2 They got something out of it, right?
3 A. Yes.
4 Q. The trustee took the remainder and paid
5 off some of your creditors, correct?
6 A. Correct. All of them.
7 Q. But the award was paid to the trustee on
8 your behalf?
9 A. I believe so. I don't know how it
10 worked.
11 Q. How much was the surplus after your
12 creditors were paid?
13 A. After just the creditors?
14 Q. How much did you get?
15 A. How much did I get?
16 Q. Yes.
17 A. A third.
18 Q. I'm asking how much money did you get?
19 A. A third of the award.
20 Q. Dollars. How much money did you get?
21 A. Roughly a hundred.
22 Q. \$100,000?
23 A. I don't know the exact number. It's
24 roughly a hundred.

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1 Q. Was there a check that was issued to you?
2 A. By the trustee, yes.
3 Q. Did you cash it?
4 A. Yes.
5 Q. At what bank?
6 A. McHenry Bank & Trust.
7 Q. Do you still have an account there?
8 A. Yes.
9 Q. Do you have a copy of the canceled check?
10 A. I'm sure the bank has a photo thing.
11 Q. You can request a copy of the check,
12 correct?
13 A. I could. I could see if they got it.
14 Q. I would ask you to do that. If you have
15 any other documentation relative to the payouts that
16 were made by the bankruptcy trustee on your behalf,
17 we are requesting that information.
18 MR. FLYNN: Why don't we take a break and I'm
19 going to look for one document and then we're just
20 about done here.
21 (WHEREUPON, a recess was had.)
22 MR. FLYNN: Mark these as the next two.
23
24



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1 (WHEREUPON, a certain document was
2 marked Exhibit No. 12, for
3 identification, as of 02/19/2020.)
4 (WHEREUPON, a certain document was
5 marked Exhibit No. 13, for
6 identification, as of 02/19/2020.)
7 BY MR. FLYNN:
8 Q. I'm going to show you what I've marked as
9 Exhibits 12 and 13. Twelve are your answers to Hans
10 Mast's interrogatories. Thirteen is your responses
11 to Popovich's request for production.
12 Interrogatory No. 1 from Mast asks,
13 "Identify and describe each and every way that
14 Popovich or Mast breached any duty of care to you,
15 the date of the breach, and when and how you became
16 aware of the breach."
17 Do you understand that?
18 A. Yes.
19 Q. So how is it they committed malpractice?
20 A. May I see it?
21 Q. I'm going to show it to you in a second.
22 I only have one copy.
23 This is basically, how did you first
24 become aware that they committed malpractice?

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1 That's the essence of that interrogatory.
2 Here is your response. I can show that
3 to you. It doesn't reflect any discussion with any
4 malpractice lawyer in December of 2016.
5 Tell me --
6 A. Let me read it again. We're talking
7 about No. 1 on this?
8 Q. Correct.
9 A. Okay.
10 Q. You understand it?
11 A. Yes.
12 Q. Would you agree that the legal opinion
13 you received on December 16, 2016 is responsive to
14 that interrogatory, whatever it is that you were
15 told?
16 A. Yes.
17 Q. You didn't identify this December 16,
18 2016 discussion in the answer to that interrogatory,
19 correct?
20 A. Say that again.
21 Q. Your discussion with Mr. Gooch on
22 December 16, 2016, that's referenced in your
23 original complaint, you didn't respond and identify
24 it in this answer to the interrogatory, correct?

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1 A. This asks for every way Popovich or Mast
2 breached the duty of care. It didn't ask for
3 Gooch's opinion.
4 Q. How did you find out that Mast and
5 Popovich breached the duty of care to you? Because
6 Gooch told you, right?
7 A. Yes.
8 Q. That's what you've alleged here in this
9 complaint.
10 A. Yes.
11 Q. Here I'm asking you, each and every way
12 that they ever breached a duty of care to you. I
13 covered the waterfront. You didn't answer --
14 A. On the McGuire case it was between
15 October 2013 and January 2014. Yes. There's a
16 multitude of things and that's why I listed a range.
17 Q. I'm asking when you became aware of it,
18 in that interrogatory. Do you see that?
19 A. I became aware of that when Thomas Gooch
20 read them and said there's a problem here.
21 Q. That's not the way you answered the
22 interrogatory, correct?
23 A. I answered the first part. I did not
24 answer after the comma and the and.

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1 Q. There's no objection and indication that
2 any information is being withheld, correct?
3 A. Excuse me?
4 Q. There's no objection and an indication
5 that you're withholding --
6 A. I was not withholding.
7 Q. I'll show you Exhibit 13. It asks --
8 Exhibit 13 are the production requests to you.
9 Number 8 asks for you to produce a privilege log
10 identifying the creator and recipient of any
11 document withheld, the basis for any claimed
12 privilege, the date the document was created and the
13 date the recipient received the document.
14 The answer is, "The plaintiff is only
15 withholding attorney-client communication between
16 his successor counsel."
17 Is that your answer to the production
18 request and did I accurately read No. 8?
19 A. May I consult with her for a minute?
20 Q. Sure.
21 THE WITNESS: Can we go off the record?
22 MS. WILLIAMS: If you can answer the question,
23 answer the question first.
24



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<p style="text-align: right;">Page 129</p> <p>1 BY THE WITNESS: 2 A. It's been a while since I've done this, 3 so I'm not sure who the successor counsel is. Is it 4 her or is it the Boudins or Balke? 5 BY MR. FLYNN: 6 Q. I think successor counsel, we can both 7 agree, the successor counsel in the underlying case 8 which would be Balke and then Boudin. 9 You didn't identify any documents 10 withheld other than documents between you and 11 successor counsel, correct? 12 THE WITNESS: I believe we waived those, didn't 13 we, for Balke and Boudin? 14 MS. WILLIAMS: For Balke and Boudin we can 15 represent that we waived those. 16 BY MR. FLYNN: 17 Q. Let me ask a different question. 18 Did Gooch communicate with you in writing 19 relative to his opinion that you had a legal 20 malpractice case against Mast and Popovich? 21 A. In writing? 22 Q. Yes. 23 A. I suppose the agreement between us that 24 he would represent me because I had the case is a</p>	<p style="text-align: right;">Page 131</p> <p>1 Popovich did wrong and how it injured you? 2 A. How it injured me? Yeah. 3 Q. The first part of my question was, did he 4 tell you exactly what they did wrong in connection 5 with your — their representation of you? 6 A. He probably did. I'm not recalling it 7 right now. I'm pulling a blank. 8 The parts of the conversation I'm 9 remembering, and for some reason I'm not pulling it. 10 We've been at this a while and this is a long thing. 11 Yes, he said based on what he saw, he saw reason for 12 malpractice. 13 Q. You don't remember any details, as you 14 sit here? Did you discuss the liability of property 15 owners in Illinois? 16 A. Well, if they were just property owners 17 in the case, that would be one thing, but they 18 weren't just property owners. 19 Q. That wasn't my question. I'm asking if 20 you discussed it? 21 A. Certainly. 22 Q. You and Gooch discussed the liability of 23 the McGuires in the case? 24 A. Yes.</p>
<p style="text-align: right;">Page 130</p> <p>1 document in writing. 2 Q. Did he tell you — strike that. 3 The discussion that you reference in the 4 complaint, paragraph 20 of December 16, 2016, was 5 that a face-to-face communication with Gooch? 6 A. What number is that? 7 Q. Exhibit 4, paragraph 20. The legal 8 opinion you received, was it verbal, was it written? 9 A. I believe it was verbal. 10 Q. Now, I'm going to ask you what he said. 11 There was an objection and that will be addressed by 12 the Court later. Please tell me what Gooch told 13 you. 14 A. He read what I brought him, looked 15 through some things, and I don't remember if it was 16 the same day that we talked to him or he took a day 17 or two. I don't remember. He got back to me and he 18 said, "You have a case here. You have a valid 19 case." 20 Q. Did he say why? 21 A. On the basis of what I brought to him. 22 Yes. 23 Q. Specifics, though. I don't want to talk 24 about generalities. Did he tell you what Mast and</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. What did you say to him and what did he 2 say to you? 3 A. I showed him the expert opinion. 4 Q. The chainsaw expert? 5 A. Yes. 6 Q. Did you show him any deposition 7 transcripts? 8 A. Yes. 9 Q. Which ones? 10 A. All of them. 11 Q. And he read them before you talked? 12 A. I don't remember. Like I said, it may 13 have been a few days between our initial meeting and 14 bringing the whole file that I had and trying to get 15 what the Boudins had and letting him go through it. 16 I don't remember how long that took. 17 Q. How did you transmit the documents to 18 him — 19 A. My brother carried them. 20 Q. Let me finish. 21 How did you transmit the documents to 22 Mr. Gooch, including the deposition transcripts? 23 A. I believe we brought him a box. 24 Q. So you physically handed the documents to</p>



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1 him?
2 A. I didn't physically hand them. My
3 brother did.
4 Q. Did you communicate with Mr. Gooch by
5 e-mail, at all, leading up to this meeting?
6 A. No.
7 Q. Did he ever write you any letters?
8 A. An e-mail or regular mail or what are you
9 talking about?
10 Q. Any letters whatsoever.
11 A. Throughout the course of his
12 representation, yes.
13 Q. What about in December of 2016?
14 A. I believe we started communicating in
15 December, yes.
16 Q. But in writing?
17 A. In e-mails, sure.
18 Q. Did he discuss —
19 A. We may have. I'm not — whenever we
20 started — whenever he started sending me things and
21 going back and forth, I don't remember the exact
22 date, but it was right after he started representing
23 me, sure, we exchanged e-mails and started, yes.
24 Q. When did Gooch begin representing you?

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1 A. The day that he agreed to represent me.
2 I believe it would have been the day that he decided
3 that he had a case.
4 Q. On or about December 16?
5 A. Yes.
6 Q. At that point in time, or shortly
7 thereafter, he communicated with you in writing the
8 details of the breach of the standard of care
9 committed by Popovich and Mast; is that correct?
10 A. I believe he started to detail those out
11 in the complaint and we were working it back and
12 forth trying to get it right.
13 Q. When did you first exchange drafts of the
14 complaint?
15 A. I'd have to look back in the e-mails. I
16 don't remember the dates.
17 Q. Did you look for any of these e-mails in
18 connection with my discovery requests in this case?
19 A. At the time I think we thought they were
20 privileged.
21 Q. That privilege objection wasn't exactly
22 made. My question is, did you look for them?
23 A. Did I look for them? I have them.
24 Q. I would ask that you preserve each and

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1 every communication between you and Mr. Gooch, all
2 written communications, even phone records that
3 might reflect the dates and times of your phone
4 communications, if any. Did you use a cell phone
5 back then?
6 A. I used VOIP over a data line.
7 Q. Who was your carrier?
8 A. Comcast.
9 Q. Is that still your carrier?
10 A. Yes.
11 Q. Do you have the same phone that you
12 utilized?
13 A. Same phone number for 50 years, yes.
14 Q. What else could you remember that Gooch
15 told you on or about the 16th of December 2016 about
16 Mast and Popovich breaching the standard of care and
17 how it damaged you?
18 A. Say that again.
19 Q. What, if anything, else do you recall
20 about your discussions with Gooch on December 16
21 regarding the breach of the standard of care by
22 Popovich and Mast and how it injured you?
23 A. We discussed the whole scenario between
24 October and January and what happened. It was

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1 pretty detailed. We discussed everything that you
2 see that's been communicated in the e-mails. He
3 didn't have much else to go on other than the
4 documents and the e-mails.
5 Q. You're talking about the e-mails between
6 you and Hans from the fall of 2013?
7 A. Yes.
8 Q. Ultimately leading to the \$5,000
9 settlement?
10 A. Yes.
11 Q. Other than you have a case, what did
12 Gooch say to you?
13 A. He said that they definitely committed
14 malpractice.
15 Q. Did he ever put this in writing?
16 A. Did he ever put it in writing? I think
17 he backed it up by filing a suit. That's
18 documented.
19 Q. Again, the suit wasn't filed until
20 November of 2017.
21 A. Yes, he had some health problems and then
22 his wife had some health problems. Believe me, I
23 was pushing for him to get that done.
24 Q. From December of 2016 until the complaint



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1 was filed, you exchanged some drafts of complaints
2 with him?
3 A. I believe he let me see what he wanted to
4 put in the complaint. I got to review some things.
5 Of course I had, do this or that's not right. In
6 fact, a couple of these things in here we had to
7 definitely — you caught one. He totally worded it
8 wrong. It was wrong. We had to amend.
9 MS. WILLIAMS: His question was, did he give
10 you drafts for you to review?
11 THE WITNESS: Yes.
12 BY MR. FLYNN:
13 Q. These were exchanged by e-mail?
14 A. I believe so, yes.
15 Q. So you would have records of them?
16 A. Yes.
17 Q. Any comments with respect to the
18 pleadings, as well, did you ever ask him questions?
19 Did he explain to you the basis for the allegations
20 in the draft complaints, similar to what you did
21 with Hans?
22 A. Over many times, yes.
23 Q. This is all reflected in e-mails?
24 A. Yes.

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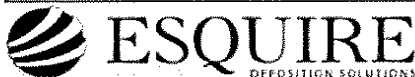
1 Q. Ultimately, you didn't file until
2 November of 2017?
3 A. Correct.
4 Q. Popovich ceased being your lawyer
5 March 19 of 2015, correct?
6 A. That sounds about right.
7 Q. Until December 16, 2016, you didn't have
8 any reason to believe there was a malpractice case
9 against —
10 A. Say the date again.
11 Q. Until December 16, 2016, you didn't have
12 any other reason to believe there was a malpractice
13 case against Popovich and Mast?
14 A. I did not know that I had a case, no.
15 Q. You threatened one with respect to the
16 Gagnon case —
17 A. Yes.
18 Q. — at another point in time, correct?
19 A. I think I threatened him a few times in
20 there. Yeah. I was actually nice to what I really
21 wanted to say.
22 Q. Subject to the ruling on these
23 objections, you don't recall any other specific
24 details that you discussed with Popovich — I'm

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1 sorry — Gooch on December 16, other than what we
2 already talked about?
3 A. I discussed the exact same things that
4 you — the same documents that you already have. We
5 went over the case that Mast and Popovich had
6 against the McGuires. He followed through all the
7 way to the end. We went over the whole case. You
8 see as much as he did.
9 Q. Did Gooch ever explain to you why the
10 McGuires would have been liable any more than Mast
11 explained to you that they wouldn't be liable?
12 A. He said he agreed right away. He said
13 that's obvious.
14 Q. Did Gooch ever provide you with any cases
15 or statutes?
16 A. Provide to me, maybe. Maybe. I don't
17 know.
18 Q. Would that be by e-mail?
19 A. It could be. I was in his office quite a
20 few times. He may have.
21 Q. As you sit here today, other than you
22 have a case against Popovich and Mast, what did
23 Gooch tell you specifically that was any different
24 than what Mast and Popovich told you with respect to

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1 the McGuires' liability?
2 A. That they were definitely liable. He
3 tried to say that — like Popovich and Mast were
4 first- or second-year lawyers and that they may have
5 made a mistake here.
6 I said they've got 20 years in this. You
7 think they'd know the difference. That's the kind
8 of thing. He agreed with me. Twenty years, yeah,
9 they should have known better.
10 Q. Did you ever discuss the specifics of the
11 McGuires' potential liability with Gooch?
12 A. Liability with Gooch?
13 Q. With Gooch, did you ever discuss the
14 specifics of the McGuires' liability other than he
15 thinks you have a case?
16 A. Yes.
17 Q. Did he ever tell you why? What was it?
18 A. Because he agreed with the expert's
19 opinion.
20 Q. The expert on the chainsaw?
21 A. Yes. The liability expert.
22 Q. The expert said you should use safety
23 goggles and gloves and things like that?
24 A. He said more than that, but yes.



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1 Q. Do you know who commissioned that expert
2 report?
3 A. Boudins.
4 Q. Do you know when the first draft of that
5 doctor's expert report was circulated?
6 A. I heard that Boudin got it in February,
7 maybe. I don't think I got it until July, but I'm
8 not sure about that.
9 Q. July of what year?
10 A. The same year as the mediation.
11 Q. Of 2016?
12 A. Yeah.
13 Q. So you actually read it in advance of the
14 mediation?
15 A. I talked about this earlier. I said yes.
16 You don't catch everything the first time you read
17 it. I was sitting there at the mediating table and
18 I was reading it and I caught it and I turned to
19 Randy and I said, after it was over, does this
20 mean — that means.
21 Q. Means what?
22 A. Does this mean the McGuires are liable?
23 Yeah, that means they are liable. He said, call my
24 office after everything and I'll give you a name for

Page 142
1 an attorney you should go see.
2 MR. FLYNN: Any follow-up, Julia?
3 MS. WILLIAMS: I have two follow-up questions.
4 EXAMINATION
5 BY MS. WILLIAMS:
6 Q. Did you ever give Hans authority to make
7 a settlement demand regarding Mr. Gagnon?
8 A. I think at one time in one of my meltdown
9 letters I said get whatever you can, but no, I never
10 actually signed anything saying you have the right
11 to offer a settlement.
12 Q. Did you ever give Hans authority to make
13 a settlement demand with regard to the McGuires?
14 A. A demand, no. He said he was going to
15 probe and see what was out there, and I said, if you
16 want to do that, that's fine.
17 MS. WILLIAMS: I have no further questions.
18 MR. FLYNN: Signature?
19 MS. WILLIAMS: We can waive signature.
20 THE REPORTER: Are you ordering this?
21 MR. FLYNN: Yes.
22 THE REPORTER: Regular delivery, e-tran?
23 MR. FLYNN: Yes.
24 THE REPORTER: Copy?

Page 143
1 MS. WILLIAMS: Yeah.
2 THE REPORTER: Regular delivery, e-tran?
3 MS. WILLIAMS: PDF.
4 (WHEREUPON, at 4:00 p.m.,
5 the deposition of PAUL DULBERG
6 was concluded.)
7 *****
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Page 144
1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DUPAGE)
4 I, KAREN PILEGGI, a Notary Public
5 within and for the County of DuPage, State of
6 Illinois, and a Certified Shorthand Reporter of said
7 state, do hereby certify:
8 That previous to the commencement of
9 the examination of the witness, the witness was duly
10 sworn to testify the whole truth concerning the
11 matters herein;
12 That the foregoing deposition
13 transcript was reported stenographically by me, was
14 thereafter reduced to typewriting under my personal
15 direction, and constitutes a true record of the
16 testimony given and the proceedings had;
17 That the said deposition was taken
18 before me at the time and place specified;
19 That I am not a relative or employee
20 or attorney or counsel, nor a relative or employee
21 of such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in the
23 outcome of this action.
24 IN WITNESS WHEREOF, I do hereunto



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Page 145		
1	set my hand and affix my seal of office at Chicago,	
2	Illinois this 3rd day of March, 2020.	
3		
4	<i>Karen Filleggi</i>	
5	Notary Public, DuPage	
6	County, Illinois.	
7	My commission expires 1/2/24.	
8		
9	CSR Certificate No. 84-3404	
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Page 146		
1	EXAMINATION	
2		Page Line
3	PAUL DULBERG	
4	Examination by Mr. Flynn	3 6
5	Examination by Ms. Williams	142 4
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8	EXHIBITS	
9	Deposition Exhibit	Page Line
10	Exhibit No. 1.....	47 19
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13	Exhibit No. 4.....	65 2
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15	Exhibit No. 6.....	79 12
16	Exhibit No. 7.....	84 8
17	Exhibit No. 8.....	87 10
18	Exhibit No. 9.....	91 2
19	Exhibit No. 10.....	101 9
20	Exhibit No. 11.....	114 10
21	Exhibit No. 12.....	125 2
22	Exhibit No. 13.....	125 5
23		
24		



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
v.) Case No. 17 LA 377
)
THE LAW OFFICE OF THOMAS J.)
POPOVICH, P.C. and HANS MAST,)
)
Defendants.)

**DULBERG'S ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify the person(s) answering and/or providing assistance in the answering of these interrogatories.

ANSWER: Paul Dulberg, available through counsel. The Clinton Law Firm, as counsel for Paul Dulberg.

2. Identify all persons who have knowledge of any matters relating to any of the facts, claims, damages, or defenses at issue in this case.

ANSWER: Paul Dulberg is the Plaintiff in this matter and is expected to testify in accordance with any deposition testimony he provided or provides. He has knowledge regarding the circumstances leading to the injury he sustained, the actual injury, the harm he suffered, including financial injury.

William McGuire ("William") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

EXHIBIT # 1

EXHIBIT E.1 - EXS. 1-13 TO DULBERG TRANSCRIPT 2-19-20

Caroline McGuire ("Caroline") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

David Gagnon ("Gagnon") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

Barbara Dulberg. 4606 Hayden Ct., McHenry, IL 60051. Retired. Barbara is expected to testify to the facts and circumstances of the November 4, 2013 meeting with Hans Mast. Barbara is also expected to testify as to the facts and circumstances of Paul Dulberg's pain and suffering, and Dulberg's loss of use of his arm.

Thomas Kost. 423 Dempster Ave., Mt Prospect, IL 60056. Electrician. Thomas Kost is expected to testify as to the legal advice given to Dulberg from Mast and The Popovich Firm on the McGuires' liability, or lack of it, and how the judge would rule in the December 2013 meeting, as well as Dulberg's pain and suffering and loss of use of arm.

Mike McArtor, 4606 Hayden Ct., McHenry, IL 60051. McArtor was Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Scott Dulberg, 8245 Cunat Blvd, Apt. 2B, Richmond, IL 60071. Scott Dulberg is Paul Dulberg's family member and was Paul Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Investigation continues.

3. Identify the address of the McGuire's property described in paragraph 6 of your second amended complaint, and your address identified in paragraph 7 of the second amended complaint.

ANSWER: McGuires' real property is located at 1016 W. Elder Ave., McHenry, IL 60051.

Dulberg's home is located at 4606 Hayden Ct., McHenry IL 60051

4. Identify and describe how you were invited to the McGuires' property to see if you wanted any of the wood from the tree, as alleged in paragraph 12 of your second amended complaint.

ANSWER: Dulberg received a call from Gagnon on June 27, 2011. Over the phone, Gagnon asked Dulberg if he wanted wood from the tree that the McGuires were removing and invited Dulberg to come see the wood.

5. Identify how William McGuire physically assisted in cutting down the tree, including the date, time, and location of his assistance, and describe how and when he supervised David Gagnon's actions in cutting down the tree, as alleged in paragraph 13 of your second amended complaint.

ANSWER: On June 28, 2011, Dulberg went to the McGuires' home and arrived between 8:30-9:00 am. He observed William McGuire working with Gagnon between that time and approximately noon that same day to remove tree branches from the tree. Gagnon continued to work throughout the day, after William stopped working. Caroline was present observing the work and supervising the work.

William and Caroline McGuire purchased and provided the chainsaw that was used to cut the branches. William and Caroline McGuire provided the ropes and straps that Gagnon used to climb the tree. Caroline had the chain saw owner's manual in her possession and instructed Gagnon what fuel/oil ratio to use for the chain saw.

William and Caroline McGuire instructed Gagnon as to which trees and branches that they wanted removed and where they wanted the trees and branches to fall during the removal process. Gagnon climbed into the tree and cut the branches utilizing the chain saw that the McGuire's provided. The branches would fall to the ground and William would pile the branches in the yard. He also started a fire and burnt some of the branches. At times, William started the chainsaw for Gagnon.

Throughout the entire day, Caroline observed the work and instructed Gagnon to "be careful"

on several occasions. She also provided water to both William and Gagnon.

William, Caroline, and Gagnon had several conversations throughout the morning as to which trees and branches to cut, how to best remove the trees and branches, where the trees and branches would fall, and how to clean them up. William and Caroline instructed Gagnon regarding those matters.

At approximately noon on that same date, William stopped working on cutting down the tree and went into the house. He then came out of the house and entered the McGuires' pool that is located on the same property.

Gagnon continued to work through the afternoon and early in the afternoon complained to Caroline that he was "working alone" and couldn't complete the work that day without help. Caroline and Gagnon then asked Dulberg to assist. Dulberg agreed to assist.

Dulberg assisted William McGuire by moving branches to the garden and started the chainsaw for Gagnon once while Gagnon was in the tree.

Dulberg then assisted Gagnon by moving the large branches that had already been cut and holding the large limbs steady so that Gagnon could cut them. Dulberg would hold the large branch while Gagnon would cut the smaller branches off the larger branch with the chain saw.

Gagnon would tell Dulberg which branches to pick up and move to the location where Gagnon was cutting them into smaller pieces by cutting off smaller limbs with the chain saw. Gagnon would also instruct Dulberg as to how and where to hold the limbs so that he could cut the branch with the chain saw. Gagnon placed the larger limb, which was now stripped of the smaller branches in a pile and instructed Dulberg to grab the next limb, which still had the smaller branches, to start the process again.

The chain saw was very loud and little conversation occurred during the time the chain saw was on. Instead, Gagnon would gesture to communicate with Dulberg as to how he wanted the branch

held or moved.

No one cut down the entire tree that day, instead branches were removed from the tree and cut down into smaller pieces.

6. Identify and describe how Caroline McGuire supervised David Gagnon and William McGuire's actions, as alleged in paragraph 14 of the second amended complaint.

ANSWER: See answer to 5.

7. Identify the date, time, the location, and the exact words exchanged between Gagnon and the McGuires on the one hand and you on the other as alleged in paragraph 15 of your second amended complaint, in which it is alleged that were asked to assist the trimming and removal of the tree.

ANSWER: See answer to 5. Dulberg does not recall the "exact words exchanged" but does recall the incident as outlined in his answer to 5.

8. Identify what safety information was readily available to Caroline and William McGuire as alleged in paragraph 18 of your second amended complaint, and how you know this information.

ANSWER: Caroline and William McGuire had the owner's manual to the chain saw. Caroline was reading parts of it aloud to Gagnon in the morning of June 28, 2011. Dulberg observed Caroline in possession of the owner's manual and saw her reading it in the morning of June 28, 2011.

The owner's manual had safety instructions and warnings that would have prevented the accident.

9. Did you request any protective equipment or other safety devices from the McGuires or Gagnon while you provided assistance to Gagnon in operating the chainsaw?

ANSWER: No, Gagnon instructed Dulberg as to what to do and Dulberg never operated the chain saw or read the owner's manual.

10. Did you assist Gagnon with trimming and removal of the tree? If so, describe

each and every action you took in assisting Gagnon with the cutting down or removal of the tree.

ANSWER: See answer to 5.

11. Identify and describe each and every conversation between and David Gagnon while you were assisting him with trimming or cutting down the tree.

ANSWER: See answer to 5.

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is \$650 per month.

2. 1999-2011 Juskie Printing

Paul Dulberg served as an independent contractor for Juskie Printing performing graphic design and prepress functions.

From 1999-2006, this was a barter arrangement.

From 2007-2011, Paul Dulberg earned approximately \$18,000 per year.

See tax documents.

3. Intermatic Incorporated

1998-2002 Intermatic Incorporated, Offset Press Operator I

2002-2007 Intermatic Incorporated, Graphic Designer

2010 Intermatic Incorporated, Independent Contractor for Graphic Design

See tax documents for income information.

See job description provided with documents.

4. 2011 Art Material Services. Material Handler

Operated and maintain thread roller.

See tax documents for income information.

13. Did you suffer any serious personal injury and/or illness within ten years prior to the date of the occurrence? If so, describe where and how you were injured and/or became ill and describe the injuries and/or illness suffered.

ANSWER:

1. Migraine Headaches, treated at home.

2. 2002. Rear end collision at Hayden Dr and Johnsburg/Wilmot Rd., in McHenry, IL.

See medical records produced.

3. Approx. 2004, Chest Infection. Treater: Dr. Sek. Treated with inhaler and antibiotics

4. 2005. Broken Foot. Treated at Centegra Hospital in McHenry. Scott Dulberg stepped

on Paul Dulberg's bare right foot.

14. Have you suffered any serious injury and/or illness since the date of the occurrence? If so, state when, where, and how you were injured and/or became ill and describe the injury and/or illness suffered.

ANSWER:

1. 2011 to present. Migraines.

Treaters: Dr. Levin

Dr. Terrance Lee

Investigation Continues.

2. 2013 Hemorrhoid related to stress. Treater: Dr. Conway

3. 2016 Dog Bite to Left Leg. Treater: Centegra, McHenry.

a. Dulberg broke up a fight between his dog and the neighbors' dog when he was bitten by a neighbor's dog.

4. Enlarged Prostate Treaters: Dr. Berger, The Uro Center, Lake Zurich, Illinois.

Dr. Elterman and Dr. Tarnauskas, Elterman Center, Skokie, Illinois.

Investigation continues. No other major illness or injuries relevant to this case.

15. Have you filed any claim for workers compensation benefits in the ten years prior to the underlying accident of June 28, 2011? If so, state the name and address of your employer, the date(s) of the accidents, the identity of the insurance company that paid you such benefits and the case nos. and jurisdictions where filed.

ANSWER: No.

16. State the personal injuries sustained by you as the result of the underlying occurrence.

ANSWER: Chainsaw injury to the right arm. See medical records.

17. With regard to your injuries, state:

- (a) The name and address of each attending physician and/or health care professional;
- (b) The name and address of each consulting physician and/or health care professional;
- (c) The name and address of each person and/or laboratory taking an x-ray, MRI and/or other radiological tests of you;
- (d) The date or inclusive dates on which each of them rendered you service;
- (e) The amounts to date of respective bills for services; and
- (f) From which of them you have written reports

ANSWER: See medical records provided.

18. As a result of your personal injuries from the underlying case, were you a patient or outpatient at any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

ANSWER: See medical records provided.

19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:
- (a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
 - (b) The date or inclusive dates on which you were unable to work;
 - (c) The amount of wage and/or income lost by you; and
 - (d) The name and address of your present employer and/or wage and/or salary.

ANSWER: Paul Dulberg was self-employed and unable to work after the accident. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

20. State any and all other expenses and/or losses you claim as a result of the occurrence in the underlying case or resulting from any alleged legal malpractice committed by Popovich or Mast. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm, and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid, and if so, by whom it was so paid and describe the reason and/or purpose for each expense and/or loss.

ANSWER: Investigation continues. Medical costs, lost wages, loss of use, permanent disability resulting from injury, and pain and suffering.

21. Were any photographs, movies, and/or videotapes taken of the scene of the occurrence or the persons and/or equipment involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

ANSWER: Photograph of Mr. Gagnon. See all photographs produced with request to produce.

22. Had you consumed any alcoholic beverage within the 12 hours immediately prior to the occurrence or had you used any drugs or medications within 24 hours immediately prior to the occurrence. If so, state the name(s) and address(es) of those from whom it was obtained, where it was used, the particular kind and amount of drug, medication, or alcohol so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication or alcohol.

ANSWER: Dulberg may have taken Naproxen sodium prior to the accident. Naproxen

sodium is a pain reliever available over the counter. Dulberg does not recall whether he took the drug the night before or the day of the accident, but he did take it on a regular basis at that time. He did not consumer any other drugs or alcohol during that time.

23. Describe why you agreed to a binding mediation in the summer of 2016 as alleged in paragraph 52 of your second amended complaint.

ANSWER: At that time, a bankruptcy trustee was appointed by the bankruptcy court and the bankruptcy trustee filed a motion for binding mediation that was granted.

24. Identify the date on which you provided any settlement authority to Hans Mast or the Popovich firm, and the amount of any specific settlement authority to make any settlement demand upon the defendants in the underlying case.

ANSWER: Specific settlement authority was never given. On November 4, 2013, Mast was granted authority to investigate a settlement, but a specific dollar amount was never provided. On or around January 29, 2014, Dulberg signed the settlement agreement.

25. Identify and describe the date on which you received a copy of the settlement agreement from Mast in the underlying case, the date on which you executed the settlement agreement and the date on which you mailed the executed settlement agreement to Mast.

ANSWER: January 29, 2014, received, signed and mailed back to Mast.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

ANSWER: Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that Dulberg would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to

seek and receive a full recovery from Gagnon.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

ANSWER:

Dr. Landford is a chain saw expert who was retained by Dulberg. See documents produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street, Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: PAUL DULBERG

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the \$5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

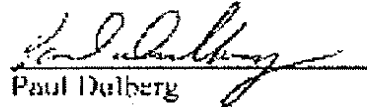
EXHIBIT # 3

2-19-20

POP 000003

VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Paul Delberg

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111117451
17LA000377
11/26/2017
McHenry County, Illinois
22nd Judicial Circuit

NOTICE

THIS CASE IS HEREBY SET FOR A
SCHEDULING CONFERENCE IN
COURTROOM 201 ON
02/27/2018 AT 9:00 AM.
FAILURE TO APPEAR MAY RESULT IN
THE CASE BEING DISMISSED OR AN
ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as

"DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint
against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as
"POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the
following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was
such a resident at all times complained of herein.
2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm
operating in McHenry County, Illinois, and transacting business on a regular and daily basis in
McHenry County, Illinois.
3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW
OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of
Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT # 4
2-19-20

4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of \$260,000.00, along with lost wages in excess of \$250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as Exhibit A.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as Exhibit B, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as Exhibit A, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

11. That as Exhibit B reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them

there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of \$5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of \$5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of \$660,000.00 in gross, and a net award of \$561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to \$300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as Exhibit D.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois.

McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

- a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;
- b) Failed to thoroughly investigate liability issues against property owners of the subject property;
- c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;
- d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;
- e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;
- f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;
- g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;


j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of \$5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys THE GOOCH FIRM,


Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.


Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084

847-326-0110

ARDC No.: 3123355

gooch@goochfirm.com

office@goochfirm.com

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20____.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~33 1/3%~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: 

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

ALL STATE LEGAL
PLAINTIFF'S
EXHIBIT



COPY

MAY 15 2012

KATHARINE M. KATZ
McHENRY CITY CLERK

STATE OF ILLINOIS)
COUNTY OF McHENRY) SS

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No. 12LA178

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,
County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE
lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 4 ON
JULY 13, 2012, AT 4:00 PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 4 ON
JULY 13, 2012, AT 4:00 PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

ALL STATE LEGAL
PLAINTIFF'S
EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, not work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

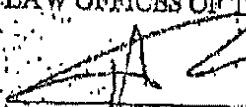
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

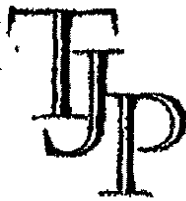
22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scared and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.


One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDON No. 05203084



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovitchlaw.com

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. ROHRER

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smg
Enclosure



Waukegan Office
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #171111174517 Case #17LA000377
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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012-LA-178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

- c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

Notary Public



Binding Mediation Award

Paul Dulberg

v.

ADR Systems File # 33381BMAG

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.

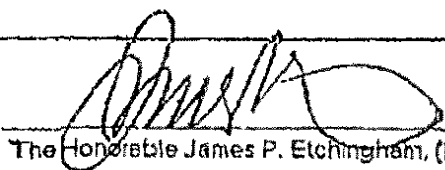
Comparative fault:

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.)

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602
 312.960.2200 • info@adrsystems.com • www.adrsystems.com

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 08:53 AM / Transaction #17111117451 / Case #17LA00077
 Page 19 of 19



IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,
PLAINTIFF,

v.

THE LAW OFFICES OF THOMAS POPOVICH,
and HANS MAST,
DEFENDANTS.

Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch
Mary Winch

EXHIBIT # 5
2-19-20

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
v.	)	No. 17 LA 377
)	
THE LAW OFFICES OF THOMAS J.)	
POPOVICH, P.C., and HANS MAST,)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

**COUNT I
LEGAL MALPRACTICE**

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.
2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.
3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or should have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of \$260,000, lost wages in excess of \$250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for \$5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the \$5,000.00, "the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their \$5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the \$5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of \$5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for \$5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to \$100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the \$5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

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

53. In December of 2016, Dulberg was awarded a gross amount of \$660,000 and a net award of \$561,000 after his contributory negligence was considered.

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

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

- a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
- b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
- c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing

Dulberg that Gagnon's insurance policy was "only \$100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for \$5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

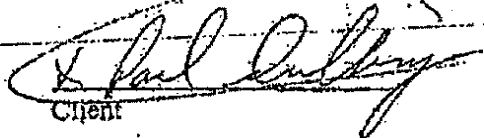
Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20____.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3 %) of my recovery from my claim by suit or settlement; this will increase to ~~1/3~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

LAW OFFICES OF THOMAS J. POPOVICH

By: 

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797



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Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
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STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

COPY

MAY 15 2012

KATHARINE M. KEEPS
McHENRY CT. CLK.

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.:

12LA178

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,
County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE
lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 201 ON
11/28/2012 AT 2:00 PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.10
CONFERENCE IN COURTROOM 201 ON
11/28/2012 AT 2:00 PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

EXHIBIT



Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711117451 / Case #17LA000377

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 13 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises where the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, not work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

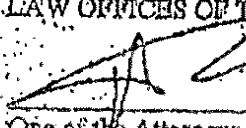
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 05203684

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Dave's Best and oldest friend John
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet, I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:

Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.

— Original Message —

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
Subject: Re: Dave's Best and oldest friend John

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul
Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

Sent from my iPhone

On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Only 5, That's not much at all.
Is this a take it or leave it or do we have any other options?

If you want a negligence case for the homeowners ask what happened immediately after the accident.

Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

I'm waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

Hans

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>

To: Hans Mast <hansmast@comcast.net>

Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

Subject: Dave's Best and oldest friend John

Hans,

Just spoke with John Choyinski again about talking with you.

I am leaving your number with him as he has agreed to talk with you about David Gagnon.

I believe he will try and call sometime tomorrow.

Paul

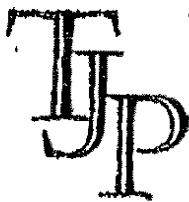
Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

Sorry for the rant but Dave was a complete ass all the way and deserves this.

Paul Dulberg

847-497-4250

Sent from my iPad



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KOHNAK

MARK J. VOGO
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smg
Enclosure



WAUKESHA OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKESHA, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111174017 / Case #17LA000377
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012-LA-178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

- o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

Notary Public

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
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From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: McGuire settlement
Date: December 28, 2013 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuire fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:

SSD has to be part of it...its not going to effect anything...
We can't prevent disclosure of the amount...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
Subject: Re: McGuire settlement

What and why do those questions have any relevance at all and why do they need to be part of this agreement?
Particularly the one about being eligible.

Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.

Is it possible to make this agreement blind to the McGuires or David Gagnon?

What I mean is can we make it so that the amount of money cannot be told to them in any way?

It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.

Paul Dulberg
847-497-4250

Sent from my iPad

On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:

Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
Subject: McGuire settlement

Here is a copy of the first page.

It has check boxes and one of the check boxes says;

I am not eligible to receive SSI or SSDI.

Another says;

I am not receiving SSI or SSDI.

As you know, I have applied for SSDI and SSI



From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Memo
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of course he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:

Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only \$100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.

Sent from my iPhone

On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
I agree showing me the memo is a good idea it's just not the accuracy I expected.
I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.

What's left for me?

Facebook, scrap booking, crafts, etc... A life of crap...

With ongoing pain and grip issues in my dominate arm/hand that are degenerative.

This is as total as it gets for us in the working class short of being paralyzed or dead.

I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.

What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.





Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

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.PIS75,000.LNL75,000.

 The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 25 • Chicago, IL 60602
 312.960.2280 • info@adrsystems.com • www.adrsystems.com



Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711117451 / Case #17LA000

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

Page 25 of 25

Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed



17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	COAA
Description	COMPLAINT - AMENDED
Date Filed	12/6/2018
Image Link	View Document Image
Doc Type	NOTE
Description	NOTICE - FILING
Date Filed	12/6/2018
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Just received your mailed letter
Date: December 27, 2016 7:10:43 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 9:06:46 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: Fwd: Just received your mailed letter

Hans,
If I use a chainsaw and cut you badly who is going to believe me when I say it's not my fault, Hans just fell into it?

Who in their right mind is going to believe me when your pointing your finger at me saying I did it?

Who?

Begin forwarded message:

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 23, 2014 at 8:25:03 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Just received your mailed letter

First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw. I was but a lowly printer/graphic designer my whole life and never asked for anyone's sympathy till now.

Secondly, I'm sorry I must live among a bunch of potential jurors that you don't trust to just do the right thing.

Thirdly, I'm most sorry for agreeing to lend David Gagnon a hand when he needed some help, I had no idea he was going to try and lop it off.

Fourth, I'm sorry you don't feel good about pushing for a trial. I wish whatever mysterious evidence you seek would be shared with me because without a video camera I can only say what I've seen from direct experience. And I guess in this case "me" the victim isn't credible enough but the one wielding a chainsaw that hurt me is.

A few questions from a layman,

How much could a trial actually cost?

What,

\$50,000

\$150,000

Does it even cost as much as a car?

What number?

How much would you hope to get for us in a settlement?

How much could be expected if the trial does proceed and we have a favorable outcome?

Hans, if your heart is not in this I'm sorry

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Sep 23, 2014, at 7:39 PM, Hans Mast <hansmast@comcast.net> wrote:

Hi Paul. My view hasn't changed. I think each time we've talked I've always tried to be open about my reservation to take this

EXHIBIT # 6
2-19-20

Dulberg 001466

case to trial. I just don't think we have enough evidence to prove our case and to invest the time and cost and preparing for trial and moving to trial just in my mind does not make sense to me. I have to be very realistic about things and honest with my opinion. It doesn't do you any good if I do not feel strongly about the case.

That's the very reason why I wanted to have this discussion. I want to give you the option of finding other counsel at this point if you really want to take the case to trial which I think ultimately will be necessary. I just do not believe strongly that defense counsel will offer much in the way of a settlement. Although I will ask him if he is going to make an offer and maybe that will allow you to make a better judgment on this.

Sent from my iPhone

On Sep 23, 2014, at 7:17 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Before I proceed,

Why the change of heart?

I mean, last month your response was we are setting a date for trial or something like that but Now it's settle or find new council again.

Paul

Paul Dulberg

847-497-4250

Sent from my iPad

Dulberg 001467

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Bad night
Date: December 27, 2016 7:07:16 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: September 26, 2014 at 6:32:40 PM CDT
To: Hans Mast <hansmast@comcast.net>
Subject: Bad night

Hans,

Last evening I was in the hospital with the most severe migraine I've ever had.

This morning I filed for bankruptcy with David Stretch.

This afternoon I spent with my regular physician Dr Zaide doing a follow up from yesterday.

And right now, I have to email you. All when I still have a slight residual headache and should be in bed.

At first I thought the migraine was brought on by the medications I'm taking but it wasn't, it was brought on after our discussions. Now I can't prove that but it seems pretty obvious to me. Joke no pun intended there!

That migraine made me realize I need the stress of this situation over with. All the stress on top of losing everything is too much and I'd rather live than die from it all before my body does something worse.

My body is not reacting well and the migraines are getting more frequent and worse. Have you ever vomited at the same time as defecating while being in some of the most excruciating pain in your life?

If not, neither did I till the chainsaw went through my arm. That's when the migraines became more frequent, stronger and faster coming on. And now for the first time during the day.

Ever since I awoke this morning, all I can I think is the stress of it all is killing me more and more as the reality sets in and I just can't afford to care about it anymore.

My health means more than some lawsuits and the lure of money.

All because some idiot named David Gagnon forgot to tell me to move out of the way and he can't seem to admit it.

Yes, after reading his deposition and hearing it was my fault I was pissed.

In my anger I suspected all sorts of things. Including it being intentional especially after my discussions at his home only trying to get his homeowners policy number and him wanting money and threatening me for it.

Yes, my arm and elbow were hurt from his stupidity irregardless if some dr can link the two together or not.

Yes, there will be ongoing medical as a result of all this because it still hurts and doesn't work right.

Yes, I am now disabled irregardless of what SSDI appeal goes because of this.

Yes, I understand I'm screwed because of a system that allows one person to hurt another and even after a trial and judgement entered all they have to do is go file for bankruptcy in the same courthouse on the same day.

Yes, it just took me almost an hour just to type this.

Yes, yes, yes...

but none of it matters anymore!

Bottom line Hans... Do the best you can with what you got. I've got nothing more to lose or give. I need it all to just go away.

EXHIBIT # 7
2-19-20

Dulberg 001462

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Memo
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

No answer, that's what I thought...

Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Is your wanting out a personal issue with me or is it strictly financial?

On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
In effect he did admit it was his fault.

On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

You do not have my consent to quit.

On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:

Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.

Sent from my iPhone

On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

To be honest, you took this case knowing it was my word vs. his.
Now you back out because the value of the case isn't worth your time?
You got some nerve and your earning the reputation of a shady lawyer

On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

EXHIBIT # 8

2-19-20

Dulberg 001384

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY,

FILED *APE*
MAR 19 2015
KATHERINE M. MADR
McHENRY CTY, CLERK

PAUL DULBERG

vs.

Case Number 12 LA 178

DAVID GAGNON, ET AL.

APPEARANCE

THEREBY ENTER THE APPEARANCE OF

PAUL DULBERG
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

- | | |
|---|--|
| <input type="checkbox"/> REGULAR COUNSEL | <input type="checkbox"/> TRIAL COUNSEL |
| <input type="checkbox"/> SPECIAL & LIMITED APPEARANCE | <input checked="" type="checkbox"/> SUBSTITUTE COUNSEL |
| <input type="checkbox"/> PRO-SE | <input type="checkbox"/> COUNSEL IN FORCIBLE ENTRY |
| <input type="checkbox"/> ADDITIONAL COUNSEL | <input type="checkbox"/> APPELLATE COUNSEL |
| <input type="checkbox"/> GUARDIAN AD LITEM | <input type="checkbox"/> COURT APPOINTED COUNSEL |

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED

BB

(Signature of Attorney filing appearance)

Name BRAD J. BALKE, P.C.

BRAD J. BALKE
Printed Name

ARDC Number 6273304

Attorney for PLAINTIFF

Address 542 S. DEARBORN ST, STE 310

City, State Zip CHICAGO, IL 60605

Phone 312-986-8063

CG-API (Rev 05/2010)

EXHIBIT # 9

2-19-20

Dulberg 002646



**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.

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2-19-20

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

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, 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 THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
v.) Case No. 17 LA 377
)
THE LAW OFFICE OF THOMAS J.)
POPOVICH, P.C. and HANS MAST,)
)
Defendants.)

**DULBERG'S SUPPLEMENTAL ANSWERS TO DEFENDANTS THE LAW OFFICES
OF THOMAS J.
POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds, in supplement, to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

SUPPLEMENT TO ORIGINAL ANSWER:

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor. Dulberg provided full time employment services to Sharp Printing, Inc. and thus was "employed" by Sharp Printing, Inc. However, Dulberg did not draw a salary from Sharp Printing, Inc. and did not receive any profits from the company.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

EXHIBIT # 11
2-19-20

Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is \$650 per month.

19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

- (a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;**
- (b) The date or inclusive dates on which you were unable to work;**
- (c) The amount of wage and/or income lost by you; and**
- (d) The name and address of your present employer and/or wage and/or salary.**

SUPPLEMENT TO ORIGINAL ANSWER:

Paul Dulberg was self-employed by Sharp Printing and unable to work after the accident. He was also an independent contractor with Juskie Printing. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

SUPPLEMENT TO ORIGINAL ANSWER:

On December 8, 2016, the mediator issued a net award to Dulberg of \$561,000. Dulberg discovered he could not recover the entire mediation award from Gagnon. At that time Dulberg realized that Mast's advice to settle with the McGuires for \$5,000 was incorrect, because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

SUPPLEMENT TO ORIGINAL ANSWER:

Dr. Landford is a chainsaw expert who was retained by Dulberg during the mediation which occurred in 2016. Landford's expert opinion demonstrates that contrary to Mast's advice, the McGuires were liable for Gagnon's actions with the chainsaw. The expert report came out in February of 2016 and the mediation award was issued in December of 2016.


Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Paul Dulberg

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
v.) Case No. 17 LA 377
)
THE LAW OFFICE OF THOMAS J.)
POPOVICH, P.C. and HANS MAST,)
)
Defendants.)

**DULBERG'S ANSWERS TO DEFENDANT HANS MAST'S
INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant Hans Mast's Interrogatories To Plaintiff Paul Dulberg as follows:

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER: Various dates between October 2013 to January 2014. The advice was

EXHIBIT # 12
219-20

provided via email, text messages, telephone calls, and in person meetings.

Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg would that he would retain his claim against Gaganon and be able to seek and receive a full recovery from Gagnon.

All documents in Plaintiff's possession and control produced.

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER: The McGuire's owned their home and vehicles. McGuire's also held bank accounts in their name. Investigation continues.

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than \$100,000?

ANSWER: The McGuire's produced insurance information to Dulberg on the day of the accident and also were represented by insurance counsel.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street, Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

5th IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
v.) Case No. 17 LA 377
)
THE LAW OFFICE OF THOMAS J.)
POPOVICH, P.C. and HANS MAST,)
)
Defendants.)

**DULBERG'S RESPONSES TO DEFENDANTS THE LAW OFFICES
OF THOMAS J. POPVICH, P.C., s REQUESTS FOR PRODUCTION TO PLAINTIFF**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 214, responds to Defendants, The Law Offices of Thomas J. Popovich, P.C.'s Requests for Production To Plaintiff as follows:

PRODUCTION REQUESTS

1. Produce any and all records regarding the legal representation provided to you by the Law Offices of Thomas J. Popovich, P.C. ("Popovich") and/or Hans Mast ("Mast") in connection with the underlying case, against William McGuire, Caroline McGuire, and David Gagnon.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

2. Produce any and all correspondence, agreements, draft agreements, emails, letters, and any other documents between you and Popovich or Mast in connection with the legal representation in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

3. Produce any and all correspondence between you and any defendant from the underlying case, including Caroline McGuire, William McGuire, and David Gagnon, from June 28, 2011 to the present time.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

4. Produce any and all documentation relating to legal representation of you by any successor counsel in the underlying case.

EXHIBIT # 13
2-19-20

RESPONSE: Objection. Attorney Client Privilege.

5. Any and all engagement or disengagement letters or agreements between you and any attorney relative to legal services in the underlying case.

RESPONSE: Objection. Attorney Client Privilege.

6. Any and all pleadings and discovery (including deposition transcripts) created, filed, served, and received in the underlying case prior and subsequent to Popovich and Mast's withdrawal as your attorneys, including but not limited to any "high/low" agreement and any arbitration award, arbitration agreement, and any other documentation relating to any arbitration in the underlying case.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

7. Produce any and all documents relating in any way to your claimed damages in the instant case, including but not limited to any special damages, such as medical bills, medical records, costs, invoices, and lost wages.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

8. Produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created, and the date any recipient received the document.

RESPONSE: Plaintiff is only withholding attorney client communication between his successor counsel.

9. Produce any and all state and federal tax returns you filed in the ten year period prior to the accident of June 28, 2011.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

10. Produce any and all documentation of lost wages as alleged in paragraph 30 of your second amended complaint, including but not limited to any employment agreement, wage records, paystubs, cancelled checks, and any other documentation reflecting income in the ten year period prior to the date of the accident.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

11. Produce copies of any and all settlement documents, settlement agreements, cancelled checks or other payments made in connection with any settlement reached in the underlying case, including payment of approximately \$300,000 as alleged in paragraph 54 of your supplemental complaint.

RESPONSE: All relevant documents in Plaintiff's possession will be produced.

12. An affidavit signed you (and not your attorney) pursuant to Illinois Supreme Court Rule 214, certifying that your response is complete in accordance with each request contained herein.

RESPONSE: Produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Memo
Date: December 27, 2016 6:01:21 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 9:38:57 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Is your wanting out a personal issue with me or is it strictly financial?

On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
In effect he did admit it was his fault.

On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

You do not have my consent to quit.

On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:

Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.

Sent from my iPhone

On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

To be honest, you took this case knowing it was my word vs. his.
Now you back out because the value of the case isn't worth your time?
You got some nerve and your earning the reputation of a shady lawyer

On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

EXHIBIT # 8

EXHIBIT F

Dulberg 001384

2-19-20

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

4 IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
5 MCHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)
7)
8 Plaintiff,)
9)
10 -vs-) No. 17 LA 377
11)
12 THE LAW OFFICES OF THOMAS)
13 POPOVICH and HANS MAST,)
14)
15 Defendants.)
16)
17)
18)
19)
20)
21)
22)
23)
24)

25 The remote videoconference deposition of
26 HANS MAST, appearing remotely from McHenry County,
27 Illinois, called by the Plaintiff for examination,
28 pursuant to subpoena and pursuant to the Code of
29 Civil Procedure of the State of Illinois, and the
30 Rules of the Supreme Court thereof, pertaining to the
31 taking of depositions, for the purpose of discovery,
32 taken before Barbara G. Smith, appearing remotely
33 from Will County, Illinois, Certified Shorthand
34 Reporter and Notary Public within and for the County
35 of Cook and State of Illinois, commencing at the hour
36 of 10:00 a.m. on the 25th day of June, A.D., 2020.

Page 2		Page 4	
1	REMOTE APPEARANCES:	1	THE REPORTER: The attorneys participating
2	THE CLINTON LAW FIRM, By	2	in this deposition acknowledge that I am not
3	MS. JULIA C. WILLIAMS	3	physically present in the deposition room and that I
4	111 West Washington Street, Suite 1437	4	will be reporting this deposition remotely. They
5	Chicago, Illinois 60602	5	further acknowledge that, in lieu of an oath
6	(312) 387-1515	6	administered in person, the witness will verbally
7	(312) 201-0737 (Facsimile)	7	declare his testimony in this matter is under penalty
8	juliawilliams@clintonlaw.net	8	of perjury. The parties and their counsel consent to
9	On Behalf of the Plaintiff;	9	this arrangement and waive any objections to this
10		10	manner of reporting. Please indicate your agreement
11	KARBAI COHEN ECONOMOU SILK DUNNE, LLC, By	11	by stating your name and your agreement on the
12	MR. GEORGE FLYNN	12	record.
13	150 South Wacker Drive, Suite 1700	13	MS. WILLIAMS: Julia Williams. I agree.
14	Chicago, Illinois 60605	14	MR. FLYNN: George Flynn. I agree.
15	(312) 431-3622	15	THE REPORTER: Will the witness kindly
16	(312) 431-3670 (Facsimile)	16	present his government-issued identification by
17	gflynn@karballlaw.com	17	holding it up to the camera for verification?
18	On Behalf of the Defendants.	18	(Witness presents
19		19	government-issued identification
20	ALSO PRESENT: Mr. Paul Dulberg	20	and identity is verified.)
21		21	THE REPORTER: Thank you.
22		22	HANS MAST,
23		23	called as a witness herein, having been first duly
24		24	sworn, was examined and testified as follows:

Page 3		Page 5	
1	I N D E X	1	EXAMINATION
2		2	BY MS. WILLIAMS:
3	WITNESS	3	MS. WILLIAMS: Okay, so this is the
4	EXAMINATION	4	discovery deposition of Hans Mast taken pursuant to
5	HANS MAST	5	all applicable rules and notice in the case of
6	By Ms. Williams	6	Dulberg versus The Law Offices of Thomas Popovich,
7	By Mr. Flynn	7	et al. This deposition is being taken for the
8		8	purposes of discovery.
9	EXHIBITS	9	Q. Hans, can you state your name for the
10		10	record, please?
11	HANS MAST	11	A. Hans Mast.
12	DEPOSITION EXHIBIT	12	Q. Have you had your deposition taken before?
13	MARKED FOR ID	13	A. Yes.
14	No. 1	14	Q. And how many times?
15	No. 2	15	A. I think two.
16	No. 3	16	Q. And for what purpose?
17	No. 4	17	A. Long, long time ago I think there was a
18	No. 5	18	malpractice case I was a witness on and a legal -- a
19	No. 6	19	medical malpractice case that turned into a legal
20	No. 7	20	malpractice case, not against me but against the
21	No. 8	21	office I was with.
22	No. 9	22	Q. Okay. So you weren't named in the
23	No. 10	23	lawsuit as a defendant?
24	No. 11	24	A. I might have been named. I might have been

<p style="text-align: right;">Page 6</p> <p>1 named, but I was somebody that appeared on a motion. 2 I think I got out eventually. 3 Q. Okay, and then -- And then -- Sorry. And 4 then you said you think twice, so do you know 5 approximately what year that medical malpractice case 6 that turned into a legal malpractice case, do you 7 know roughly what year that was? 8 A. '94 or something. 9 Q. Okay, and then the second time, what would 10 have that been? 11 A. It's not coming to me. It was another legal 12 case. I don't remember the details. 13 Q. Okay -- 14 A. There -- Go ahead. 15 Q. More than 10 years? I'm sorry, I didn't 16 mean to interrupt you. 17 A. Yes. 18 Q. We can go over the -- I'm going to try not 19 to interrupt you, you're going to try not to 20 interrupt me. You've taken depositions before, I'm 21 sure we can get into that and appreciate you 22 answering orally, all of those typical things that 23 apply, and I'll try not to interrupt you too much. 24 Have you ever -- Other than the one time you just</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Hundreds? 2 A. Probably. 3 Q. Oh, I'm sorry, I forgot to do this, but I 4 think we saw your room. It's just you and George 5 Flynn in the room with you, correct? 6 A. Yes. 7 Q. And there's no one else in the room and if 8 there were, you would identify them, correct? 9 A. Yes. 10 Q. And you don't have any devices or anything 11 with you? You're not communicating with anyone 12 during this deposition other than the attorney in the 13 room with you, correct? 14 A. And you and who else is on this meeting. 15 Q. Okay. I'm sorry, let me rephrase. Is there 16 anyone that I don't know that you are communicating 17 with that I wouldn't know? 18 A. Not that I'm aware of. 19 Q. Okay. If you take any notes or otherwise 20 communicate with people during the deposition, we 21 just ask that those notes be produced. Okay. Did 22 you do anything to prepare for the deposition today? 23 A. Well, I just saw some exhibits you sent 24 George. I didn't really prepare them. I looked them</p>
<p style="text-align: right;">Page 7</p> <p>1 identified, have you ever been sued other than this 2 suit for legal malpractice? 3 A. No. 4 Q. Do you recall any other details about that 5 medical malpractice lawsuit that turned into a legal 6 malpractice suit? Do you know what the basis of the 7 suit was? 8 A. It was a medical malpractice case that I 9 think lost on a summary judgment motion and they 10 were -- the client was suing the office and I think I 11 got involved in it because I was on a motion. 12 Q. Were you the one that drafted the summary 13 judgment motion? 14 A. I don't think so. I don't really remember 15 clearly back then, but I don't think I did. 16 Q. Okay. 17 A. I think I argued -- I might have argued it. 18 I don't remember. 19 Q. Okay. Have you -- Have you taken 20 depositions before? 21 A. Yes. 22 Q. Roughly how many depositions do you think 23 you've taken in your legal career? 24 A. Lots. Lots.</p>	<p style="text-align: right;">Page 9</p> <p>1 over briefly. 2 Q. Did you review any of the other files that 3 have been produced in this case? 4 A. No. 5 Q. Did you review any notes? 6 A. No. 7 Q. Any other documents? 8 A. No. 9 Q. Did you meet with anyone -- 10 A. Other than George? 11 Q. -- to prepare? Other than George. 12 A. No. 13 Q. And you did meet with George, I'm 14 assuming. I don't want to know the contents of that 15 meeting, but you met with George to prepare? 16 A. Not very long. 17 Q. Okay. Did you talk to anyone else about 18 today's deposition prior to the deposition today? 19 A. No. 20 Q. Where did you go to law school? 21 A. Kent. 22 Q. And what year did you graduate? 23 A. '91. 24 Q. And were you admitted to practice in</p>

<p style="text-align: right;">Page 10</p> <p>1 Illinois that same year?</p> <p>2 A. Yes.</p> <p>3 Q. And have you -- Are you admitted to practice</p> <p>4 anywhere else?</p> <p>5 A. No.</p> <p>6 Q. Have you ever been reprimanded or</p> <p>7 disciplined by any courts?</p> <p>8 A. No.</p> <p>9 Q. Have you ever been publicly reprimanded or</p> <p>10 disciplined by any oversight body, such as the ARDC?</p> <p>11 A. No.</p> <p>12 Q. When did you start practicing?</p> <p>13 A. '91.</p> <p>14 Q. And where did you start?</p> <p>15 A. In Rockford.</p> <p>16 Q. With a firm?</p> <p>17 A. Yeah, Cacciatore.</p> <p>18 Q. And how long were you there?</p> <p>19 A. About a year and a half.</p> <p>20 Q. And what kind of work did you do there?</p> <p>21 A. Personal injury, plaintiff.</p> <p>22 Q. Have you done personal injury your entire</p> <p>23 career?</p> <p>24 A. No, I did some defense work.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I think a couple years. Maybe a little more</p> <p>2 than that.</p> <p>3 Q. And what kind of work did you do at Kemper?</p> <p>4 A. Defense.</p> <p>5 Q. Defense of what type of cases?</p> <p>6 A. Lots of different kinds, auto accidents,</p> <p>7 premises.</p> <p>8 Q. Mostly torts though, negligence-type cases?</p> <p>9 A. Yes.</p> <p>10 Q. And then after Kemper?</p> <p>11 A. I think Popovich was next.</p> <p>12 Q. And how long were you with the Popovich</p> <p>13 firm?</p> <p>14 A. About 18 years, I think.</p> <p>15 Q. And do you know what year you -- roughly</p> <p>16 what year you joined Popovich?</p> <p>17 A. 2001 maybe.</p> <p>18 Q. And you were there for roughly 18 years you</p> <p>19 think?</p> <p>20 A. Yes.</p> <p>21 Q. So you left maybe just last year?</p> <p>22 A. In '18.</p> <p>23 Q. 2018?</p> <p>24 A. Yeah.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. So you were at Cacciatore for a year</p> <p>2 and a half and you were doing plaintiff's personal</p> <p>3 injury work. What did you do after that?</p> <p>4 A. I went to the Loggans firm in Chicago for</p> <p>5 about 6 months.</p> <p>6 Q. And what did you do there?</p> <p>7 A. Plaintiff's.</p> <p>8 Q. PI again, personal injury?</p> <p>9 A. Yeah.</p> <p>10 Q. And after that?</p> <p>11 A. Judge and James in Park Ridge.</p> <p>12 Q. And how long were you there?</p> <p>13 A. 7 years, I think.</p> <p>14 Q. Did you do plaintiff's personal injury there</p> <p>15 as well?</p> <p>16 A. No, that was defense.</p> <p>17 Q. What kind of defense work?</p> <p>18 A. Lots -- All kinds, municipal, tort.</p> <p>19 Q. Did you defend personal injury cases while</p> <p>20 you were there as well?</p> <p>21 A. Yes.</p> <p>22 Q. And then after that, where did you go?</p> <p>23 A. Kemper, I think.</p> <p>24 Q. And how long were you with Kemper?</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. And why did you leave Popovich?</p> <p>2 A. To start on my own.</p> <p>3 Q. And where are you now?</p> <p>4 A. With Compton Law Group.</p> <p>5 Q. I'll give you just a second to come back.</p> <p>6 A. Yeah.</p> <p>7 Q. And what types of -- I'm sorry, I'm going to</p> <p>8 go back to the Popovich firm. What kind of cases did</p> <p>9 you handle at Popovich's firm?</p> <p>10 A. Plaintiff's personal injury, all kinds.</p> <p>11 Q. And then at Compton, what kind of work do</p> <p>12 you do?</p> <p>13 A. Same thing, same kind of cases, plaintiff's</p> <p>14 personal injury.</p> <p>15 Q. So is it fair to say you've been doing</p> <p>16 plaintiff's personal injury cases steadily throughout</p> <p>17 your career?</p> <p>18 A. Yeah, except for the time I was with the</p> <p>19 defense offices.</p> <p>20 Q. Okay. But you were still doing personal</p> <p>21 injury, just on the defense side, not on the</p> <p>22 plaintiff side?</p> <p>23 A. Right.</p> <p>24 Q. Okay. Did you answer discovery in this</p>

<p style="text-align: right;">Page 14</p> <p>1 case, in the malpractice case that we're -- the</p> <p>2 Dulberg versus Thomas Popovich case?</p> <p>3 A. I think I did.</p> <p>4 Q. Do you remember -- Did you review discovery</p> <p>5 in this case, do you recall?</p> <p>6 A. Like I said, I think I answered some and</p> <p>7 signed off on some, I just don't remember. I haven't</p> <p>8 seen them recently.</p> <p>9 Q. Okay. Okay. If you recall, do you remember</p> <p>10 reviewing the documents that were produced in this</p> <p>11 case?</p> <p>12 A. I don't know what was produced.</p> <p>13 Q. Okay.</p> <p>14 A. I assume the file.</p> <p>15 Q. Right. Okay, if I represented that the file</p> <p>16 was produced, would that make sense to you? Can we</p> <p>17 kind of agree that the file was produced?</p> <p>18 A. Well, if you told me that.</p> <p>19 Q. Okay. So when the file was produced, I</p> <p>20 don't know if you recall, there were black -- some</p> <p>21 black pages between the file. Do you remember any</p> <p>22 discussions about that?</p> <p>23 A. I didn't produce anything so and I haven't</p> <p>24 reviewed what was produced, that wasn't my -- I was</p>	<p style="text-align: right;">Page 16</p> <p>1 case?</p> <p>2 A. Not that I'm aware of. Unless I produced it</p> <p>3 to Popovich and he produced it. I don't know how</p> <p>4 that worked.</p> <p>5 Q. Okay. When were you retained by Paul</p> <p>6 Dulberg?</p> <p>7 A. I don't recall. I'm assuming there's</p> <p>8 paperwork that shows that.</p> <p>9 Q. Yes. Let me upload a file here. Just give</p> <p>10 me a second.</p> <p>11 A. I don't think he retained me. I think he</p> <p>12 retained Tom Popovich's office.</p> <p>13 Q. Okay. I just uploaded a file that's titled</p> <p>14 Dulberg Mast Dep Exhibit 1, if you can -- And,</p> <p>15 George, you should have that as well -- and it should</p> <p>16 be the retainer contract.</p> <p>17 A. Yeah, I see it.</p> <p>18 Q. Okay. So it's a contract for legal services</p> <p>19 and it's marked POP, P O P, 000586 on the bottom,</p> <p>20 just for reference, so this will be the first exhibit</p> <p>21 in this deposition. Do you recognize this document?</p> <p>22 A. I recognize what it looks like, yeah.</p> <p>23 Q. Yeah, and it's the contract for legal</p> <p>24 services and it's undated, it looks like.</p>
<p style="text-align: right;">Page 15</p> <p>1 in a different office when it was produced, I think.</p> <p>2 Q. Okay. So Thomas Popovich would have had</p> <p>3 possession of the file?</p> <p>4 A. Right.</p> <p>5 Q. You did not have possession of any documents</p> <p>6 from the underlying case, from the Dulberg versus</p> <p>7 Gagnon-McGuire case?</p> <p>8 A. I didn't.</p> <p>9 Q. Okay. So you would not have had access to</p> <p>10 that file since you were with Thomas Popovich in</p> <p>11 2018?</p> <p>12 A. Once I left the firm, I have not had the</p> <p>13 file.</p> <p>14 Q. Okay. In this case did you produce emails</p> <p>15 that you possessed or did you not have access to</p> <p>16 those either?</p> <p>17 A. I would -- I don't know what was produced,</p> <p>18 again, by the Popovich firm. I don't know if they</p> <p>19 had my emails, but I have a new email address. I</p> <p>20 don't think it's the same as it was back then.</p> <p>21 Q. Okay.</p> <p>22 A. So I didn't produce anything.</p> <p>23 Q. So you didn't produce any emails or</p> <p>24 communications that -- in the -- from the underlying</p>	<p style="text-align: right;">Page 17</p> <p>1 A. That's what it looks like.</p> <p>2 Q. Okay. I'm going to upload another exhibit.</p> <p>3 So I'm uploading Exhibit 2, it's titled Dulberg Mast</p> <p>4 Dep Exhibit 2, and this should be the original</p> <p>5 complaint filed in the case of Dulberg versus Gagnon,</p> <p>6 et al., 12 LA 178, filed in McHenry County. Do you</p> <p>7 see that document?</p> <p>8 A. Yeah. What I'm going off are an email I got</p> <p>9 with all the exhibits attached, so I'm not -- that's</p> <p>10 what I'm looking at.</p> <p>11 Q. Okay.</p> <p>12 A. It's a complaint and it says Exhibit 2.</p> <p>13 Q. Right, okay. So our numbers may be a little</p> <p>14 off, but the description should be correct. In that</p> <p>15 complaint shows file stamp May 15, 2012?</p> <p>16 A. Yeah, that's what it says.</p> <p>17 Q. Okay, and so Mr. Dulberg would have hired</p> <p>18 you sometime -- hired the Popovich firm sometime</p> <p>19 prior to that, correct?</p> <p>20 A. I'm assuming. I --</p> <p>21 Q. Okay. Do you have any idea?</p> <p>22 A. I'm sorry.</p> <p>23 Q. I'm sorry, I didn't mean to interrupt you.</p> <p>24 Go ahead.</p>

Page 18	Page 20
<p>1 A. Go ahead.</p> <p>2 Q. Do you have any idea about -- Do you have</p> <p>3 any idea about what timeframe he would have hired --</p> <p>4 retained you?</p> <p>5 A. I really, again, I don't have an independent</p> <p>6 recollection of it. I think there's probably a memo</p> <p>7 out there of me meeting with him, too.</p> <p>8 Q. Okay. Actually, I think there is. Okay, I</p> <p>9 just uploaded Dulberg Mast Dep Exhibit No. 3 and the</p> <p>10 top says -- it's titled, "Intake Memo." At the top</p> <p>11 it says, "Memorandum," it's Popovich, it says</p> <p>12 POP00961 and 000962. Do you recognize this document?</p> <p>13 A. I -- It looks familiar.</p> <p>14 Q. And it indicates that it's from you, so you</p> <p>15 would have drafted this document, correct?</p> <p>16 A. I would have dictated it, yeah.</p> <p>17 Q. Okay, and it looks like you had a new client</p> <p>18 meeting with Paul on December 1st of 2011?</p> <p>19 A. That's what it says.</p> <p>20 Q. Okay. Does that seem like that timeframe</p> <p>21 would have been roughly correct?</p> <p>22 A. I have no reason not to believe that's</p> <p>23 accurate.</p> <p>24 Q. Okay. So Paul retained you probably</p>	<p>1 named as well.</p> <p>2 Q. And what was the theory as to the McGuires?</p> <p>3 A. I think Paul had said that they were the</p> <p>4 ones that owned and looked over the work that was</p> <p>5 being done.</p> <p>6 Q. Okay. So if they owned the chain saw and</p> <p>7 were overseeing the work, what's the legal theory for</p> <p>8 liability on that? Why would they be liable?</p> <p>9 A. Under case law potentially there's liable --</p> <p>10 liability for people that oversee and direct the</p> <p>11 work.</p> <p>12 Q. Okay, and is that a strict liability or is</p> <p>13 it some other form of liability?</p> <p>14 A. It would be negligence.</p> <p>15 Q. So negligent oversight?</p> <p>16 A. Potentially.</p> <p>17 Q. Okay. Were there any other theories that</p> <p>18 you were going to pursue or could be pursued?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Okay. So a negligence claim against Gagnon</p> <p>21 for negligently utilizing the chain saw and then a</p> <p>22 negligence claim against McGuires for not -- for not</p> <p>23 controlling his use of the chain saw, is that</p> <p>24 accurate?</p>
Page 19	Page 21
<p>1 sometime in December of 2011 and then you filed a</p> <p>2 complaint around May 15, 2012?</p> <p>3 A. That's what it appears.</p> <p>4 Q. Okay. So can you just tell me what the case</p> <p>5 against Mr. -- I'm sorry. Can you describe the case</p> <p>6 between Paul Dulberg and David Gagnon, Caroline and</p> <p>7 William McGuire?</p> <p>8 A. What do you mean describe it? What it's</p> <p>9 about?</p> <p>10 Q. Yeah, basically what was it about?</p> <p>11 A. An injury, a chain saw injury.</p> <p>12 Q. Okay. Was there anything about the case</p> <p>13 that was unique to you?</p> <p>14 A. Other than it was a chain saw injury.</p> <p>15 Q. Okay. What was your theory of that case?</p> <p>16 What was your theory of liability in the case?</p> <p>17 A. I think the -- Paul had claimed Dave struck</p> <p>18 him with the chain saw.</p> <p>19 Q. So was it just a negligence theory or was it</p> <p>20 a strict liability or --</p> <p>21 A. I believe it was negligence, if I recall</p> <p>22 correct.</p> <p>23 Q. Negligence against Gagnon, David Gagnon?</p> <p>24 A. Yeah, and I think the McGuires actually were</p>	<p>1 A. I don't recall the exact allegations, but I</p> <p>2 think in a general theme that was what we were going</p> <p>3 to try to prove.</p> <p>4 Q. Okay. In the intake memo, do you want to go</p> <p>5 back to that? There are some notes on this exhibit</p> <p>6 that state -- it looks to me like it says, "Hans BC</p> <p>7 the accident occurred on their premises, their HO med</p> <p>8 pay will cover the bills," and then it's signed. Do</p> <p>9 you recognize that handwriting?</p> <p>10 A. Yeah, that would be Tom.</p> <p>11 Q. Okay, and what does that note mean?</p> <p>12 A. Medical coverage, medical payments coverage.</p> <p>13 Q. So there -- So the McGuires -- When he says</p> <p>14 their, is he referring to Caroline and Bill McGuire?</p> <p>15 A. Well, I don't know what he's referring to.</p> <p>16 I think what he's -- Well, he circled their names, so</p> <p>17 that probably indicates what he's referring to.</p> <p>18 Q. Okay. Would their -- Would their insurance</p> <p>19 cover medical bills in an instance like this?</p> <p>20 A. Possibly.</p> <p>21 Q. Okay. Did you reach out to their insurance</p> <p>22 company about covering any medical bills?</p> <p>23 A. I don't recall if that was applicable or I</p> <p>24 don't know -- I don't recall that issue.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q. Okay.</p> <p>2 A. Oh, uh, I think -- It just kicked me off.</p> <p>3 MR. FLYNN: I got disconnected, too. It's</p> <p>4 the Wi-Fi.</p> <p>5 BY MS. WILLIAMS:</p> <p>6 Q. Okay, we'll just wait a minute here.</p> <p>7 A. I can hear you. I just can't see you.</p> <p>8 Q. We'll wait a minute until you can get your</p> <p>9 video back on.</p> <p>10 MR. FLYNN: Julia, we think the Wi-Fi may</p> <p>11 have dropped here in the office.</p> <p>12 MS. WILLIAMS: Okay. Well, let's just give</p> <p>13 it a minute and see.</p> <p>14 MR. FLYNN: Okay.</p> <p>15 (Whereupon, a break was taken,</p> <p>16 after which the following</p> <p>17 proceedings were had:)</p> <p>18 MS. WILLIAMS: Okay. I think we're back on</p> <p>19 the record. Barb, are you doing all right?</p> <p>20 THE REPORTER: Yes.</p> <p>21 BY MS. WILLIAMS:</p> <p>22 Q. Okay. So we just went through the memo that</p> <p>23 Tom made a note about insurance and your testimony</p> <p>24 was that you don't recall whether you made any</p>	<p style="text-align: right;">Page 24</p> <p>1 mean, that brings up a lot of issues.</p> <p>2 Q. Okay. Let's -- Let me narrow it down a</p> <p>3 little bit and try to get more to a point that will</p> <p>4 be useful for our discussion. At some point, you had</p> <p>5 recommended that Paul settle the case as to the</p> <p>6 McGuires; is that correct?</p> <p>7 A. Yeah.</p> <p>8 Q. And what was the reasoning for settling the</p> <p>9 case as to William and Bill McGuire?</p> <p>10 A. Just risk, like you always discuss with any</p> <p>11 settlement.</p> <p>12 Q. Can you be a little more specific about what</p> <p>13 type of risk?</p> <p>14 A. Again, that's a long question but, I mean,</p> <p>15 it's like any settlement, you're taking a risk if you</p> <p>16 don't settle the case when you have issues that could</p> <p>17 be problematic.</p> <p>18 Q. Okay. When you say issues that can be</p> <p>19 problematic, and I know it could be a very long</p> <p>20 answer, but as much as you can, can you summarize</p> <p>21 what you think those risks were?</p> <p>22 A. Understanding it's a summary that, I mean, I</p> <p>23 could probably answer that in a couple hours, but the</p> <p>24 chance of recovery was in my view very slim if at all</p>
<p style="text-align: right;">Page 23</p> <p>1 requests to the McGuires' insurance to pay Paul's</p> <p>2 medical bills; is that correct?</p> <p>3 A. I don't remember, right.</p> <p>4 Q. Okay. Back to the actual claims made. Do</p> <p>5 you remember -- Do you recall what the defense was</p> <p>6 for first Gagnon and then Bill -- William and</p> <p>7 Caroline McGuire?</p> <p>8 A. What do you mean by defense?</p> <p>9 Q. What was their theory of defense in the</p> <p>10 case, do you recall? As you understood it.</p> <p>11 A. I mean, that's a big question. I mean,</p> <p>12 they, like every case, they were denying what we were</p> <p>13 alleging.</p> <p>14 Q. Were they denying the facts? Did they</p> <p>15 dispute the facts of the case?</p> <p>16 A. Definitely.</p> <p>17 Q. Okay. Do you recall what they were alleging</p> <p>18 as far as the facts that were different from what you</p> <p>19 were alleging?</p> <p>20 A. I mean, I can probably answer that for --</p> <p>21 with an hour -- an hour answer. There's a lot that</p> <p>22 they were denying. There was a lot that, you know, I</p> <p>23 mean, I'd have to -- I could look at their answer. I</p> <p>24 could look at their deposition testimony, but, I</p>	<p style="text-align: right;">Page 25</p> <p>1 because of lots of reasons, one, because of Paul's</p> <p>2 testimony, Gagnon's testimony, the McGuires'</p> <p>3 testimony. The evidence didn't seem to be something</p> <p>4 that was going to allow us to prove the case against</p> <p>5 the McGuires.</p> <p>6 Q. Okay. What -- And, again, I understand this</p> <p>7 is -- these are very long questions, but just in</p> <p>8 summary, what were you going to need to prove the</p> <p>9 case against the McGuires?</p> <p>10 A. Now, again, understanding I would have to</p> <p>11 put myself in my place where I was back at the time</p> <p>12 that I fully evaluated this with Paul, but if I'm</p> <p>13 just trying to come up with some thoughts now years</p> <p>14 later the case law, I think, was against us. The</p> <p>15 defense was going to file a motion for summary</p> <p>16 judgment if we didn't work out some sort of</p> <p>17 settlement that I felt they were going to win and the</p> <p>18 testimony from all parties was not helpful to us.</p> <p>19 Q. Okay. I'm going to move forward and then we</p> <p>20 may come back to this a little bit. Do you recall</p> <p>21 when the first time was that you talked to Paul about</p> <p>22 settling the claims with the McGuires?</p> <p>23 A. No, whenever -- You know, the defense</p> <p>24 attorney would have reached out to me to ask for some</p>

<p style="text-align: right;">Page 26</p> <p>1 sort of demand, I assume.</p> <p>2 Q. Did you make a demand at some point?</p> <p>3 A. I think -- I think some of your paperwork</p> <p>4 showed that I did.</p> <p>5 Q. Okay. I just uploaded Dulberg Mast</p> <p>6 Exhibit 4 and it says letter -- it's "Letter Re</p> <p>7 Settlement," and that should be -- still be Exhibit 4</p> <p>8 that was emailed around to Counsel so that you would</p> <p>9 have it. And it is labeled POP192 and POP193. Do</p> <p>10 you recognize those documents?</p> <p>11 A. Wait. I think the Internet, maybe because</p> <p>12 we were having problems, is the Internet went down,</p> <p>13 so now my exhibits aren't pulling up. Can you try it</p> <p>14 again? Do you have that, George?</p> <p>15 MR. FLYNN: Yeah, here's the hard copy.</p> <p>16 THE WITNESS: I'll look at the hard copy, so</p> <p>17 what are you asking?</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. Great. So it should be the document it has</p> <p>20 letterhead on the top, Popovich letterhead on the</p> <p>21 top, and at the bottom it's POP000192 and</p> <p>22 POP000193.</p> <p>23 A. Right.</p> <p>24 Q. Do you recognize those documents?</p>	<p style="text-align: right;">Page 28</p> <p>1 know if this number is identified in those emails,</p> <p>2 but, again, it would have been something I would have</p> <p>3 talked to him about before making it.</p> <p>4 Q. Okay. But at this time you don't know if</p> <p>5 there are any memos, notes or emails memorializing</p> <p>6 any conversation with Paul prior to sending the</p> <p>7 October 22, 2013 demand?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Okay, and if they did exist, they would be</p> <p>10 in the possession of Thomas Popovich, correct?</p> <p>11 A. I would think so.</p> <p>12 Q. Okay, and if you had those in your</p> <p>13 possession, you would produce them in discovery,</p> <p>14 correct?</p> <p>15 A. If I had them.</p> <p>16 Q. Okay. Just uploaded Exhibit 5, and this is</p> <p>17 email dated October 30, 2013, and it's marked at the</p> <p>18 bottom POP000195.</p> <p>19 A. Okay.</p> <p>20 Q. Okay, and here in this email it looks like</p> <p>21 you started this email chain to Paul on</p> <p>22 October 25, 2013. Do you see that?</p> <p>23 A. It looks like there's a couple emails here.</p> <p>24 There's several pages. You just mean the first page?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. I mean, they look familiar. Documents from</p> <p>2 the Popovich firm, if that's what you're asking.</p> <p>3 Q. Is that your signature?</p> <p>4 A. Yes.</p> <p>5 Q. So you would have drafted or caused this</p> <p>6 letter to be drafted and sent?</p> <p>7 A. It appears that way, yeah.</p> <p>8 Q. And this is a demand letter where you make a</p> <p>9 demand of \$7,500; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall making that demand?</p> <p>12 A. No.</p> <p>13 Q. Do you recall if you talked to Paul prior to</p> <p>14 making the demand?</p> <p>15 A. I'm sure I would have.</p> <p>16 Q. Okay. Do you recall -- Do you have any</p> <p>17 memos or notes regarding that conversation with Paul?</p> <p>18 A. I don't personally.</p> <p>19 Q. Okay. If there were memos and notes, would</p> <p>20 they be in Thomas Popovich's file?</p> <p>21 A. It should.</p> <p>22 Q. Okay. Do you recall any emails about the</p> <p>23 demand -- the 7,500 demand?</p> <p>24 A. I know there were lots of emails. I don't</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. I think -- It should only be, I believe it's</p> <p>2 only one page and it looks like --</p> <p>3 A. Oh, these aren't part of it? Just one page?</p> <p>4 Q. The document that I have is just one page.</p> <p>5 Are we looking at the same thing?</p> <p>6 A. Okay.</p> <p>7 Q. It's POP00195 on the bottom.</p> <p>8 A. Yeah, he had a couple other pages on it, but</p> <p>9 okay.</p> <p>10 Q. Okay. I just want to make sure that I</p> <p>11 didn't -- Okay. And on the bottom there of the first</p> <p>12 sheet, if you have several, I've only published one</p> <p>13 sheet for the purposes of this deposition, it states,</p> <p>14 "Friday, October 25, 2013," do you see that?</p> <p>15 A. Where does it say that?</p> <p>16 Q. So about halfway down the page it looks like</p> <p>17 it says, "Original message from Paul"?</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. So that looks like Paul reached out</p> <p>20 to you about medical deposition and then on the top</p> <p>21 it appears to be your reply of October 30, 2013.</p> <p>22 Does that seem like that's accurate?</p> <p>23 A. That's what it shows.</p> <p>24 Q. Okay. Okay. And here you first -- Am I</p>

<p style="text-align: right;">Page 30</p> <p>1 correct in summarizing this is an email where you 2 talk to Paul about liability for Mr. Gagnon? 3 A. Look likes I did cover that issue. 4 Q. Okay, and do you recall at the time what 5 your purpose was behind this email? 6 A. I mean, every purpose is just to have open 7 communication. That's all the purpose -- 8 Q. Okay. Would you have been trying to explain 9 to Paul the liability issues in his case that you 10 described earlier? 11 A. Yeah, I definitely was discussing several 12 issues for him so he knows what's going on. 13 Q. Okay, and this email response is dated 14 October 30th, so that was after you sent that initial 15 letter. Do you recall whether there would have been 16 anything prior to this? 17 A. Whether what was prior to this? 18 Q. Would there have been any communications 19 about liability either to Gagnon or the McGuire's 20 prior to the October 30, 2013 email? 21 A. Every time we talked, there were issues 22 about liability, I mean, for whatever I first -- he 23 first came to the office I recall he was lots of 24 questions and I gave him lots of answers as is</p>	<p style="text-align: right;">Page 32</p> <p>1 deal with it if and when we get to that point. 2 Q. Okay. So the document that I'm looking at 3 now is another email on the -- it's now titled 4 Exhibit 6. I don't think it was entitled Exhibit 6 5 in what I sent to George, but it's an email that the 6 first date on the email is November 4, 2013, and the 7 last date on the email is November 5, 2013 email 8 chain and it's -- at the bottom it's stamped 9 Dulberg001531. 10 A. What exhibit is it? 11 Q. I think it might have been 5-A to George. 12 It's now Exhibit 6 for the purposes of this 13 deposition. 14 A. Yeah, that wasn't part of the download then. 15 Do you have -- 16 MR. FLYNN: Yeah, I don't think that was 17 included. 18 THE WITNESS: What's the Bates stamp or 19 what's the stamp? 20 MS. WILLIAMS: The Bates stamp is 21 Dulberg001531. 22 THE WITNESS: Yeah, I don't recall -- 23 MR. FLYNN: I don't recall seeing a 5-A on 24 the download. I think it just went straight from</p>
<p style="text-align: right;">Page 31</p> <p>1 reflected in my emails. 2 Q. Okay. Did you meet with Paul after you sent 3 that October 22nd demand letter? 4 A. Did I meet with him? 5 Q. Yes. In person. 6 A. I'm sure I did. 7 Q. Okay. Do you recall -- Do you recall 8 meeting -- the dates of those meetings? 9 A. No, I don't recall the dates. 10 Q. Okay. So I'm going to upload another file 11 here. 12 A. Yeah, our Internet is down. That's why I 13 can't bring these up. 14 Q. Okay. 15 MR. FLYNN: Julia, just so you know, I've 16 got hard copies of the majority of the exhibits you 17 sent with the exception of the larger files, like the 18 insurance policy and the dep transcripts. 19 MS. WILLIAMS: Okay. Okay, great. 20 MR. FLYNN: I've got some of the deposition 21 transcripts, but I didn't want to waste a lot of 22 paper and ink at home. 23 MS. WILLIAMS: Okay. I think we'll be -- 24 For the most part, I think we'll be fine and we'll</p>	<p style="text-align: right;">Page 33</p> <p>1 5 to 6. 2 MS. WILLIAMS: Okay, let me see if I can do 3 something else. I'm going to try to share my screen. 4 I don't know if I'm going to be able to do it. So 5 bear with me. Okay. I can't -- I can't share the 6 screen. Can I email -- George, can you pull up an 7 email if I email it to you? 8 MR. FLYNN: I should be able to eventually. 9 MS. WILLIAMS: Okay, let me see if that 10 will -- 11 THE WITNESS: Let me run to the washroom 12 real quick while you guys do -- 13 MS. WILLIAMS: We'll take a quick break, 14 that's fine, we'll try to work this out. If anybody 15 else needs a break, obviously take a break now. 16 (Whereupon, a break was taken, 17 after which the following 18 proceedings were had:) 19 BY MS. WILLIAMS: 20 Q. Okay, back on the record. This is the 21 Exhibit 6 for the deposition and it's marked at the 22 bottom Dulberg001531 and it's an email chain between 23 Paul Dulberg and Hans Mast dated November 4th through 24 about November 5th, is that accurate, Hans?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. That's what it appears.</p> <p>2 Q. Okay, and it appears at the bottom that Paul</p> <p>3 is asking you if he should bring anything to a</p> <p>4 meeting.</p> <p>5 A. Okay.</p> <p>6 Q. And that meeting appears to be at 3:00 p.m.</p> <p>7 on November 4th of 2013.</p> <p>8 A. Okay.</p> <p>9 Q. Is that an accurate description? Okay? Do</p> <p>10 you recall having --</p> <p>11 A. Go ahead, I'm sorry.</p> <p>12 Q. Do you recall having a meeting on</p> <p>13 November 4th of 2013 with Paul Dulberg?</p> <p>14 A. I don't have an independent recollection.</p> <p>15 Q. Okay. Okay.</p> <p>16 MR. FLYNN: Julia, now I recall, this is a</p> <p>17 separate exhibit you sent a little bit later than the</p> <p>18 original download, so I did have this.</p> <p>19 MS. WILLIAMS: Okay. Okay. We got it</p> <p>20 worked out.</p> <p>21 MR. FLYNN: Yeah, okay.</p> <p>22 BY MS. WILLIAMS:</p> <p>23 Q. Okay. So you don't recall calling a meeting</p> <p>24 for November 4th?</p>	<p style="text-align: right;">Page 36</p> <p>1 against the McGuires only," do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you recall that offer being made?</p> <p>4 A. I do have some recollection of having a</p> <p>5 conversation with them.</p> <p>6 Q. Okay. So I'm going to upload another</p> <p>7 document and then we can keep going here. And then</p> <p>8 this is Exhibit 8 and for -- it is a letter from</p> <p>9 Ronald Barch to you, Hans, and it's POP000667. Do</p> <p>10 you have that?</p> <p>11 A. What's it dated?</p> <p>12 Q. I'm sorry, dated November 18, 2013.</p> <p>13 A. Yeah, I have that.</p> <p>14 Q. Okay. And that's a settlement letter from</p> <p>15 Barch offering the settlement of \$5,000, correct?</p> <p>16 A. Right.</p> <p>17 Q. Do you recall receiving this letter?</p> <p>18 A. I mean, I don't today recall getting the</p> <p>19 letter, but I'm familiar with the transaction, yes.</p> <p>20 Q. Okay. Okay. So you would have received the</p> <p>21 \$5,000 offer from Barch and you communicated it to</p> <p>22 Paul via the email on November 18th?</p> <p>23 A. As well as when we talked, yes.</p> <p>24 Q. Okay. Okay. And when did you talk?</p>
<p style="text-align: right;">Page 35</p> <p>1 A. We had lots of meetings so --</p> <p>2 Q. Okay.</p> <p>3 A. -- I don't have an independent recollection</p> <p>4 of that one particular date.</p> <p>5 Q. Okay. Okay, I'm going to stop screen</p> <p>6 sharing. Okay. I'm going to upload another file.</p> <p>7 This is Deposition Exhibit 7. George, you probably</p> <p>8 had it as Exhibit 6, but for the purposes of this</p> <p>9 deposition right now it's going to be 7 and it's an</p> <p>10 email chain dated --</p> <p>11 A. I have these on the computer. You don't</p> <p>12 need to, unless you want to, but I'm just saying I</p> <p>13 have these on the computer.</p> <p>14 Q. Okay, but Barb needs them, so that's why I</p> <p>15 keep uploading them, otherwise she doesn't have them.</p> <p>16 Okay. So Exhibit 7, and it's POP00181 and POP00182,</p> <p>17 and it's two pages of an email chain, November 15th,</p> <p>18 looks like on the second page it starts November 15th</p> <p>19 and ends November 19th, is that accurate?</p> <p>20 A. Yes.</p> <p>21 Q. Okay, great. So here it looks like Paul</p> <p>22 started this email chain, but then on November 18th</p> <p>23 you note that, "The McGuires' attorney has offered</p> <p>24 us, you, \$5,000 in full settlement of the claim</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Again, I don't know the dates. I just know</p> <p>2 generally how this all transpired.</p> <p>3 Q. Would you have talked to Paul on the 18th</p> <p>4 when the letter came in?</p> <p>5 A. It's dated the 18th. I doubt I got it on</p> <p>6 the 18th. Whenever I got it, I would have told Paul.</p> <p>7 Q. Okay. And it looks like the email you sent,</p> <p>8 which is Exhibit 7, communicated that offer?</p> <p>9 A. Okay.</p> <p>10 Q. Would you have talked to the McGuires'</p> <p>11 attorney prior to receiving the letter about the</p> <p>12 offer?</p> <p>13 A. I don't recall. It might have -- that might</p> <p>14 have happened.</p> <p>15 Q. Okay. Do you recall whether you met with</p> <p>16 Paul sometime after -- on or after November 18 to</p> <p>17 discuss the settlement offer?</p> <p>18 A. I'm sure we did. I know we had several</p> <p>19 conversations and meetings about that.</p> <p>20 Q. Okay. In this email chain that's</p> <p>21 Exhibit 7 about halfway down the page it says on</p> <p>22 November 18, 2013, at 7:40 p.m., Paul responds to</p> <p>23 your email. Can you see that?</p> <p>24 A. Are we going back to the email now?</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Yep, it's POP00181.</p> <p>2 A. What exhibit?</p> <p>3 Q. It's Exhibit 7.</p> <p>4 A. 7, that's the letter.</p> <p>5 Q. If may be 6 for you. It may be 6 for you.</p> <p>6 A. Let's take a look. What page is the email?</p> <p>7 Q. The date at the top of the email chain is</p> <p>8 Tuesday, November 19, 2013.</p> <p>9 A. Yeah, I have that.</p> <p>10 Q. Okay. And then about maybe halfway down the</p> <p>11 page it's dated on November 18, 2013, at 7:40 p.m.,</p> <p>12 do you see that?</p> <p>13 A. Yep.</p> <p>14 Q. And there it says, "Only five? That's not</p> <p>15 much at all," do you see that?</p> <p>16 A. That's his response, yes.</p> <p>17 Q. Right. Right. Do you recall talking to</p> <p>18 Paul about the \$5,000 and that not being much?</p> <p>19 A. Like I said, yes, we've had plenty of</p> <p>20 conversations and meetings on that.</p> <p>21 Q. Okay. When you originally offered the</p> <p>22 7,500, did you talk about what the possible outcomes</p> <p>23 as far as counteroffers, what they may demand,</p> <p>24 something like that, did you talk about that prior to</p>	<p style="text-align: right;">Page 40</p> <p>1 than the 7,500?</p> <p>2 A. Again, I'm -- I understand the question.</p> <p>3 I'm just not trying to play games, but you're asking</p> <p>4 me do I recall specific words that are used or</p> <p>5 topics. All I can tell you about this is we talked</p> <p>6 about the whole gamut of options, that I didn't feel</p> <p>7 it was a strong case, that they were reaching out to</p> <p>8 us for \$5,000, and that balancing everything, the</p> <p>9 risks, costs, even though it wasn't much, it was</p> <p>10 something that would have been desirable for him if</p> <p>11 he wants to end up with money versus the McGuires.</p> <p>12 Q. I'm going to add another exhibit here.</p> <p>13 Okay, for the purposes of this deposition it's</p> <p>14 Deposition Exhibit 9. This is a memorandum. At the</p> <p>15 top it will say, "Memorandum," and the date is</p> <p>16 November 20, 2013, and at the bottom it's identified</p> <p>17 as POP and then 3 -- there's 000003, I believe. Do</p> <p>18 you have that?</p> <p>19 A. What exhibit is it?</p> <p>20 Q. I think you're probably going to have it as</p> <p>21 Exhibit 8, but for the purposes of this deposition</p> <p>22 it's actually going to be Exhibit 9.</p> <p>23 A. Okay.</p> <p>24 Q. And it's Dulberg Mast Memo,</p>
<p style="text-align: right;">Page 39</p> <p>1 making that \$7,500 offer?</p> <p>2 A. I mean, I think I generally understand what</p> <p>3 you're asking. Did we just have general</p> <p>4 conversations of numbers? Yes.</p> <p>5 Q. Okay. In this email and this is -- I</p> <p>6 understand this is speculation, but in this email it</p> <p>7 appears that Paul is surprised that it's \$5,000 was</p> <p>8 the offer, correct? Would that be fair to</p> <p>9 characterize it that way?</p> <p>10 A. Is he surprised at it or is he surprised at</p> <p>11 the amount? It looks like he didn't think it was</p> <p>12 much.</p> <p>13 Q. Right. So if you originally offered 7,500</p> <p>14 and they came back at 5,000, in your experience, does</p> <p>15 that seem like much of a difference when it comes to</p> <p>16 counteroffers?</p> <p>17 MR. FLYNN: I'll object to the form.</p> <p>18 THE WITNESS: Yeah, I'm not real sure what</p> <p>19 you mean by that.</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. I guess let me rephrase because I don't</p> <p>22 think I'm getting to the point. Prior to making the</p> <p>23 \$7,500 offer, did you discuss with Paul that the</p> <p>24 McGuires may come back with an offer that was lower</p>	<p style="text-align: right;">Page 41</p> <p>1 2013 November 20.</p> <p>2 A. Okay, yeah.</p> <p>3 Q. Okay. It looks from this memo that you had</p> <p>4 a meeting with Paul and his friend on November 20th,</p> <p>5 is that accurately reflected what's stated in the</p> <p>6 memo?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember this document? Do you</p> <p>9 recall this?</p> <p>10 A. As I said before, I understand what you're</p> <p>11 asking, but we've had lots of meetings. Do I</p> <p>12 remember that particular date, no, but I remember the</p> <p>13 meetings.</p> <p>14 Q. Do you recognize this memorandum?</p> <p>15 A. I recognize the discussion that's referenced</p> <p>16 in the memo. I haven't seen the memo for 7 years.</p> <p>17 Q. Okay. Do you recall the advice that you</p> <p>18 gave in that meeting of November 20th?</p> <p>19 A. Yeah, like I said, it's summarized a little</p> <p>20 bit in there. Yeah.</p> <p>21 Q. Okay. And what was the -- Why don't -- What</p> <p>22 was the advice that you gave?</p> <p>23 A. Do you want me to read the memo or you want</p> <p>24 me to just tell you generally what the topics were or</p>

<p style="text-align: right;">Page 42</p> <p>1 what?</p> <p>2 Q. Generally to the best that you can recall.</p> <p>3 A. Looks like on that day he brought his friend</p> <p>4 in because before he wanted to consider the offer, he</p> <p>5 wanted to have his friend come with him to talk about</p> <p>6 these issues with me. So we went over --</p> <p>7 Q. So --</p> <p>8 A. Go ahead.</p> <p>9 Q. No, I'll let you finish. Go ahead. I'm</p> <p>10 sorry.</p> <p>11 A. Well, we went over all the issues, all the</p> <p>12 risks, all the money issues, all of the issues.</p> <p>13 Q. Do you recall who the friend was?</p> <p>14 A. Not as I sit here today.</p> <p>15 Q. From this memo it says, "Paul maintains the</p> <p>16 McGuires controlled everything that they were doing</p> <p>17 and you told him that wasn't what the evidence seemed</p> <p>18 to show." So can you expound on what -- This is</p> <p>19 really going to be a complicated question, but to the</p> <p>20 best of your ability, can you explain what the theory</p> <p>21 of your case was against the McGuires and what the</p> <p>22 evidence was that was going to -- what evidence was</p> <p>23 your reason for believing that you couldn't prove</p> <p>24 your theory?</p>	<p style="text-align: right;">Page 44</p> <p>1 negligence claim against the McGuires what the legal</p> <p>2 elements were that you would have to show?</p> <p>3 A. I haven't brushed up recently on that area,</p> <p>4 but I can tell you that under the case law they have</p> <p>5 to have some oversight and control over what was</p> <p>6 going on and some involvement in the work and some</p> <p>7 knowledge higher and above what Paul was doing, and</p> <p>8 if you look at their testimony, they were not out</p> <p>9 there, they were not looking at it, they didn't even</p> <p>10 really know what Paul was doing frankly.</p> <p>11 Q. And what about David? Did they have to</p> <p>12 control what David was doing as well?</p> <p>13 A. I meant David, I'm sorry.</p> <p>14 Q. Okay. So the McGuires would have to have</p> <p>15 oversight and control over David Gagnon?</p> <p>16 A. Over the work.</p> <p>17 Q. Okay. Over the work. Okay. So William and</p> <p>18 Caroline did buy the chain saw, correct?</p> <p>19 A. I believe that is true.</p> <p>20 Q. Okay. But then David Gagnon was the one</p> <p>21 operating the chain saw?</p> <p>22 A. Right.</p> <p>23 Q. And you would have to show in Paul's case</p> <p>24 that Bill and Caroline, one or the other, had control</p>
<p style="text-align: right;">Page 43</p> <p>1 A. We already talked a little bit about that</p> <p>2 earlier, but every time we met, we talked about this</p> <p>3 because this was a subject at the time with the</p> <p>4 McGuires and given the testimony of the McGuires,</p> <p>5 given Paul's testimony, given the lack of any</p> <p>6 evidence that they were controlling any work or even</p> <p>7 knew what Paul was doing, I felt it was a big, high</p> <p>8 risk of moving forward on that claim.</p> <p>9 Q. So I'm going to try to summarize this.</p> <p>10 Maybe in parts. So in order for the McGuires to be</p> <p>11 liable for Gagnon's work, Paul would have to prove in</p> <p>12 his case that the McGuires controlled Gagnon's work,</p> <p>13 is that accurate?</p> <p>14 A. Are you asking me if that's an accurate</p> <p>15 statement of the law?</p> <p>16 Q. Yes.</p> <p>17 A. I think that's partially right. There's a</p> <p>18 lot more to it. It's different branches and elements</p> <p>19 that you have to prove, control was a factual matter,</p> <p>20 and he would have to be able to establish there was</p> <p>21 some oversight. It goes down into some factual</p> <p>22 issues that you have to be able to show.</p> <p>23 Q. Okay. So can you -- To the best of your</p> <p>24 ability, can you kind of walk me through for the</p>	<p style="text-align: right;">Page 45</p> <p>1 over David's operation of the chain saw?</p> <p>2 A. Control could mean a lot of things. They</p> <p>3 would have to be in a position to instruct him, tell</p> <p>4 him what to do, be aware of the work that was being</p> <p>5 done and have some control over what he was doing.</p> <p>6 Q. Okay. So in your -- Your opinion of the</p> <p>7 case was that it was insufficient for them to have</p> <p>8 simply purchased the chain saw and provided it to</p> <p>9 Gagnon?</p> <p>10 A. Yeah.</p> <p>11 Q. And what about if they were paying him?</p> <p>12 Would that make any difference?</p> <p>13 A. No.</p> <p>14 Q. I'm sorry, I don't know or no?</p> <p>15 A. No.</p> <p>16 Q. Just bear with me for a second here. And</p> <p>17 you informed Paul -- I'm sorry, let me back up. In</p> <p>18 exhibit -- Deposition Exhibit 7, so it's probably</p> <p>19 6 for you, the email chain between you and Paul,</p> <p>20 roughly November 18th through the 19th, Popovich</p> <p>21 000181, on the bottom of that first page,</p> <p>22 November 18, 2013, at 1:28 p.m. there's an email from</p> <p>23 you. Do you see that?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. "In addition, the McGuires' attorney," so 2 it's ATTY, "has offered us, you, 5,000 in full 3 settlement of the claim against the McGuires only. 4 As we discussed, they have no liability in the case 5 for what Dave did as property owners so they likely 6 will get out of the case on a motion." Did I read 7 that correctly? 8 A. Yes. 9 Q. So this is where you told Paul that you 10 didn't believe the McGuires had any liabilities for 11 the reasons -- in part for the reasons we just 12 discussed? 13 A. Right. 14 Q. Ultimately Paul accepted that \$5,000 offer, 15 correct? 16 A. Yes. 17 Q. And you communicated that to the other side 18 later in 2013, does that sound correct to you? 19 A. Yes. 20 Q. I'm uploading Exhibit 10, and it should be 21 Exhibit 10 for you as well, and it's a memorandum 22 dated December 20, 2013, and at the bottom it's 23 POP000884, do you see that? 24 A. Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 risk and he had -- he wanted some time to think about 2 it and consider it. 3 Q. Okay. All right, just bear with me here. 4 Okay, I just uploaded Deposition Exhibit 11, it's a 5 settlement acceptance letter, letterhead from Thomas 6 Popovich's office dated December 26, 2013. Hans, 7 your signature appears on there and it's POP00670. 8 Do you recognize this document? 9 A. That appears to be a letter from Popovich's 10 office to defense counsel. 11 Q. Do you recognize your signature on here? 12 A. Yes. 13 Q. And this is the letter where you accepted 14 the offer on behalf of Paul, is that accurate? 15 A. It appears, yeah. 16 Q. Okay. So the Defendants made the original 17 offer around November 18 and Paul -- 18 November 18, 2013, and Paul accepted it around 19 December 20, 2013. Is that statement accurate? 20 A. I don't have, like I said, independent 21 recollection of the dates. I would just have to go 22 off the documents. 23 Q. Okay. Was there -- If that timeframe is 24 roughly correct, was there anything that occurred</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. And that's a memorandum that you wrote to 2 the legal file; is that correct? 3 A. It looks like that. 4 Q. I think I already said this, it's dated 5 December 20, 2013? 6 A. Yes. 7 Q. Okay. And the substance of it, it appears 8 that you had a conversation on December 18th with 9 Paul and that he was authorizing you to accept the 10 \$5,000 settlement? 11 A. Yes. 12 Q. Okay. Do you recall that conversation of 13 December 18? 14 A. I recall having lots of conversations, this 15 is one of them, and generally I do recall the 16 conversations in a general sense, not the exact 17 dates. 18 Q. Okay. So you don't remember anything 19 specific to this December 18th call what you would 20 have discussed? 21 A. Not other than what I've already said we 22 discussed over the time. 23 Q. Okay. 24 A. Paul was weighing his options. He knew the</p>	<p style="text-align: right;">Page 49</p> <p>1 during that timeframe that indicated to you, you 2 know, why Paul changed his mind from originally 3 thinking it was too little to now accepting it. Was 4 there anything that stuck out in your mind about 5 that? 6 A. Yeah. 7 Q. Can you expound on that? 8 A. Well, he had his friend with him during our 9 meeting and he reviewed the depositions. 10 Q. Okay. Did he not have the depositions prior 11 to that? 12 A. I remember he asked for copies of them, so I 13 provided them to him. 14 Q. Okay, and when you say the depositions, do 15 you mean just the party depositions, the McGuires and 16 the Gagnon? 17 A. I don't remember if I gave him the doctors. 18 I don't remember which ones I gave him, but I know 19 specifically it was Gagnon and the McGuires. 20 Q. Okay, I'm uploading Dulberg Mast Dep 21 Exhibit 12. This is titled, "Legal Research." And 22 this is hard because there's -- it's 27 pages. Some 23 of them have Bates numbers, but some of them are 24 black on the bottom, so I think the Bates numbers</p>

<p style="text-align: right;">Page 50</p> <p>1 didn't -- didn't take, but it's roughly -- looks like 2 roughly 204, maybe 205, Dulberg204, 205 through 3 roughly Dulberg00304 -- Actually, I'm sorry, these 4 aren't going to be continuous. But do you have that 5 packet of legal research in front of you? It appears 6 to be copies out of a -- copies of case law out of 7 the Northeastern Digest. 8 A. I just have the one case here. 9 Q. Just one case? Which -- What's the case 10 title? 11 A. The first one, it's L A J A T O. 12 Q. Okay. Do you -- Did you copy this case law? 13 A. I don't know. 14 Q. Do you recall providing any case law to 15 Paul? 16 A. I don't know if I did or didn't. I don't 17 know if he asked. 18 Q. Okay. Do you recall doing case law 19 research? 20 A. I'm sure I did, yeah. 21 Q. Would have there been a memo or something 22 regarding that research? 23 A. Not necessarily. I was familiar with the 24 law.</p>	<p style="text-align: right;">Page 52</p> <p>1 but just, I mean, we're talking now, what is it, 2 7 years later? I haven't been asked to do any 3 research before today's deposition, but so, I mean, 4 if you're asking me for what the case law says, I'd 5 have to look at the case law, if that's what you're 6 asking. 7 Q. I'm asking based on your -- on your 8 experience and knowledge as a personal injury 9 attorney and not necessarily related to Dulberg's 10 case specifically. 11 A. Okay. 12 Q. But based on your knowledge and experience 13 in premises liability cases, what is an independent 14 contractor? 15 A. Someone that works on their own. 16 Q. And can you explain what you mean by on 17 their own? 18 A. Somebody that's hired, like, somebody that's 19 hired to paint the house. 20 Q. Okay. So somebody that's hired by a 21 homeowner or maybe a business? 22 A. Yes. 23 Q. But someone that's hired by a homeowner but 24 the homeowner doesn't -- doesn't tell them how to do</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. Okay. Was there any -- Was there any 2 case law that stuck out to you, any particular cases 3 that stuck out to you? 4 MR. FLYNN: Object to the form. 5 THE WITNESS: You mean stuck out to me with 6 regard to Paul and his case? 7 BY MS. WILLIAMS: 8 Q. No. Were there any applicable cases that 9 stuck out to you one way or the other as to whether 10 the McGuires would be liable? Was there any specific 11 cases that made you think that the McGuires may not 12 be liable given the facts in Paul's case? 13 A. I mean, you deal with this issue a lot and I 14 can't think of one particular name of a case, but 15 these cases all go along the same line, so there were 16 lots of cases on this one particular issue. It 17 wasn't a complicated issue. 18 Q. So particularly the issue of control of 19 Gagnon. 20 A. Of a premises owner's liability for an 21 independent contractor. 22 Q. Okay. So can you explain generally what an 23 independent contractor is? 24 A. I'll give you have an answer if you want,</p>	<p style="text-align: right;">Page 53</p> <p>1 their job? 2 A. Right. 3 Q. Did you ever obtain a copy of the McGuires' 4 insurance policy, do you recall? 5 A. I don't have an independent recollection. 6 Q. Did you ever advise Paul as to the limits of 7 the McGuires' policy? 8 A. I'm sure we talked about it. 9 Q. Okay. I just uploaded Dulberg Mast 10 Deposition Exhibit 13 McGuire Interrogatory Answers 11 and they're Bates stamped Dulberg000162 is the first 12 page and there's roughly 14 pages. Do you see that 13 document? 14 A. Yes. 15 MR. FLYNN: This is 14? 16 MS. WILLIAMS: It should be Exhibit 13 -- 17 13 or 14. I think I have it as 13. Yes, okay. And 18 this -- I'm looking at paragraph 15 or at least I'm 19 trying to look at paragraph 15. 20 Q. Okay. In paragraph 15 it looks like there 21 was a question about the homeowner's insurance and 22 the McGuires respond with their personal liability 23 and their medical liability, do you see that? 24 A. Yes.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. Okay. Now that you see that, do you recall 2 whether you ever got a copy of that policy? 3 A. I don't -- You mean the dec pages or the 4 whole policy? 5 Q. Either. Did you get a copy of the dec 6 pages? 7 A. I have no idea. 8 Q. And you have no idea whether you got a copy 9 of the whole policy? 10 A. Yeah, don't know. 11 Q. But they are representing what their 12 insurance was and the liability there, correct, or 13 their liability coverage there? 14 A. That's what it appears. 15 Q. Okay. And these -- This was -- looks like 16 this was responded to based on the McGuires' 17 signature on roughly the 12th page of the document. 18 It looks like it was August 6th of 2012. 19 A. That's what it appears. 20 Q. Yeah. So prior to when they would have made 21 the settlement offers, correct? 22 A. That's what it appears. 23 Q. Okay. Did you ever talk to Paul about 24 those -- the limits of the insurance policy and how</p>	<p style="text-align: right;">Page 56</p> <p>1 Co-Defendants, in other words, the McGuires, does 2 that seem accurate to you? 3 A. Yes. 4 Q. So would you have issued interrogatories in 5 addition to what the McGuires' counsel issued? 6 A. It's probable. 7 Q. Okay. Do you recall one way or the other 8 today as we sit here? 9 A. Not other than it's probable I did. 10 Q. I have not seen those in discovery, so if 11 they exist, we'd ask that they be produced. Do you 12 ever recall talking to Paul about the policy limits 13 of the Gagnon insurance policy? 14 A. It's a topic that frequently comes up. I 15 don't have an independent recollection. 16 Q. Would you have any memos or notes on that? 17 A. I could. I may. I don't have an 18 independent recollection of that. 19 Q. Okay. And, again, that would have been in 20 the file that -- in Thomas Popovich's file? 21 A. Correct. 22 Q. In your knowledge and experience not related 23 to the Dulberg case but just in your general 24 knowledge and experience, are there any situations</p>
<p style="text-align: right;">Page 55</p> <p>1 that may be important in his case? 2 A. I suspect we talked about the policy, yeah. 3 Q. Okay. Prior to any settlement discussions? 4 A. Yeah. 5 Q. Okay. But you've already testified you 6 didn't -- You don't know if you -- You don't know if 7 you obtained a copy. What about Gagnon's insurance 8 policy, did you ever obtain a copy of that? 9 A. I don't know. I don't know. 10 Q. Okay. Did you issue interrogatories to 11 Mr. Gagnon? 12 A. I'm sure I did. 13 Q. Let me upload this. Would they have been in 14 Popovich's file if you -- 15 A. Yes. 16 Q. Okay. So I can tell you, I don't recall 17 seeing any documents issued by you. I'm going to 18 upload a document that appears to be interrogatories 19 issued by McGuires' counsel in the case. I'm going 20 to upload it right now. It's Exhibit 14 and Answers 21 to Co-Defendant Interrogatories and it is stamped 22 Dulberg00178. Do you see that document? 23 A. Yes. 24 Q. It appears that these were issued by</p>	<p style="text-align: right;">Page 57</p> <p>1 where a homeowner may be strictly liable for someone 2 doing work on their property? 3 MR. FLYNN: I'm just going to object to the 4 hypothetical being inaccurate and incomplete, also 5 calls for an expert opinion. While this witness is a 6 lawyer, I won't necessarily -- I don't expect to call 7 him as an F-2 or F-3 witness in the case. 8 THE WITNESS: So you're asking if a 9 homeowner can be strictly liable for an injury? 10 BY MS. WILLIAMS: 11 Q. Right. 12 A. In general terms, not with regard to this 13 case? 14 Q. No, in general terms. I'm just asking in 15 general terms in your -- based on your experience and 16 knowledge of injury cases. 17 A. I mean, I think -- Not in Paul's case, but I 18 think I could probably think of something that maybe 19 could be -- as products strict liability, there's 20 hazardous materials strict liability, there's 21 different issues that potentially factually if 22 they're applicable could apply, but not in Paul's 23 case. 24 Q. Okay. Just in general, what kind of</p>

<p style="text-align: right;">Page 58</p> <p>1 hazardous -- When you say hazardous, are you talking 2 about hazardous chemical-type cases?</p> <p>3 A. There's a string of cases when you're 4 dealing with hazardous chemicals and hazardous 5 materials, like a bomb or something like that, things 6 like that.</p> <p>7 Q. Okay. Okay. Are there any, like, hazardous 8 actions? Could something be considered, like, some 9 type of action be considered hazardous?</p> <p>10 A. What do you mean by action? Activity?</p> <p>11 Q. Yeah, like, I'm trying to give you an 12 example because I'm just trying to understand it more 13 than anything else. Yeah, is there an activity that 14 you could be doing on your property, I don't know, 15 like, what about tearing down your home, would that 16 be considered -- would that be something that could 17 be hazardous?</p> <p>18 A. There would have to be statutory authority 19 for that and there isn't.</p> <p>20 Q. Okay. Okay. Okay. So generally for strict 21 liability there has to be some type of statutory 22 authority for that?</p> <p>23 A. Or common law. Yeah. They have a 24 particular fact pattern.</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. On -- When you were talking to Paul about 2 settlement in the general timeframe of 3 November-December 2013, did you ever suggest at that 4 time that he seek alternative counsel or any 5 recommendation related to that?</p> <p>6 A. I think that did come up.</p> <p>7 Q. Do you recall what your advice to him was or 8 what the discussion was?</p> <p>9 A. I think, you know, we always talk about the 10 risks of not settling and further down the road what, 11 you know, having to try the case and having to try 12 prove the case or getting a motion for summary 13 judgment, having the costs exceed the benefits and 14 all that, and I think my position with Paul, since he 15 didn't give a relatively very good deposition, my 16 thought was we were going to have a tough time, an 17 uphill battle, and he can always seek other counsel 18 if he doesn't agree with me.</p> <p>19 Q. And you just stated that you thought Paul 20 didn't give a very good deposition, that may not have 21 been your exact language, but roughly that the 22 deposition wasn't great. Can you explain what -- as 23 you recall it, what about the deposition was 24 problematic?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Okay. But this case particularly is simply 2 a negligence case. Paul's case against the McGuires 3 was a simple negligent failure to control case in 4 your opinion?</p> <p>5 A. That's what was pled.</p> <p>6 Q. Okay. Did you ever make any -- ever 7 consider pleading any other allegations?</p> <p>8 MR. FLYNN: Object to the form.</p> <p>9 THE WITNESS: I don't -- No. Not that I 10 recall.</p> <p>11 MS. WILLIAMS: Okay. Can we take about a 12 4-minute break?</p> <p>13 MR. FLYNN: Sure.</p> <p>14 MS. WILLIAMS: Let's just take -- I just 15 want to take a quick break and review my notes and I 16 want to give everybody an opportunity to kind of 17 stretch for a second. I'm going to go on mute.</p> <p>18 MR. FLYNN: Okay.</p> <p>19 (Whereupon, a break was taken, 20 after which the following 21 proceedings were had:)</p> <p>22 MS. WILLIAMS: Let's go back on the record. 23 Okay, thank you everyone. Okay, just a little bit 24 more here.</p>	<p style="text-align: right;">Page 61</p> <p>1 A. I mean, he even agreed with me, but he just 2 doesn't do a very good job.</p> <p>3 Q. You mean -- Can you expand on that a little 4 bit?</p> <p>5 A. As a witness, as I recall, again, it's been 6 quite some time, as I recall he was -- his testimony 7 wasn't given -- wasn't strong, it wasn't definite, it 8 didn't have credible points and some points were 9 incredible when compared to other -- other testimony. 10 I mean, there's just a lot -- there was a lot of 11 problems with his testimony.</p> <p>12 Q. Okay. Do you recall the circumstances that 13 Paul described as to why he came to the McGuires'?</p> <p>14 A. I think he was either going to pick up 15 something or drop something off.</p> <p>16 Q. Okay.</p> <p>17 A. I don't really recall. I'm just thinking 18 back now.</p> <p>19 Q. Okay. Do you recall whether he was asked to 20 come over to help with the tree, to help take down 21 the tree? Was that the purpose of his visit?</p> <p>22 A. I don't recall that.</p> <p>23 Q. Would it matter as for liability whether it 24 was or wasn't?</p>

<p style="text-align: right;">Page 62</p> <p>1 A. As by who? As to whose liability?</p> <p>2 Q. I'm sorry, his and McGuires' liability.</p> <p>3 A. As to how he got there?</p> <p>4 Q. Whether he was -- Whether he was invited for</p> <p>5 the purpose of assisting with the removal of the</p> <p>6 tree.</p> <p>7 MR. FLYNN: Object to the form. Just</p> <p>8 invited by whom?</p> <p>9 THE WITNESS: Yeah, that's a complicated</p> <p>10 question, but I don't think --</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. Let me clarify if I can. Okay. So my</p> <p>13 question was does it matter if the McGuires invited</p> <p>14 Paul to their residence to remove the tree on that --</p> <p>15 on the June -- roughly June, I believe, 2011 date?</p> <p>16 MR. FLYNN: Object to the hypothetical.</p> <p>17 THE WITNESS: I don't think it matters.</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. Okay. Would it matter if they were paying</p> <p>20 Paul?</p> <p>21 A. That's not the issue. The issue is Dave.</p> <p>22 Q. Okay. So the relationship between the</p> <p>23 McGuires and Paul is somewhat irrelevant?</p> <p>24 A. I'm just saying the issue really that --</p>	<p style="text-align: right;">Page 64</p> <p>1 Paul to file for bankruptcy?</p> <p>2 A. Would not.</p> <p>3 Q. Okay. And then sometime after the McGuire</p> <p>4 settlement but before the -- but while the Gagnon --</p> <p>5 the claims against David Gagnon were still pending</p> <p>6 you withdrew from the case; is that correct?</p> <p>7 A. The law firm did. I -- Again, he hired the</p> <p>8 law firm.</p> <p>9 Q. Sure. Sure. I'm sorry. The Popovich firm</p> <p>10 withdrew?</p> <p>11 A. Right.</p> <p>12 Q. And I -- Let's see -- I think we're on</p> <p>13 Exhibit 14.</p> <p>14 THE REPORTER: 15.</p> <p>15 MS. WILLIAMS: 15, okay.</p> <p>16 Q. I have, I think, one more and then -- Okay,</p> <p>17 I am uploading Exhibit 15, Dulberg Mast Dep</p> <p>18 Exhibit 15. It's a motion to withdraw and it's four</p> <p>19 pages and on the first page it has a Dulberg versus</p> <p>20 Gagnon case caption and file stamped March 13, 2015.</p> <p>21 Do you have that document?</p> <p>22 A. Yeah.</p> <p>23 Q. And this is the Popovich's firm motion to</p> <p>24 withdraw as counsel for Paul Dulberg in the Dulberg</p>
<p style="text-align: right;">Page 63</p> <p>1 about liability is Dave's relationship with them.</p> <p>2 Q. Because Dave is the one that controlled the</p> <p>3 chain saw that injured Paul, is that accurate?</p> <p>4 A. He was the one hired to do the work or asked</p> <p>5 to do the work, however, whatever that background</p> <p>6 was.</p> <p>7 Q. And Caroline and William McGuire both</p> <p>8 testified that they had never used a chain saw; is</p> <p>9 that correct?</p> <p>10 A. I think that's accurate. I'd have to</p> <p>11 refresh my memory, but that sounds right.</p> <p>12 Q. Okay. Do you remember discussing bankruptcy</p> <p>13 with Paul?</p> <p>14 A. I don't remember that.</p> <p>15 Q. Do you remember that Paul filed for</p> <p>16 bankruptcy? Do you recall that?</p> <p>17 A. I saw a -- Maybe I didn't see one. I</p> <p>18 remember there was some sort of bankruptcy matter. I</p> <p>19 don't know the dates or when it came up.</p> <p>20 Q. Okay. Do you recall if you advised Paul to</p> <p>21 file for bankruptcy?</p> <p>22 A. I don't advise people to file for</p> <p>23 bankruptcy.</p> <p>24 Q. All right. So you would not have advised</p>	<p style="text-align: right;">Page 65</p> <p>1 versus Gagnon-McGuire case, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you drafted or caused this motion to be</p> <p>4 drafted and filed?</p> <p>5 A. Yes.</p> <p>6 Q. And was it granted that same day it was</p> <p>7 filed?</p> <p>8 A. I'm sure it had to be noticed up.</p> <p>9 Q. Okay. On the notice of motion it looks like</p> <p>10 it was noticed for March 13, filed on March 13, but</p> <p>11 sent to the service list on March 5th, does that seem</p> <p>12 accurate?</p> <p>13 A. That's what it says.</p> <p>14 Q. But at any rate, you withdrew sometime in</p> <p>15 roughly March of 2015?</p> <p>16 A. It appears that way. Again, I don't have an</p> <p>17 independent recollection of the date.</p> <p>18 Q. Okay. Okay. That's fine. And I didn't see</p> <p>19 it -- an order actually showing the exact date of</p> <p>20 when you withdrew. Can you explain why you withdrew</p> <p>21 from the case?</p> <p>22 A. The short version is just we had a</p> <p>23 difference of opinion.</p> <p>24 Q. Can you give me the long version or slightly</p>

<p style="text-align: right;">Page 66</p> <p>1 longer?</p> <p>2 A. Well, we have difference of opinion but Paul</p> <p>3 was a bit difficult, so I just had to -- there were a</p> <p>4 couple times that I told him I was going to withdraw</p> <p>5 and then he begged me not to and so I didn't, but</p> <p>6 then ultimately he -- it got pretty -- it got pretty</p> <p>7 tough. He was saying some unfavorable, unflattering</p> <p>8 things and I just decided we're not going to get</p> <p>9 anywhere, I'm going to move on.</p> <p>10 Q. Okay, so you -- the client relationship</p> <p>11 broke down and you withdrew?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Was there anything about Gagnon's</p> <p>14 liability or your thoughts on his liability that</p> <p>15 would have caused you to withdraw?</p> <p>16 A. That was another aspect of it. Paul was</p> <p>17 looking for the stars and the moon and I didn't see</p> <p>18 it.</p> <p>19 Q. And when you say Paul was looking for the</p> <p>20 stars and the moon, you mean -- Well, what do you</p> <p>21 mean by that?</p> <p>22 A. He was looking for a lot of money.</p> <p>23 Q. Okay, and what was your opinion as to David</p> <p>24 Gagnon's liability in the case?</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Anything other than what? Pretty much</p> <p>2 everything was not good.</p> <p>3 Q. Okay. I mean, anything that we haven't</p> <p>4 really discussed here today. We've talked about</p> <p>5 Paul's testimony, Gagnon's testimony a little bit,</p> <p>6 the McGuires, the premises liability. We talked --</p> <p>7 You mentioned the doctors' depositions. Is that sort</p> <p>8 of the general gamut of it?</p> <p>9 A. That's the whole case.</p> <p>10 Q. Okay. Have you ever had any other chain saw</p> <p>11 liability cases other than this particular case?</p> <p>12 A. I'm sure I have. I don't -- If you're going</p> <p>13 to ask me to name a date, I don't know. I mean, it's</p> <p>14 not a common issue, but it comes up from time to</p> <p>15 time.</p> <p>16 Q. Okay. Did you state -- Did you seek out a</p> <p>17 liability expert, a chain saw liability expert,</p> <p>18 during the time you were representing Paul?</p> <p>19 A. No.</p> <p>20 Q. Is there a reason for that?</p> <p>21 A. That's always a possibility. It's always a</p> <p>22 consideration, but I had to consider even more</p> <p>23 whether we could even get to prove a credible case</p> <p>24 and that was my first object, my first -- my first</p>
<p style="text-align: right;">Page 67</p> <p>1 A. I didn't think much of the liability issue.</p> <p>2 I thought it was going to be a long, tough haul given</p> <p>3 that --</p> <p>4 Q. And --</p> <p>5 A. -- Paul was going to be our only witness on</p> <p>6 our side pretty much.</p> <p>7 Q. Okay, and there were no other witnesses</p> <p>8 other than Paul and David; is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. And what about -- Anything related to, like,</p> <p>11 the actual injury, the doctors' depositions or</p> <p>12 anything like that?</p> <p>13 A. That all -- It was the whole ball of wax.</p> <p>14 The doctors weren't supporting his claim. Dave was</p> <p>15 saying he's a liar, he tried to bribe him. There was</p> <p>16 just a lot of -- a lot of bad stuff, not enough good</p> <p>17 stuff.</p> <p>18 Q. Okay, and then at that point you and Paul</p> <p>19 disagreed and Paul retained alternative counsel?</p> <p>20 A. Right.</p> <p>21 Q. Okay. Was there anything else about the</p> <p>22 case that you can recall right now that gave you</p> <p>23 pause as to the liability either to the McGuires or</p> <p>24 David Gagnon?</p>	<p style="text-align: right;">Page 69</p> <p>1 tier. It doesn't do any good to hire an expert if</p> <p>2 you don't have a good case.</p> <p>3 Q. Okay. Okay. If you were going to take the</p> <p>4 case to trial, at that point would you have hired an</p> <p>5 expert, chain saw expert?</p> <p>6 A. For this case, I don't know. I'd have to</p> <p>7 look at it again and see what we need to prove, what</p> <p>8 they're arguing. There's -- As I recall, they</p> <p>9 weren't arguing the chain saw -- They weren't</p> <p>10 arguing. He didn't get hit with the chain saw. So</p> <p>11 I'm not real sure. I'd have to think whether we need</p> <p>12 to prove -- what we need to prove, anything more than</p> <p>13 that.</p> <p>14 Q. Okay.</p> <p>15 A. It was more what happened, who caused it to</p> <p>16 happen, not that it happened.</p> <p>17 Q. Okay. Is there a difference between an</p> <p>18 independent contractor and an employee?</p> <p>19 A. In terms of what? In terms of duty or what?</p> <p>20 Q. Right. In terms of the supervisor's duty.</p> <p>21 So if the Gagnons -- If Gagnon was, and this is a</p> <p>22 hypothetical, if Gagnon was an employee of his</p> <p>23 parents as opposed to an independent contractor,</p> <p>24 would there be a liability difference?</p>

<p style="text-align: right;">Page 70</p> <p>1 MR. FLYNN: Object to the hypothetical. 2 It's inaccurate and incomplete. 3 THE WITNESS: That's a very complicated 4 question, even though it doesn't sound like one. It 5 depends on lots of things. 6 BY MS. WILLIAMS: 7 Q. Okay. We've already talked about an 8 independent contractor. So just in your experience 9 and knowledge, what is a supervisor's duty as to an 10 employee? That's actually a really terrible 11 question. Let's strike that question. 12 Is there a difference -- Is there a 13 difference between the control aspect of -- Would 14 an -- Let me start again. This is a complicated 15 question, more complicated than I'm anticipating 16 right now. Okay. 17 We've generally established that in order 18 for an -- someone who hires an independent contractor 19 to be liable for the actions of that independent 20 contractor, they would have to control the work. In 21 a situation, an employer-employee situation, is that 22 control element also present when considering 23 liability? Does the employer have to control the 24 work of the employee in the same way?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. And there are -- 2 A. Go ahead. 3 Q. So there would be different elements if 4 something was an employer-employee situation, that 5 would be different law, different case law? 6 A. Yeah, there's a different cause of action. 7 Q. Okay. 8 A. Different elements potentially have to be 9 pled and proved. 10 Q. Okay. But in this case you were trying to 11 prove -- In Dulberg's case against the McGuires and 12 Gagnon you were trying to show that -- The theory of 13 the case was that Gagnon was not an employee, but an 14 independent contractor, and the McGuires had to 15 control him in order to be liable? 16 A. Well, that's ultimately what it appeared. 17 You followed the evidence, you follow the facts, so 18 if it turned out it was employee-employer-employee 19 relationship, that's a different evaluation. 20 Q. Okay. So but, for the most part, you 21 were -- your evaluations of the liability were based 22 on an independent contractor analysis? 23 A. Well, that's where it went because of the 24 evidence.</p>
<p style="text-align: right;">Page 71</p> <p>1 A. I think there are -- 2 MR. FLYNN: I just want to raise an 3 objection for the record. I object to the form. I 4 think that the premise of the question indicated that 5 we already established some legal precedent. I don't 6 think that's the case. I don't think that he's 7 testified to that, so, again, I'll just object to the 8 form. But if you can -- 9 THE WITNESS: You're asking me to compare 10 two different theories without a fact pattern, but 11 there's a lot to each issue and it's hard to just 12 say, well, if you have this, then you have that. 13 There's a lot of different facts that apply, but now 14 I'm forgetting what you asked initially about the 15 employer-employee question. 16 BY MS. WILLIAMS: 17 Q. So I guess my question to the point of is an 18 employer liable for their employees in a different 19 way than a homeowner would be liable for an 20 independent contractor? 21 A. I think -- 22 Q. Based on -- You go ahead. 23 A. I think under the law there are different 24 elements to those actions.</p>	<p style="text-align: right;">Page 73</p> <p>1 MS. WILLIAMS: Okay. I'm going to go on 2 mute for just a second so you guys don't hear me 3 shuffling papers, but I think I'm almost finished 4 here or may be finished. 5 MR. FLYNN: Okay. 6 BY MS. WILLIAMS: 7 Q. Okay. Just a couple more questions and then 8 we'll wrap things up here. When did you first advise 9 Paul that you didn't think the claims against Gagnon 10 were going to be very strong? 11 A. Probably day one. 12 Q. Before the settlement with the McGuires? 13 A. Yeah. 14 Q. And did you discuss that several times prior 15 to that McGuire settlement? 16 A. Like I said, we discussed those issues every 17 time we'd meet, liability issues, damages issues. 18 Q. Do you recall any particular instances, like 19 maybe after Paul's deposition, after David's 20 deposition, did that stick out in your mind at all? 21 A. Discussing what, the issues of liability 22 against Gagnon? 23 Q. Yes. 24 A. Those are probably something we talked about</p>

<p style="text-align: right;">Page 74</p> <p>1 every visit.</p> <p>2 Q. Okay. So we discussed this a little bit</p> <p>3 before, but I believe the testimony was that the</p> <p>4 McGuires testified that they purchased the chain saw</p> <p>5 and I believe you said yes, that was your</p> <p>6 recollection as well; is that correct?</p> <p>7 A. That sounds right. I just don't have an</p> <p>8 independent recollection at this point.</p> <p>9 Q. Okay. If the McGuires -- Let's assume</p> <p>10 that -- Just for the purposes of this, let's assume</p> <p>11 that the McGuires did -- it was their chain saw, they</p> <p>12 purchased it and let Gagnon use it on their property.</p> <p>13 Would they have any duties to share the manual of</p> <p>14 that chain saw with Gagnon or provide any other</p> <p>15 education as to the use of the chain saw to Gagnon?</p> <p>16 A. All right, so you're asking me to make a</p> <p>17 judicial decision whether they had a duty or not?</p> <p>18 Q. No, I'm asking you in your experience with</p> <p>19 these types of cases is there any duty there for</p> <p>20 them.</p> <p>21 A. All right, so a legal duty?</p> <p>22 Q. Right. Right. And -- Go ahead, George.</p> <p>23 MR. FLYNN: Yeah, I'll just object. I mean,</p> <p>24 there isn't any evidence that Gagnon asked for a</p>	<p style="text-align: right;">Page 76</p> <p>1 operate it effectively yourself safely.</p> <p>2 Q. Sure. Okay. And --</p> <p>3 A. So I mean --</p> <p>4 Q. Okay. But today you're not giving an</p> <p>5 opinion one way or the other whether they had a duty</p> <p>6 to provide warnings, whether they had a duty to</p> <p>7 provide the manual, fair enough?</p> <p>8 A. Yeah, legal wise, no, I'm not giving you a</p> <p>9 legal opinion on that.</p> <p>10 MS. WILLIAMS: Okay. Okay, I don't think I</p> <p>11 have anything further.</p> <p>12 MR. FLYNN: I actually have just a few</p> <p>13 follow-ups to that.</p> <p>14 MS. WILLIAMS: Sure.</p> <p>15 EXAMINATION</p> <p>16 BY MR. FLYNN:</p> <p>17 Q. Hans, is your understanding based on the</p> <p>18 evidence that there were only two eyewitnesses to</p> <p>19 Mr. Dulberg's accident, correct?</p> <p>20 A. Correct.</p> <p>21 Q. That was Mr. Dulberg himself and David</p> <p>22 Gagnon?</p> <p>23 A. Correct.</p> <p>24 Q. And did you have an understanding as to how</p>
<p style="text-align: right;">Page 75</p> <p>1 manual, for one, but as far as him providing legal</p> <p>2 opinions not based on the facts of this case, I'm</p> <p>3 just going to caution him not to provide what could</p> <p>4 be considered an expert opinion.</p> <p>5 THE WITNESS: You don't want me to answer?</p> <p>6 MR. FLYNN: It's up to you. I don't know if</p> <p>7 you can.</p> <p>8 THE WITNESS: I don't remember the question.</p> <p>9 You're asking me should the McGuires have given</p> <p>10 Gagnon the manual to the chain saw?</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. Yes.</p> <p>13 A. Sure, if he asked for it or if they wanted</p> <p>14 to give it to him.</p> <p>15 Q. Are there any other warnings that they</p> <p>16 should have provided?</p> <p>17 A. See, I mean, you're asking me to -- I get</p> <p>18 the question, but I'm saying you're asking me to</p> <p>19 evaluate the conduct of both parties and interpret</p> <p>20 something and I don't know that that's my position as</p> <p>21 a witness, but should they have warned him? You</p> <p>22 know, sure, go ahead and warn him, but obviously when</p> <p>23 you take on a piece of equipment that you're skilled</p> <p>24 and experienced in operating, you should be able to</p>	<p style="text-align: right;">Page 77</p> <p>1 the evidence and testimony shook out as to each</p> <p>2 gentleman's version of the accident and how it</p> <p>3 occurred?</p> <p>4 A. Well, as I said before, I thought Paul's</p> <p>5 case was going to be very difficult to prove based on</p> <p>6 the testimony of everybody, credibility issues, and</p> <p>7 the lack of evidence to support and prove.</p> <p>8 Q. David Gagnon's testimony regarding the facts</p> <p>9 surrounding the accident differed from Paul Dulberg's</p> <p>10 version of the facts, correct?</p> <p>11 A. Correct.</p> <p>12 Q. You took that into account in your</p> <p>13 evaluation and analysis of the case?</p> <p>14 A. Definitely.</p> <p>15 Q. Did you also take into account your</p> <p>16 professional analysis of Paul Dulberg's performance</p> <p>17 as a witness at his discovery deposition?</p> <p>18 A. Definitely.</p> <p>19 Q. You didn't think he made a very good witness</p> <p>20 for himself, did he?</p> <p>21 A. He even admits he didn't and I don't think</p> <p>22 he -- I think -- that was one of the worst -- that</p> <p>23 was one of my worst fears with this case. I had lots</p> <p>24 of cases and on a scale of weak witnesses, he's</p>

<p style="text-align: right;">Page 78</p> <p>1 probably up at the top, and I'm not putting him down, 2 that's just a reality and I think he even 3 acknowledged that reality. 4 Q. Okay. Not everyone is a professional 5 witness? 6 A. Right. 7 Q. Okay. Generally speaking, your evaluation 8 of the case hinged in part on whether the McGuires 9 controlled the manner and method of the use of the 10 chain saw, correct? 11 A. Right. 12 Q. Do you have any recollection as to what the 13 McGuires were doing while the work was being done? 14 A. They were inside the house, just another day 15 to them. They weren't even -- I don't think even 16 paying attention to what was going on outside. 17 Q. Did Mr. McGuire testify that he was watching 18 television inside the house while David was working 19 on the tree? 20 A. They were both inside as I recall. 21 Q. Your recommendation or suggestion that 22 Mr. Dulberg settle the case for \$5,000 was based on 23 your analysis of the entire case, including the risks 24 and benefits of going forward and potentially losing</p>	<p style="text-align: right;">Page 80</p> <p>1 THE WITNESS: I'll waive signature. 2 MS. WILLIAMS: We'll order the original, 3 E-tran. 4 MR. FLYNN: I'll take a regular and a mini 5 copy. 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 79</p> <p>1 the case at trial, correct? 2 A. Yes. 3 Q. Did you have any way to predict whether the 4 case would result in a verdict on behalf of the 5 plaintiff in the case against the McGuires? 6 A. I'm sorry? 7 Q. Did you have any -- Did you have any 8 certainty as to whether Mr. Dulberg could prevail at 9 trial on liability against the McGuires? 10 A. I would have staked a lot that we would not 11 have recovered in the case and just something that 12 didn't come up with the direct is they didn't offer 13 the arbitrator to me. That was something that was 14 later decided. I talked to them about that. They 15 did not offer that to me, so that was not an option 16 to me. 17 Q. So you were -- Based on your professional 18 judgment, you suggested that you attempt to settle 19 the matter as opposed to taking it to trial versus 20 the McGuires, correct? 21 A. Right. 22 MR. FLYNN: Okay. That's all I have. 23 MS. WILLIAMS: I have no follow-up. 24 THE REPORTER: Signature?</p>	<p style="text-align: right;">Page 81</p> <p>1 DECLARATION UNDER PENALTY OF PERJURY 2 3 I, HANS MAST, do hereby certify under 4 penalty of perjury that I have read the foregoing 5 transcript of my deposition taken on June 25, 2020; 6 that I have made such corrections as appear noted 7 herein in ink, initialed by me; that my testimony as 8 contained herein, as corrected, is true and correct. 9 Dated this _____ day of _____, 10 20__, at _____, Illinois. 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">_____ HANS MAST</p>

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1 STATE OF ILLINOIS)

) SS:

2 COUNTY OF COOK)

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4 I, Barbara G. Smith, Certified Shorthand
5 Reporter and Notary Public in and for the County of
6 Cook, State of Illinois, do hereby certify that on
7 the 25th of June, A.D., 2020, the deposition of the
8 witness, HANS MAST, called by the Defendants, was
9 taken remotely before me, reported stenographically
10 and was thereafter reduced to typewriting through
11 computer-aided transcription.

12 The said witness, HANS MAST, was first duly
13 sworn to tell the truth, the whole truth, and nothing
14 but the truth, and was then examined upon oral
15 interrogatories.

16 I further certify that the foregoing is a
17 true, accurate and complete record of the questions
18 asked of and answers made by the said witness, at the
19 time and place hereinabove referred to.

20 The signature of the witness was waived by
21 agreement.

22 The undersigned is not interested in the
23 within case, nor of kin or counsel to any of the
24 parties.

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1 Witness my official signature and seal as
2 Notary Public, in and for Cook County, Illinois on
3 this 7th day of July, A.D., 2020.

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Barbara G. Smith, CSR, RFR
Notary Public

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License No. 084-002753

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CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20____.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~100~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By:  _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

Exhibit

1

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Sara Smith

POP 000586

EXHIBIT G.1 - EXS. 1-15 TO MAST TRANSCRIPT

7014 0150 0001 6391 9353

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POP 000971

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

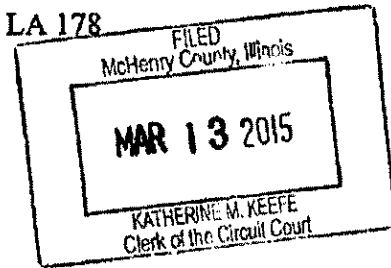
Plaintiff,

vs.

DAVID GAGNON, Individually, and as
Agent of CAROLINE McGUIRE and BILL
McGUIRE and CAROLINE McGUIRE
and BILL McGUIRE, Individually,

Defendants.

No. 12 LA 178



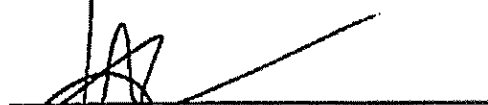
MOTION TO WITHDRAW AS COUNSEL

NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.
2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

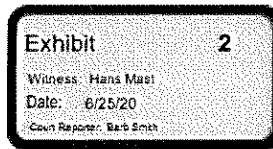
WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,


Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)



COPY
FILED
MAY 15 2012
KATHARINE M. KIEFE
McHENRY CTY. CLK.

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.:

12LA178

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
JUL 18 2012 AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
JUL 18 2012 AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

POP 001163

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

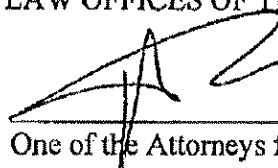
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
 Plaintiff,)
)
 vs.) No.:
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
 Defendants.)

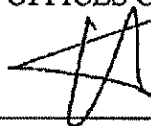
AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.
2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed \$50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

MEMORANDUM

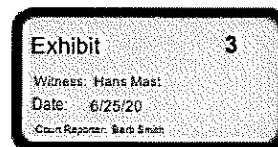
TO: Tom, Marla, Diana and Alarie
FROM: Hans
DATE: December 5, 2011
SUBJECT: PAUL DULBERG - NEW CLIENT

*B/C HAM
occurred on the accident
their H.O. must pay
will cover the bills.*

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11



Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took an EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn \$12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask Alarie to set up a new file.

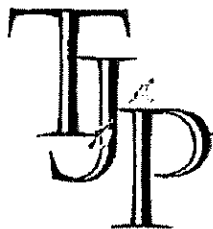
By copy of this memo, I ask Marla to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans

S:\Main\DULBERG, PAUL\Memo\Memo re new client 12-5-11.mpd

POP 000962



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

FAXED

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

**RE: Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire
McHenry County Case: 12 LA 178**

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed.

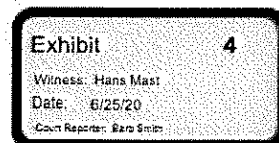
Thank you for your cooperation.

Very truly yours,



HANS A. MAST

smq



WAUKEGAN OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, IL 60085

POP 000192

**** Transmit Conf. Report ****

P.1
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Oct 22 2013 12:24pm

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The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
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THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORYAK

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ROBERT J. LUHNER
THERESA M. FREEMAN

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,



HANS A. MAST

smg

POP 000193

WAUKEGAN OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, IL 60085

XFINITY Connect

hansmast@comcast.net

+ Font Size -

Re: Medical depositions**From :** Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions**To :** Paul Dulberg <pdulberg@comcast.net>**Cc :** Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon's acts.

Both of these issues are strongly contested in your case.

As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.

As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether you had a fully recovery or not.

Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn't really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.

Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relating to the chain saw injury. Think about these issues. I will provide you Dr. Sagerman's summary soon.

Hans

----- Original Message -----
From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)
Subject: Medical depositions

Morning Hans, Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind. I'm not sure what was said during that deposition with the Drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better. Let me know, Thanks, Paul

Paul Dulberg 847-497-4250 Sent from my iPad

Exhibit

5

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Erik Smith

POP 000195

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 5, 2013 at 9:46:33 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: **Re: 3 pm meeting**

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

<http://www.sdmag.com/articles/print/success-stories-in-integrating-video-surveillance>

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:

no chance, sorry

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
Subject: Re: 3 pm meeting

Also,

Any chance the hospital (centegra) has video of their parking lots?

This could disprove David's claim of talking before entering the ER.

Thanks,

Paul

Paul Dulberg
847-497-4250

Sent from my iPad

On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:

No need to bring anything, your mom is welcome...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
Subject: 3 pm meeting

Hi Hans,

Curious if I should bring anything with me at 3 pm?

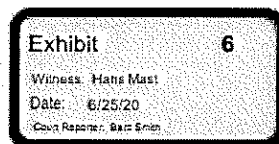
Mind if my Mom comes along?

Thanks and see you soon,

Paul

Paul Dulberg
847-497-4250

Sent from my iPad



Dulberg 001531

XFINITY Connect

hansmast@comcast.net

+ Font Size -

Re: Dave's Best and oldest friend John**From :** Paul Dulberg <pdulberg@comcast.net>

Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John**To :** Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

>

> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

>

> Sent from my iPhone

>

>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

>>

>> Only 5, That's not much at all.

>> Is this a take it or leave it or do we have any other options?

>>

>> If you want a negligence case for the homeowners ask what happened immediately after the accident.

>>

>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

>>

>> They all left me out in the yard screaming for help while they were busy making sure they were covered.

>>

>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

>>

>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

>>

>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

>>

>> I'm not happy with the offer.

>>

>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.

>>

>> Paul

>>

>> Paul Dulberg

>> 847-497-4250

>> Sent from my iPad

>>

>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

>>>

>>> Im waiting to hear from John. I tried calling him last week, but no one answered.

>>>

>>> In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

Exhibit

7

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

>>>

>>> Let me know what you think..

>>>

>>> Hans

>>> ----- Original Message -----

>>> From: Paul Dulberg <pdulberg@comcast.net>

>>> To: Hans Mast <hansmast@comcast.net>

>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

>>> Subject: Dave's Best and oldest friend John

>>> Hans,

>>> Just spoke with John Choyinski again about talking with you.

>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.

>>> I believe he will try and call sometime tomorrow.

>>> Paul

>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.

>>> Paul Dulberg

>>> 847-497-4250

>>> Sent from my iPad

CICERO, FRANCE, BARCH & ALEXANDER, P.C.

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November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of \$5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipate any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,



RONALD A. BARCH

RB:mj37lr.HAM
cc Tom Malatia (Claim No. 13-2779-11)
Encl.

Exhibit	8
Witness: Hans Mast	
Date: 6/25/20	
Court Reporter: Mark Smith	

POP 000667

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

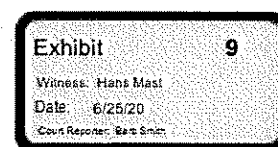
SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the \$5,000 offer. Paul wants to read the depositions of the McGuire's and also wants us to order his and Dave's deposition to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's depositions. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans



POP 000003

MEMORANDUM

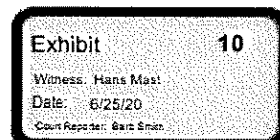
TO: File

FROM: Hans

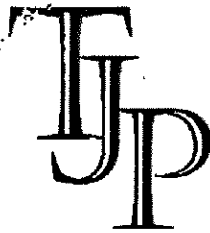
DATE: December 20, 2013

SUBJECT: PAUL DULBERG

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGurie's and he is willing to take their \$5,000 settlement offer.



POP 000884



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FAXED
12/21

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

December 26, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your \$5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

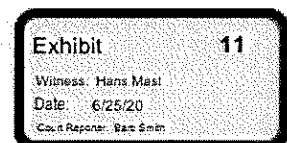
As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,


HANS A. MAST

smq



WAUKEGAN OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, IL 60085

POP 000670

debridement and skin grafting. In *Famond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").



283 Ill.App.3d 126
669 N.E.2d 645

Fernando LAJATO, Plaintiff-Appellant,
v.

**AT & T, INC., Defendant-Appellee, and
Third Party Plaintiff (Quinn Delivery
Service, Inc., Third Party Defendant).**
No. 1-95-0447.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured
when loading telephone company's battery

hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. Judgment ¶321, 356(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2-1203.

2. Motions ¶39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2-1203.

3. Appeal and Error ¶344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. Judgment ¶186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2-1203; Sup.Ct.Rules, Rule 104.

5. Appeal and Error ¶893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

did not need to consider merit of summary judgment or appellate court to

6. Negligence ¶

Independent personal injury a theory of premises injured in bed of condition of defect

7. Appeal and Error

Appellate summary judgment

8. Judgment ¶

Negligence ¶

To withstand summary judgment in action to set aside facts defendant need not proffered that ultimately resulted

9. Negligence ¶

Telephone undertake duty turn its battery independent contractor when load of loosening of total disconnection and then phone company wrapping was contractor or safety of street at Tort 4-323.

10. Negligence

Whether contractor is injured by car Tort 4-323

11. Bailment

Telephone gratuitous bailee independent contractor on battery was where contractor than finding

Exhibit

12

Witness: Maria M. M.

Date: 6/25/20

Court Reporter: Maria M. M.

at negligence action. The court did not need to remand to allow trial court to consider merit of motion, as grant of summary judgment required de novo review by appellate court to determine question of law.

Negligence ¶36

Independent contractor could not base personal injury action against defendant on theory of premises liability, where he was injured in bed of his truck and not due to any condition of defendant's premises.

Appeal and Error ¶893(1)

Appellate review of order granting summary judgment is de novo.

Judgment ¶185(2)

Negligence ¶1

To withstand motion for summary judgment in action based in negligence, plaintiff must allege facts sufficient to show that defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach.

Negligence ¶20

Telephone company did not voluntarily undertake duty to properly maintain and secure its battery hoist for transport, where independent contractor, who was injured by hoist when loading it for transport as result of loosening of strap securing motor, had total discretion in preparing and moving hoist, and there was no evidence that telephone company had strapped motor, that strapping was undertaken as protection for contractor, or that contractor relied upon safety of strapping. Restatement (Second) of Torts § 323.

Negligence ¶136(14)

Whether a duty has been voluntarily undertaken is question of law to be determined by court. Restatement (Second) of Torts § 323.

Bailment ¶35

Telephone company was not liable as gratuitous bailor for injuries sustained by independent contractor when strap securing motor on battery hoist loosened when contractor was loading hoist for transport, where contractor presented no evidence other than inadmissible hearsay rumors to show

either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

12. Appeal and Error ¶169

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

13. Bailment ¶9, 21

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

14. Judgment ¶185(1)

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

15. Pleading ¶236(6)

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based

, it was clear that plaintiff approached the hoist, he observed that its motor and accessories were already strapped and secured to the hoist's frame. Plaintiff also testified that he personally examined the strap to ensure that the hanging apparatus was firmly secured to the frame of the hoist with the nylon strap and the motor chain before attempting to move the hoist. Plaintiff then wheeled the hoist to the back of his truck and onto his truck's hydraulic lift platform, which he had lowered to ground-level in order to lift the hoist into his truck. After raising the lift and the hoist from ground-level up to the truck's bed, plaintiff climbed into the truck bed and began to pull the hoist into the bed.

Plaintiff further testified that while pulling the hoist into the truck, the strap around the motor and hoist accessories loosened for reasons beyond his knowledge, permitting the motor and the accessories to swing free and the weight of the hoist to shift towards him. Immediately thereafter, the hoist fell onto plaintiff, causing him various injuries. Plaintiff stated that there were no known witnesses to the accident. He also stated that approximately two months after the accident, he learned from an AT & T installer that certain laborers at AT & T had told him that after plaintiff's accident, they would not use the hoist because it was unsafe, and that AT & T ultimately shipped the hoist back to the manufacturer.

In addition to plaintiff's deposition testimony, AT & T submitted the Quinn-AT & T moving contract in support of its motion for summary judgment. That contract reveals that Quinn, through its own independent contractors, performed moving services for defendant AT & T. The contract required Quinn to receive, pick up, load, transport, unload, and deliver telephone equipment and other material (the "Material"), and perform the other services provided for in this agreement as ordered by [AT & T] from April 1, 1987 to March 31, 1989."

The contract further provided that Quinn or its agents shall have the sole and exclusive care, custody and control of the Material from the time it is tendered to [Quinn]. [Quinn's]

agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court

sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

1. JURISDICTION:

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood*, 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1-3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or,

if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2-1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2-1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer*, 208 Ill.App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencil-Tufo Chevrolet*, 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho-Deen, Inc. v. Michel*, 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2-1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer*.

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30-day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2-1203, the timely filing of a certificate of service is

jurisdictional, with reconsider cannot be timely filed, then the case, filed more than entry of the summary judgment, would be untimely pursuant to this court's jurisdiction.

The rule is clear: certificate of service of a motion to reconsider must have been specifically prepared in accordance with Supreme Court Rule 1 which provides at paragraph (b):

"(b) Filing of Papers. Subsequent to the filing of written motions, a certificate of service shall be filed with the motion. The certificate shall be a certificate of copies have been served on all parties who have appeared."

(d) Failure to deliver or serve copies as required by this rule shall not impair the jurisdiction of the court over the person of any party, and the court shall have jurisdiction to reimburse the party for the expense thereof. (Emphasis added.)

Thus, under Rule 1, the failure to deliver or serve copies as required by this rule shall not impair the jurisdiction of the court over the person of any party, and the court shall have jurisdiction to reimburse the party for the expense thereof. (Emphasis added.)

Defendant contends that the failure to file a certificate of service with a post-trial motion to reconsider is devoid of jurisdiction, unless the party serves himself. Thus, if the party serves himself, the failure to file a certificate of service does not

[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

"Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill. App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

II. MERITS:

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he

sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)).¹

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2-1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill. Dec. 985, 632 N.E.2d 54 (1994); *Giannobile v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 599 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. E.g., *Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 473, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill. App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.*, 273 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

(2004). To will judgment in an plaintiff's motion to amend the defense independent from injury proximate from Defendant. Ill.2d 66, 178 (1992); *Zurbrugg*, Ill.Dec. 356, 566

(9, 10) With that concerning its purpose to the of the Res provides as follows

"One who, upon consideration, or what to do for the protection things, is subject for physical harm to exercise reasonable undertaking, if a. his failure increases the b. the harm, other's relief. Restatement at 135 (1967

See generally, *C Services*, 82 Ill.2d N.E.2d 172 (1980). *Corp.*, 277 Ill.App. N.E.2d 222 (1966). voluntarily undert be determined by and Illinois Pub. 335, 163 Ill.Dec. 8 *Jackson v. Hilton*

In the instant allege facts sufficient instance that defendant undertook any and secure the n. First, it is undis whether control to ter in which plan tractor retained by independent contr the hoist, and that tion in preparing Moreover, plaintiff

Cite as 218 Ill.Dec. 502, 669 N.E.2d 645 (Ill.App. 1 Dist. 1996)

notion directed at the court in 30 days after entry of the last post-trial motion. 4 Ill.2d R. 303(a)(1) of the Illinois Code of Civil Procedure provides that a trial motion must be filed within 30 days after entry of a final judgment. (Ill. App. 1 Dist. 1996). Otherwise, the court's jurisdiction to modify the judgment which it entered is lost. *Archer Daniels Midland Co. v. Archer Daniels Midland Co.*, 134 Ill.2d 536, 83 Ill.Dec. 1984; *In Matter of the Estate of the Treasurer*, 208 Ill. App.3d 528, 567 N.E.2d 1068.

Consider is a post-trial motion. *Parts v. Fend-Town*, 188 Ill. Dec. 718, 175 Ill. Dec. 718, and therefore "the motion is not a post-judgment motion in 30 days after entry of the judgment." *Sho-Dan*, 134 Ill. App.3d 288, 290, 567 N.E.2d 1068.

The motion is a post-trial motion. 2-1203 will it extend the time of appeal under Rule 303(a)(1) of Application.

as to whether the motion was filed before the court under Rule 303(a)(1) of its jurisdiction. If the failure to file the motion initiated the filing of the motion to reconsider. If the motion of plaintiff's motion is filed within 30 days after entry of the judgment, the failure to file the motion of service within 30 days after entry of the judgment is not a post-judgment motion in 30 days after entry of the judgment.

Thus, under Rule 104(d), the failure to deliver or serve copies as required by this rule does not in any way impair the jurisdiction of the court over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to deliver or serve copies does not impair the jurisdiction of the court. This rule has been applied to post-trial motions in *In re Marriage of Collins*, 154 Ill.App.3d 655, 107 Ill. Dec. 109, 506 N.E.2d 1000 (1987) and in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which held that the failure to include proof of service with a post-trial motion will not invalidate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the failure to file a certificate of service. This contention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to perjure himself. Thus, if the failure to actually serve notice does not impair jurisdiction,

then a *fortiori*, the failure to serve a certificate of service will not impair the validity or timeliness of the motion. See *In re Marriage of Collins*.

Defendant's reliance on *Vlahakis v. Parker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357-58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.

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Cite as 218 Ill.Dec. 502, 669 N.E.2d 643 (Ill.App. 1 Dist. 1996)

(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 605 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
 - (b) the harm is suffered because of the other's reliance upon the undertaking."
- Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evi-

dence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overriding, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11-13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill. App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).

[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay

rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)) provides as follows:

"(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselthorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 628 N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 394, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

"MR. JOHNSON [Plaintiff's attorney]: I set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *McDonough v. Pippen, Phillips* [sic] case, that one who undertakes a duty to do something, then do so negligently, and someone is injured, they are absolutely liable."

If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [sic] undertaking is not proper here

There will be no due diligence in this position."

The court denied plaintiff's motion, stating that "It's a motion to amend."

We first note that the proposed amended record on appeal, as before the trial court, is devoid of new evidence voluntarily introduced already been argued before the court. The failure to include it and supporting the record would be found to be a denial of his right to request for leave to amend. *McDonough v. Pippen, Phillips*, 151 Ill.App.3d 605, 181 Ill.Dec. 1162 (1987) (plaintiff's amended complaint was not included in the appellate record and the court's ability to dispose of the amended complaint was thereby lost). *See also* *McDonough v. Pippen, Phillips*, 151 Ill.App.3d 605, 181 Ill.Dec. 1162 (1987) (plaintiff's amended complaint was not included in the appellate record and the court's ability to dispose of the amended complaint was thereby lost). *See also* *McDonough v. Pippen, Phillips*, 151 Ill.App.3d 605, 181 Ill.Dec. 1162 (1987) (plaintiff's amended complaint was not included in the appellate record and the court's ability to dispose of the amended complaint was thereby lost).

Notwithstanding the court's review of the amended complaint, we will not review the trial court's decision to deny leave to amend. A plaintiff's failure to support its conclusion as revealed in its submissions would not constitute reversible error. Moreover, by the time the complaint was amended, the plaintiff had already submitted evidence already submitted for summary judgment. *See also* *McDonough v. Pippen, Phillips*, 151 Ill.App.3d 605, 181 Ill.Dec. 1162 (1987) (plaintiff's amended complaint was not included in the appellate record and the court's ability to dispose of the amended complaint was thereby lost).

Cite as 218 Ill.Dec. 502, 669 N.E.2d 645 (Ill.App. 1 Dist. 1996)

were reported, the plaintiff testified no evidence to show either hoist or that AT & T knew of any dangerous property hoist. Consequently, the evidence presented here was not effective to show interference for purposes of the claim.

The plaintiff next contends that the trial court's refusal in its July 27 order to permit the plaintiff to amend his complaint to allege facts that there was a negligent undertaking and that it was negligent. We disagree.

Section 1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g)) provides as follows:

"In the event of a summary judgment, the court shall permit pleadings to be amended if the amendment is just and reasonable."

The court's discretion to grant or deny an amendment to the pleadings can only be found if there is an abuse of discretion. See *Loyola Academy v. S & S Roof Maintenance, Inc.*, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Dwyer*, 195 Ill.Dec. 881, 648 N.E.2d 285 (1995); *Eymann v. McDonough*, 245 Ill.App.3d 394, 188 N.E.2d 819 (1993).

On July 27, immediately after the summary judgment, the plaintiff made an oral motion to amend the complaint, as follows:

"[Plaintiff's attorney] says that they undertook to secure the hoist and they were negligent in that duty and as a result the plaintiff is injured based upon the negligence, Phillips [sic] case, that the plaintiff has a duty to do something, negligently, and someone is injured and is absolutely liable."

That the Court feels that the plaintiff's ability count cannot stand alone to state that a negligent voluntary undertaking is not proper here.

There will be no new depositions. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any support of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record would be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 87 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted a waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff's motion to amend. As already discussed, there is ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment and the submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would preclude summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248

Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur*. The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2-1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville*. Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance

of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut*.

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, *Illinois Practice*, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that all of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.*;

East Side Fire Protection District v. City of Belleville. As previously noted, the facts submitted here are insufficient to raise such an inference. Hence, we find that the trial court's denial of the motion to amend was not an abuse of discretion. See *Regas v. Associated Radiologists, Ltd.*, 230 Ill.App.3d 90, 172 Ill.Dec. 553, 595 N.E.2d 1223 (1992) (where a cause of action cannot be stated even after amendment, leave to amend should be denied).

For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

McNULTY, P.J., and HOURIHANE, J., concur.



283 Ill.App.3d 112
669 N.E.2d 655

The PEOPLE of the State of Illinois,
Plaintiff-Appellee,

v.

Vernetta CASSELL, Defendant-
Appellant.

The PEOPLE of the State of Illinois,
Plaintiff-Appellee,

v.

Curlee SIMMONS, Defendant-Appellant.

Nos. 1-94-2782, 1-95-1380.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Circuit Court, Cook County, John J. Moran, J., of aggravated criminal sexual assault, and one defendant was convicted of additional crimes of home invasion and aggravated kidnapping. Defendants appealed. The Appellate Court, McNulty, P.J., held that: (1) circuit court had adequate basis for its determination that victim was not entitled to assert privilege

against self-incrimination; (2) sufficient evidence that defendant threatened of force in order to coerce victim to suppress evidence of aggravated criminal sexual assault; (3) sufficient evidence that victim was confined to suppress evidence of kidnapping conviction; (4) defendant denied effective assistance of counsel; (5) defendant who drove vehicle in which assault occurred was criminally responsible for the assault; and (6) evidence of emergency room nurse that victim identified defendant who dragged her from scene was harmless error.

Affirmed.

1. Witnesses ⇨297(13.1)

Trial court had adequate basis for aggravated criminal sexual assault for its determination that defendant threatened to assert Fifth Amendment against self-incrimination. Trial court did not conduct hearing to test victim's testimony, where, in response to questions as to why she wanted to testify, victim never expressed fear of being charged with a crime or that she could not remember clearly. U.S.C.A. Const. 1

2. Witnesses ⇨297(1)

Privilege against self-incrimination against compulsory testimony to establish U.S.C.A. Const. Amend. 5

3. Witnesses ⇨297(1)

Although witness is entitled to refuse to answer questions to incriminate him or herself by Fifth Amendment, these instances where witness refused to believe he or herself or herself to provide answers. U.S.C.A. Const. 1

4. Witnesses ⇨297(1)

Once witness asserted amendment privilege not to answer questions or herself, trial court

, it was clear that plaintiff approached the hoist, he observed that its motor and accessories were already strapped and secured to the hoist's frame. He also testified that he personally examined the strap to ensure that the hanging apparatus was firmly secured to the frame of the hoist with the nylon strap and the motor chain before attempting to move the hoist. Plaintiff then wheeled the hoist to the back of his truck and onto his truck's hydraulic lift platform, which he had lowered to ground-level in order to lift the hoist into his truck. After raising the lift and the hoist from ground-level up to the truck's bed, plaintiff climbed into the truck bed and began to pull the hoist into the bed.

Plaintiff further testified that while pulling the hoist into the truck, the strap around the motor and hoist accessories loosened for reasons beyond his knowledge, permitting the motor and the accessories to swing free and the weight of the hoist to shift towards him. Immediately thereafter, the hoist fell onto plaintiff, causing him various injuries. Plaintiff stated that there were no known witnesses to the accident. He also stated that approximately two months after the accident, he learned from an AT & T installer that certain laborers at AT & T had told him that the hoist was not safe to use because it was unsafe, and that AT & T ultimately shipped the hoist back to the manufacturer.

In addition to plaintiff's deposition testimony, AT & T submitted the Quinn-AT & T contract in support of its motion for summary judgment. That contract reveals that Quinn, through its own independent contractors, performed moving services for defendant AT & T. The contract required Quinn to receive, pick up, load, transport, unload, and deliver telephone equipment and other material (the "Material"), and perform the other services provided for in this agreement as ordered by [AT & T] from April 1, 1987 to March 31, 1989.

The contract further provided that Quinn or its agents shall have the sole and exclusive care, custody and control of the Material from the time it is tendered to [Quinn], [Quinn's]

agents or servants, until it is delivered to and accepted by [AT & T] * * *.

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court

debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Franz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").



283 Ill.App.3d 126
669 N.E.2d 645

Fernando LAJATO, Plaintiff-Appellant,
v.

AT & T, INC., Defendant-Appellee, and
Third Party Plaintiff (Quinn Delivery
Service, Inc., Third Party Defendant).
No. 1-95-0447.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured
when loading telephone company's battery

hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. Judgment ⇨321, 386(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5-2-1203.

2. Motions ⇨39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5-2-1203.

3. Appeal and Error ⇨344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. Judgment ⇨186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5-2-1203; Sup.Ct.Rules, Rule 104.

5. Appeal and Error ⇨893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

did not need to re-consider merit of summary judgment re appellate court to

6. Negligence ⇨

Independent personal injury a theory of premises injured in bad off condition of defen

7. Appeal and Error

Appellate re-consideration of summary judgment

8. Judgment ⇨

Negligence ⇨

To withstand summary judgment in action, plaintiff must allege facts defendant owed a duty breached that damages resulted

9. Negligence ⇨

Telephone undertakes duty to secure its battery independent of cost when load of heavyening of trial discretion cost, and then phone company stripping was extractor, of safety of struct at Terms 322.

10. Negligence

Whether undertaken by defendant by con Terms 323.

11. Bailment

Telephone gratuitous ba independent c error on bail error was error contrai error than inad

it negligence action did not need to remand to allow trial court to consider merit of motion, as grant of summary judgment required de novo review by appellate court to determine question of law.

11. Negligence ¶36
Independent contractor could not base personal injury action against defendant on theory of premises liability, where he was injured in bed of his truck and not due to any condition of defendant's premises.

12. Appeal and Error ¶893(1)
Appellate review of order granting summary judgment is de novo.

13. Judgment ¶185(2)
Negligence ¶1

To withstand motion for summary judgment in action based in negligence, plaintiff must allege facts sufficient to show that defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach.

14. Negligence ¶20

Telephone company did not voluntarily undertake duty to properly maintain and secure its battery hoist for transport, where independent contractor, who was injured by hoist when loading it for transport as result of loosening of strap securing motor, had discretion in preparing and moving hoist, and there was no evidence that telephone company had strapped motor, that strapping was undertaken as protection for contractor, or that contractor relied upon safety of strapping. Restatement (Second) of Torts § 323.

15. Negligence ¶136(14)
Whether a duty has been voluntarily undertaken is question of law to be determined by court. Restatement (Second) of Torts § 323.

16. Bailment ¶35
Telephone company was not liable as gratuitous bailor for injuries sustained by independent contractor when strap securing motor on battery hoist loosened when contractor was loading hoist for transport, where contractor presented no evidence other than inadmissible hearsay rumors to show

either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

12. Appeal and Error ¶169

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

13. Bailment ¶9, 21

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

14. Judgment ¶185(1)

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

15. Pleading ¶236(6)

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.

William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based

upon the undisputed facts, it was clear that AT & T owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own experience to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately 300 pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor hoist accessories suspended from the middle of the frame. The hanging motor accessories could be pulled to one side of the hoist frame and secured thereto with a strap and a chain, both of which were attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10-15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that conversation, plaintiff had no further discussions with anyone, AT & T employee or otherwise, until after the accident.

Cite as 218 Ill. Dec. 502, 669 N.E.2d 645 (Ill.App. 1 Dist. 1996)

notion directed at the trial court's jurisdictional, without which the motion to reconsider cannot be deemed to have been timely filed, then the notice of appeal in this case, filed more than three months after the entry of the summary judgment order, would be untimely pursuant to Rule 303(a) and deprive this court without appellate jurisdiction. Otherwise, the court would be required to

The rule is clear that the absence of a certificate of service will not vitiate the filing of a motion to reconsider. This matter has been specifically preempted by Illinois Supreme Court Rule 104 (134 Ill.2d Rule 104), which provides at parts (b) and (d) as follows:

(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk

Thus, under Rule 104(d), the failure to deliver or serve copies does not impair the jurisdiction of the court. This rule has been applied to post-trial motions in *In re Marriage of Collins*, 154 Ill.App.3d 655, 107 Ill. Dec. 109, 506 N.E.2d 1000 (1987) and in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 358, 321 N.E.2d 344 (1974), which held that the failure to include proof of service with a post-trial motion will not invalidate the motion or render it untimely.

This would follow the notice of appearance within 30 days after January 13, 1968. On the other hand, the court was correct in its decision 2-1203, that the date of service is

The rule is clear that the absence of a certificate of service will not vitiate the filing of a motion to reconsider. This matter has been specifically preempted by Illinois Supreme Court Rule 104 (134 Ill.2d Rule 104), which provides at parts (b) and (d) as follows:

(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to deliver or serve copies does not impair the jurisdiction of the court. This rule has been applied to post-trial motions in *In re Marriage of Collins*, 154 Ill.App.3d 655, 107 Ill. App. 109, 506 N.E.2d 1000 (1987) and in *Math v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which held that the failure to include proof of service with a post-trial motion will not invalidate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the failure to file a certificate of service. This contention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to perjure himself. Thus, if the failure to actually serve notice does not impair jurisdiction,

then *a fortiori*, the failure to serve a certificate of service will not impair the validity or timeliness of the motion. See *In re Marriage of Collins*.

Defendant's reliance on *Vlahakis v. Parker*, 3 IllApp.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 IllApp.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 IllApp.3d at 357-58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.

[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

"Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

II. MERITS:

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pugano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he

sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)).¹

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2-1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannobile v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 599 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. E.g., *Hesselink v. R.L. Perlone Corp.*, 265 Ill.App.3d 473, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

incur his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

See generally, *Services*, 82 Ill.2d 172 (1994) N.E.2d 172 (1994) *Corp.*, 277 Ill.App.3d 222 (1995) voluntarily undert be determined by *Illinois Pub* 535, 163 Ill.Dec. > *Jackson v. Hilton*

[9, 10] With that concerning the purported violation of the Restatement as follows: "One who, in consideration, or which he is for the protection things, a subject for physical harm to exercise his undertaking, if to his failure causes the to the harm, other's relief. Restatement at 135 (1964)

See generally, *Services*, 82 Ill.2d 172 (1994) N.E.2d 172 (1994) *Corp.*, 277 Ill.App.3d 222 (1995) voluntarily undert be determined by *Illinois Pub* 535, 163 Ill.Dec. > *Jackson v. Hilton*

In the instant case, the facts sufficient to create an inference that defendant voluntarily undertook any duty to secure the hoist. First, it is undisputed that plaintiff had no control over the hoist in which plaintiff's tractor retained by independent contractor retained the hoist, and that plaintiff was not involved in preparing the hoist. Moreover, plaintiff

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(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 606 N.E.2d 571 (1992); *Ziemia v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
 - (b) the harm is suffered because of the other's reliance upon the undertaking."
- Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 635, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evi-

dence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overriding, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11-13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill. App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).

[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 885, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay

rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)) provides as follows:

"(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 626 N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 394, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

"MR. JOHNSON [Plaintiff's attorney]: I set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [sic] case, that one undertakes a duty to do something, they do so negligently, and someone is injured, they are absolutely liable."

If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [sic] undertaking is not proper here.

There will be no oral motion to amend."

The court denied plaintiff's motion for leave to amend, stating that "It's a motion [to amend]."

We first note that the proposed amended record on appeal, before the trial court, offers of new evidence, the voluntary undertaking, already been argued, and supporting facts could be found to support of his right to request for leave to amend complaint, appellate record, court's ability to deny amendment, theory against defendant of right to a request for leave to amend complaint, discretion in deny amend complaint, amend yet fail amendment to trial.

Notwithstanding to review the amendment proposed, we were motion by the trial court to amend. A ample evidence support its conclusion as revealed in submissions would which could allege Moreover, by the complaint were an allege a voluntary by the plaintiff, the plaintiff would be su facts already submitted for summary judgment v. Buehler

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ital, 245 Ill.App.3d 394, 183
N.E.2d 819 (1993).

On July 27, immediately after the hearing, the defendant entered summary judgment. The plaintiff made an oral motion for summary judgment, as follows:

Nelson [Plaintiff's attorney] does not specify that they understood or secured the hoist and they were informed that duty and as a result is injured based upon the *Allen, Phillips* [sic] case, that it is a duty to do something, gently, and someone is injured, absolutely liable.

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There will be no new depositions. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record would be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Anderson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 67 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted a waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there is ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment admissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would preclude summary judgment. See *Werkheim v. Bucher Petrochemical Co.*, 248

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Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur*. The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2-1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville*. Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance

of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut*.

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, *Illinois Practice*, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.*;

East Side Fire Protection District v. City of Belleville. As previously noted, the facts submitted here are insufficient to raise such an inference. Hence, we find that the trial court's denial of the motion to amend was not an abuse of discretion. See *Regas v. Associated Radiologists, Ltd.*, 230 Ill.App.3d 95, 172 Ill.Dec. 553, 595 N.E.2d 1223 (1992) (where a cause of action cannot be stated even after amendment, leave to amend should be denied).

For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

McNULTY, P.J., and HOURIHANE, J., concur.



283 Ill.App.3d 112

669 N.E.2d 655

The PEOPLE of the State of Illinois,
Plaintiff-Appellee,

v.

Vernetta CASSELL, Defendant-
Appellant.

The PEOPLE of the State of Illinois,
Plaintiff-Appellee,

v.

Curlee SIMMONS, Defendant-Appellant.

Nos. 1-94-2782, 1-95-1380.

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Circuit Court, Cook County, John J. Moran, J., of aggravated criminal sexual assault, and one defendant was convicted of additional crimes of home invasion and aggravated kidnapping. Defendants appealed. The Appellate Court, McNulty, P.J., held that: (1) circuit court had adequate basis for its determination that victim was not entitled to assert privilege

against self-incrimination; (2) sufficient evidence that defendant threatened of force in order to cause with victim to suppress aggravated criminal sexual assault; (3) sufficient evidence that defendant confined victim to suppress kidnapping conviction; (4) defendant denied effective assistance of counsel who drove vehicle in which assault occurred was critical to the assault; and (6) evidence of emergency room nurse that victim identified defendant who dragged her from vehicle was harmless error.

Affirmed.

1. Witnesses ⇐297(13.1)

Trial court had adequate basis for aggravated criminal sexual assault for its determination that defendant threatened to assert Fifth Amendment against self-incrimination. Trial court did not conduct hearing to determine whether victim's testimony was reliable, where, in response to questions as to why she was afraid, victim never expressed fear of being charged with a crime. She could not remember clearly. U.S.C.A. Const.

2. Witnesses ⇐297(1)

Privilege against self-incrimination guards against compulsion to establish guilt. U.S.C.A. Const. Amend. 5.

3. Witnesses ⇐297(1)

Although witness invoked privilege to refuse to answer questions that might incriminate him, defendant secured by Fifth Amendment privilege in these instances where witness was not asked to believe he or herself or herself to prove answers. U.S.C.A. Const.

4. Witnesses ⇐297(1)

Once witness asserted amendment privilege not to answer questions, trial court

appointed to you and we will not ask questions until he has been appointed—"I told him, without his attorney I wouldn't talk to him and that would be it. That he didn't have to say anything." (He said he didn't want a lawyer.) (5) If you decide to answer now with or without a lawyer, you have the right to stop questioning at any time or stop questioning and consult a lawyer—"I told him, if I start talking to you and it becomes apparent to you that you suddenly think you want an attorney to tell me and we will stop right there and we won't ask any further questions at that point. In other words, he could stop me from asking anything, at any time and I will just stop and leave the room." (He said he still wanted to talk to me.)

Dickett testified that she gave defendant the *Miranda* warnings one at a time, speaking slowly. After each one she asked defendant if he understood and he said he did. She testified that she told him the word attorney meant lawyer and instead of the phrase, "appoint a lawyer", she told him the court would give him a lawyer.

In contrast to this questioning by Kill and Dickett, Smith testified that she interviewed defendant on December 15, 1989, six months after the fire. In questions she posed which were intended to determine whether or not he could intelligently waive what are commonly known as "Miranda rights or Miranda warnings" she would ask him "what does this mean, and then I would say what the particular right was" and his reaction would be to "look around, scratch his head and draw a blank. He didn't say anything." From these reactions she concluded that "he didn't understand what these rights meant."

The contrast in the manner in which the police officer and assistant State's Attorney advised the defendant and the form of the questions posed to the defendant by the psychologist lead us to the conclusion that the record does not support the trial court's conclusion that defendant did not understand his rights and therefore did not knowingly and intelligently waive them. The court's grant of defendant's motion to suppress is not supported by the record.

Here we find the defendant was advised of his right to remain silent and his right to

have an attorney present in language he could understand. He was advised that anything he told the officer could be used against him in court. Defendant then stated that he wanted to tell the police about the fire. He repeated the story to the officer and to the assistant State's Attorney in a coherent manner. Although he was asked to do so, he chose not have his statement taken down verbatim in writing. Since he was unable to read, he could not verify what a written statement contained.

While the State has a heavy burden to show that a defendant has waived his constitutional rights in a knowing, intelligent and voluntary manner, (*Brownell*, 79 Ill.2d at 516, 38 Ill.Dec. 757, 404 N.E.2d 181) we find the State has met that burden. We find the weight of the evidence establishes that defendant waived his *Miranda* rights in a knowing and intelligent manner. For all of the foregoing reasons the order of the trial court granting defendant's motion to suppress his statements is reversed.

REVERSED.

RAKOWSKI, P.J., and EGAN, J., concur.



217 Ill.App.3d 952

578 N.E.2d 33

Byong K. CHOI, Plaintiff-Appellant,

v.

COMMONWEALTH EDISON
COMPANY, Defendant-
Appellee.

No. 1-89-2177.

Appellate Court of Illinois,
First District, Third Division.

July 10, 1991.

Rehearing Denied Aug. 26, 1991.

Independent contractor's employee
brought action against owner of nuclear

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, J., concur.

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employee
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power plant to recover for injuries sustained when he slipped and fell on wet concrete floor. The Circuit Court, Cook County, Dean Sodaro, J., granted summary judgment for owner, and employee appealed. The Appellate Court, Cerda, P.J., held that owner's duty to maintain safe workplace did not include mopping up water that accumulated on floor when snow and ice from pipes used in construction project melted onto floor, causing puddles of water.

Affirmed.

1. Judgment ¶185(2)

Although plaintiff does not have to try his case on defendant's motion for summary judgment, he must provide factual basis which would arguably entitle him to judgment.

2. Appeal and Error ¶949

Determination that summary judgment is appropriate will not be reversed absent abuse of trial court's discretion such that plaintiff's right to fundamental justice is violated.

3. Negligence ¶32(2.10)

Landowner owed duty to independent contractor's employee to maintain reasonably safe workplace.

4. Negligence ¶50

Landowner's duty to independent contractor's employee to maintain reasonably safe workplace did not extend to taking precautions against water tracked inside from natural accumulation outside.

5. Negligence ¶2, 10

Duty is determined by considering number of factors, including foreseeability of harm, likelihood of injury, magnitude of burden of guarding against it, consequences of placing that burden on defendant, public policy, and social considerations.

6. Negligence ¶29, 44

Landowner owes no duty where natural accumulation of snow, ice or water exists on outside or is tracked into building by pedestrian traffic.

7. Negligence ¶28

Property owner has duty and may be liable in negligence when injuries are result of unnatural or artificial accumulation of snow, ice or water, or natural condition aggravated by owner's use of area and creation of condition.

8. Negligence ¶50

Duty owed by owner of nuclear power plant to independent contractor's employee to provide reasonably safe workplace did not include duty to mop up water that accumulated on concrete floor when snow and ice from pipes being brought in from outside for use in construction project melted onto floor, causing puddles of water, where there was no evidence that owner did anything to aggravate that condition, but instead condition was continuation of natural accumulation.

Lane and Munday, Thomas J. Nathan, Chicago, for plaintiff-appellant.

Johnson, Cusack and Bell, Ltd., John W. Bell, Michael B. Gunzburg and Thomas H. Fegan, Chicago, for defendant-appellee.

Presiding Justice CERDA delivered the opinion of the court:

Plaintiff, Byong K. Choi, brought this action against defendant Commonwealth Edison Company seeking recovery for injuries sustained when plaintiff fell on a concrete floor while working at a construction site. The trial court granted defendant's motion for summary judgment. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment because a genuine issue of material fact exists. In addition, he argues that the trial court erred by failing to recognize defendant's duty to provide a safe workplace for workmen engaged in construction work on its premises and by failing to extend that duty to include taking precautions against the accumulation of water inside the building.

On January 10, 1979, plaintiff Choi was employed by Universal Power Piping, Inc. (UPP) as a welder at the Dresden Nuclear Power Plant, which is owned by defendant

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tracked into a building from a natural accumulation on the outside. The trial court made no finding whether the accumulation inside the building was natural or unnatural, but did state that the water began as a natural accumulation of snow and ice on the pipes outside, and was brought into the building the same way as people tracking it on their feet. The trial court did not consider the expert's affidavit and deposition because it was not factually based. The expert did not actually examine the premises, the court noted, but merely looked at photographs.

After the trial court denied plaintiff's motion to reconsider, plaintiff appealed the summary judgment order. Plaintiff's argument emphasizes that Commonwealth Edison owed him a duty to maintain a safe workplace even though he was employed by an independent contractor hired by Commonwealth Edison. He asserts that the duty included mopping up water that accumulated on the building's floor when snow and ice from the pipes melted onto the floor, causing puddles of water. Plaintiff relies on cases holding that the landowner owes a duty to the employee of an independent contractor if the owner retains sufficient control over the contractor's work. *Claudy v. City of Sycamore* (1988), 170 Ill.App.3d 990, 120 Ill.Dec. 812, 524 N.E.2d 994; See *Haberer v. Village of Sauget* (1987), 158 Ill.App.3d 313, 110 Ill.Dec. 628, 511 N.E.2d 805; *Tsourmas v. Dineff* (1987), 161 Ill.App.3d 897, 113 Ill.Dec. 758, 515 N.E.2d 743; *Weber v. Northern Illinois Gas Co.* (1973), 10 Ill.App.3d 625, 295 N.E.2d 41; *Pasko v. Commonwealth Edison Co.* (1973), 14 Ill.App.3d 481, 302 N.E.2d 642. These cases state that the duty owed is to maintain a reasonably safe workplace.

Even if the water began as a natural accumulation on the outside, plaintiff asserts, Commonwealth Edison's intervening acts caused the water to be unnaturally accumulated on the inside of the building. In the alternative, plaintiff states, the condition was aggravated by Commonwealth Edison because it would not allow the pipes to be stored inside where the snow and ice could be safely removed after it melted. Furthermore, plaintiff argues, the pipes were brought in from the outside and load-

ed onto an overhead crane operated by a Commonwealth Edison employee. The overhead crane then took the pipes to the third floor of the building, where UPP employees transported the pipes through a tunnel into the reactor building. By the time the pipes reached the third floor, the snow and ice was melting, and water from the pipes was dripping on the floor. It is on that water that plaintiff fell and injured himself.

Defendant responds that the water was a natural accumulation tracked in from the outside by UPP employees, including plaintiff. It asserts that this situation should be treated the same as a natural accumulation tracked in from the outside by pedestrian traffic, thus creating no duty by the landowner.

Defendant relies on two types of cases: those concerning natural accumulations of snow, ice or water outdoors and those concerning snow, ice or water tracked into a building from the outside, whether tracked in by pedestrians' shoes, coats or umbrellas. In *Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679, the plaintiff slipped and fell on water that had been tracked from the outside into the common hallway of the defendants' stores. The appellate court ruled that the owners did not have a duty to continuously remove the tracks left by customers who had walked through the natural accumulations of snow or water outside, tracking them inside. Even if the owner has knowledge that the accumulation caused a dangerous condition, the court stated, there is no duty if the accumulation is natural. (*Lohan*, 140 Ill.App.3d at 173, 94 Ill.Dec. 680, 488 N.E.2d 679.) See also *Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 131 Ill.Dec. 471, 538 N.E.2d 846 (summary judgment in favor of defendant store affirmed where plaintiff slipped and fell on water located within store); *Shoemaker v. Rush-Presbyterian-St. Luke's Medical Center* (1989), 187 Ill.App.3d 1040, 135 Ill. Dec. 446, 543 N.E.2d 1014 (hospital had no duty to clean up natural accumulation of water tracked into hospital on pedestrians' coats and umbrellas); *Serritos v. Chicago Transit Authority* (1987), 153 Ill.App.3d 265, 106 Ill.Dec. 243, 505 N.E.2d 1034 (city transit authority had no duty where plain-

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tiff fell on snow and slush covered steps of bus owned and operated by defendant).

[1.2] The purpose of summary judgment is to determine whether a triable issue of fact exists. (*Haberer*, 158 Ill.App.3d at 316, 110 Ill.Dec. 628, 511 N.E.2d 805.) It may be granted if the pleadings, exhibits, affidavits, and depositions on file establish that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (Ill.Rev. Stat.1985, ch. 110, par. 2-1005(c); *Branson v. R & L Investment, Inc.* (1990), 196 Ill. App.3d 1088, 1090, 143 Ill.Dec. 689, 554 N.E.2d 624.) Although the plaintiff does not have to try his case, he must provide a factual basis which would arguably entitle him to judgment. (*Handy*, 182 Ill.App.3d at 972, 131 Ill.Dec. 471, 538 N.E.2d 846.) The determination that summary judgment is appropriate will not be reversed absent an abuse of the trial court's discretion such that the plaintiff's right to fundamental justice is violated. *Breeze v. Payne* (1989), 181 Ill.App.3d 720, 727, 130 Ill.Dec. 386, 537 N.E.2d 453.

[3-5] Commonwealth Edison owed plaintiff the duty to maintain a reasonably safe workplace, but it did not extend to taking precautions against water tracked inside from a natural accumulation outside. Duty is determined by considering a number of factors: the foreseeability of harm (*Breeze*, 181 Ill.App.3d at 727, 130 Ill.Dec. 386, 537 N.E.2d 453), the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations. *Dealers Service & Supply Co. v. St. Louis National Stock*. (1987), 155 Ill.App.3d 1075, 1080, 108 Ill.Dec. 664, 508 N.E.2d 1241.

[6,7] In Illinois, a landowner owes no duty where a natural accumulation of snow, ice or water exists on the outside or is tracked into a building by pedestrian traffic. (*Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679.) However, a property owner does have a duty and may be liable where the injuries are a result of an unnatural or artificial accumulation, or a natural condition aggravated by the owner's use of the area and creation of the condition. (*Handy v. Sears, Roebuck &*

Co. (1989), 182 Ill.App.3d 969, 971, 131 Ill. Dec. 471, 538 N.E.2d 846.) To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. (*McCann v. Bethesda Hospital* (1979), 80 Ill.App.3d 544, 549, 35 Ill.Dec. 879, 400 N.E.2d 16.) Plaintiff made no such showing in this case.

[8] Therefore, summary judgment for defendant was proper. The water in the nuclear power plant was a continuation of a natural accumulation. There was no evidence presented that Commonwealth Edison did anything to aggravate the condition. To require an owner of a construction site to follow workmen around and immediately clean up any melting snow, ice or water that had been brought in from the outside would be too high a burden.

Affirmed.

WHITE and GREIMAN, JJ., concur.



217 Ill.App.3d 958

578 N.E.2d 37

FISTER/WARREN, successor in interest to Charles L. Fister and Associates, Inc., a corporation; Charles L. Fister and Robert J. Warren, Plaintiffs-Appellants/Counter-Defendants-Appellees,

v.

BASINS, INC., a Wyoming corporation, and Georgia Marble Company, a Georgia corporation, Defendants-Appellees/Counter-Plaintiffs-Appellants.

Nos. 1-90-2260, 1-90-2882.

Appellate Court of Illinois,
First District, Sixth Division.

July 12, 1991.

Rehearing Denied Aug. 30, 1991

Stock sellers brought action against buyer of corporation and corporation, seek-

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

Case No. 12 LA 178

**ANSWER TO PLAINTIFF'S INTERROGATORIES TO
DEFENDANTS BILL MCGUIRE AND CAROLYN MCGUIRE**

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

Defendants, BILL MCGUIRE AND CAROLYN MCGUIRE (improperly named Caroline),
by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to
Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address,
date of birth, marital status, and social security number, and, if different, give the full name,
as well as the current residence address, date of birth, marital status, and social security
number of the individual(s) signing these Answers.

ANSWER: William "Bill" McGuire
1016 W. Elder Avenue
McHenry, IL 60051
Married: Carolyn
DOB: July 29, 1952

Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051
Married: Bill
November 26, 1946

Defendants object to providing Social Security Numbers. Such information
is highly sensitive and private and is furthermore irrelevant to any issues in
the pending lawsuit.



Dulberg 000162

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

Dulberg 000163

8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
At Time Of Occurrence:	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

Dulberg 000164

10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:

- a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;
- b. Who owned the chain saw at the time of Plaintiff's alleged injury;
- c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

- a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.
- b. Bill McGuire was the owner of the chain saw on the date of the occurrence.
- c. David Gagnon had Bill McGuire's permission to use the chain saw.

11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:

- a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;
- b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;
- c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

- a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not know how often he has used chain saws in the past.
- b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

Dulberg 000165

- c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

Dulberg 000166

- 15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.

Auto-Owners Insurance Company

Policy No. 48-010-965-01

Eff.: May 9, 2011 thru May 9, 2012

Personal Liability (Each Occurrence): \$300,000.00

Medical Payments (Each Person): \$1,000.00

16. Do you have any information:

- (a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;
- (b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

- a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
- b. See answer to Interrogatory No. 16(a).
- c-d. No.

Dulberg 000167

17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

Dulberg 000168

22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

- (a) The subject matter on which the opinion witness is expected to testify;
- (b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
- (c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
- (d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

- a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.
- b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

Dulberg 000169

Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

- c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.
- d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.
- e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.
- f. Investigation continues.

Dulberg 000170

Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

Dulberg 000171

28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.


29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By 
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

Dulberg 000172

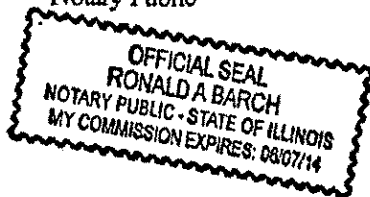
STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire
Bill McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

RBA
Notary Public



Dulberg 000173

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

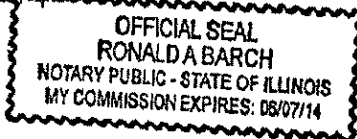
CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire
Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.



Notary Public



Dulberg 000174

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was
served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid,
at Rockford, Illinois, at 5:00 o'clock p.m. on 9/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

Dulberg 000175

STATE OF ILLINOIS)
) SS
 COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
 McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff(s),

CASE NO. 12LA000178

vs.

DAVID GAGNON, Individually, and as
 Agent of CAROLINE MCGUIRE and
 BILL MCGUIRE, and CAROLINE
 MCGUIRE and BILL MCGUIRE,
 Individually,

Defendant(s).



ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
 DOB: 4/3/1697

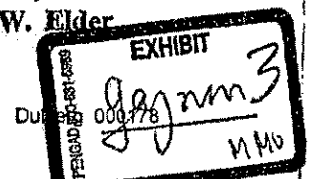
2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

- (a) Witnessed or claims to have witnessed the occurrence in question.
- (b) Was present or claims to have been present at the scene immediately before said occurrence.
- (c) Was present or claims to have been present immediately after said occurrence.
- (d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder



Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ^{BACKED} front of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

- (b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.
- (c) For each controlled expert witness, identify:
 - (i) the subject matter on which the witness will testify;
 - (ii) the conclusions and opinions of the witness and the bases therefor;
 - (iii) the qualifications of the witness; and
 - (iv) any reports prepared by the witness about the case.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.


DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-588-9821

By: 

PERRY A. ACCARDO

Firm No.: 46878

E-MAIL ADDRESS:

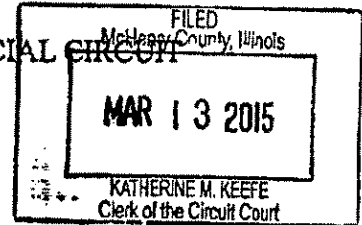
ILLINOISLEGAL@ALLSTATE.COM

Attorney Bar No.: 6228720

Attorney for Defendant(s):

David Gagnon

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS



PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

DAVID GAGNON, Individually, and as
Agent of CAROLINE McGUIRE and BILL
McGUIRE and CAROLINE McGUIRE
and BILL McGUIRE, Individually,

Defendants.

COPY

NOTICE OF MOTION


TO: **VIA FIRST CLASS MAIL:**
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

VIA CERTIFIED MAIL:
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On March 13, 2015 at 9:00 a.m., or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.



Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070



POP 000970

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG,

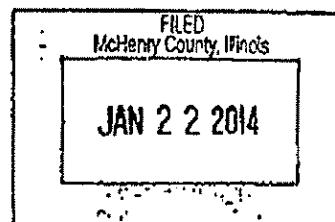
Plaintiff,

vs.

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

Case No. 12 LA 178

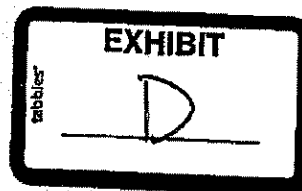


GOOD FAITH FINDING AND ORDER OF DISMISSAL

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.
2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.



3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.

4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.

DATED: _____


JUDGE Thomas A. Meyer

Prepared by:
Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700

February 17, 2016

To: Mr. W. R. Baudin II, Plaintiff Attorney
PO Box 1678
Crystal Lake, IL 60039-1678
lawbaudin@gmail.com
(815) 307-6197

From: Dr. Bobby L. Lanford, PhD
2066 Girls Ranch Road
Camp Hill, AL 36850
bob@lanfordintl.com
(406) 531-3541

Subject: Findings and Conclusions for Dulberg v. Gagnon and McGuire

After reviewing the Depositions of Mr. Dulberg and Mr. Gagnon and the chainsaw owner's manual, the following observations and conclusions were made:

Mr. Dulberg was cut on the forearm (bottom) by a chainsaw while helping Mr. Gagnon limb a pine tree on the property of Mr. Gagnon's parents – Bill and Carol McGuire. While power tools such as this chainsaw make work more efficient, they carry hazards such as experienced in this incident. Manufacturers and retailers of power equipment go to great lengths to reduce the dangers associated with such equipment through training and warnings listed in owner's manuals. The chainsaw in this incident appears from a photograph to be a EFCO MT3500 purchased by the McGuires close to the date of the incident and probably was a new saw and probably equipped with an owner's manual. Depositions from both Mr. Gagnon and Mr. Dulberg indicated that they received no additional chainsaw training. Therefore, the owner's manual and their field experience were the primary sources of instructions for the safe use of the saw.

Mr. Gagnon was the only operator of the saw and, therefore, was responsible for its use. While the saw was appropriate for the tasks involved, there are safe and unsafe activities that could have taken place. The owner's manual shows 2 bar lengths for this saw – 14 and 16 inches. It appears that the McGuires chose the 16 inch bar. For the work involved, the shorter bars would have been safer and might have prevented or reduced the injury. It appears that Mr. Gagnon performed some unsafe acts which lead to Mr. Dulberg being cut. Also, Mr. and Mrs. McGuire who owned the saw apparently did not heed the warnings posted on page 2 of the owners manual which states: "Allow persons only who understand this manual to operate your chainsaw."

Cuts with chainsaws cause more damage than those caused by power or hand tools having a thinner blade such as that of a table saw. Chainsaws are designed to take out a "kerf" of about ¼ -inch, so if someone is cut, the sides of the cut are separated by this gap (or kerf) removing a chunk of meat and causing excessive bleeding and organ damage.

From the depositions, there is no mention of safety apparel – hard hat with ear and eye protection, safety chaps or pants nor safety gloves. (See page 7 of the owners manual for proper safety apparel.)

Proper safety apparel may have eliminated or reduced the severity of the injury.

Mr. Gagnon and the McGuires' goal was to remove a tall pine tree (40 – 50 feet in height) in their yard without damaging their buildings. From depositions, Mr. Gagnon chose to delimb this tree as it stood in a vertical position. According to Mr. Dulberg, Mr. Gagnon did this by climbing and cutting off limbs as he climbed the tree using limb stubs as a ladder where he placed his feet. In the owner's manual on page 9, it tells to never cut limbs from a ladder or a tree and always cut from a firm foundation or platform. Not having seen the exact circumstances, it cannot be stated unequivocally, but my recommendations would have been to fell the tree first before trying to remove any limbs higher than could be reached safely from the ground. Once the tree has been felled on the ground, the secondary limbs could have been removed while the primary limbs were still attached to the main bole. Bucking the primary limbs into firewood lengths could also be done in a safer fashion with them attached to the bole. Doing the work in this fashion would have eliminated the conditions of where Mr. Dulberg was cut. From Mr. Gagnon's deposition, there was room to fell the pine tree with its described height.

The EFCO MT3500 has a number of features designed to operate it safely. The handle where the accelerator trigger is located has a throttle trigger lockout device that must be depressed before the engine can accelerate which means that Mr. Gagnon had a tight hold on the trigger handle when the saw accelerated before cutting Mr. Dulberg. Mr. Dulberg states in his deposition that he was holding the butt end of a primary limb, and Mr. Gagnon was removing the secondary limbs moving from the tip of that primary limb toward the butt. The accident occurred after Mr. Gagnon removed the last secondary limb and was moving toward him with the saw. The saw accelerated with the bar and chain moving upward contacting the bottom of Mr. Dulberg's arm.

There was no mention of the chain brake being used. The MT3500 has a lever mounted just forward of the front handle. This lever serves to stop and lock the cutting chain movement when pushed forward; when in the rear position, the chain travels freely on the bar. On page 8 of the owners manual, it is recommended that the chain brake be set whenever the operator moves from place to place. Also, the bar should be facing to the rear of the direction of travel so that the sawyer would not fall on the bar and chain if he were to trip and fall. This applies directly to this incident. If Mr. Gagnon had set his chain brake and/or put the bar in a rearward position as he finished cutting the last secondary limb, Mr. Dulberg would not have been cut.

The MT3500 comes with a saw chain designed to reduce kickback. Kickback is a violent upward action of a chainsaw bar when the chain on the upper quadrant of the bar's tip comes in contact with an object. While this chain does not completely eliminate kickback, it helps. It is assumed here that the chain supplied by the manufacturer had not been replaced. In addition, if the saw chain had come in contact with some object that caused a kickback, the chain brake would have instantly stopped the chain as the bar traveled vertically and Mr. Gagnon's hand activated the chain brake. This brake activation would probably have protected Mr. Dulberg. Therefore, it is doubtful that a kickback occurred.

Page 7 of the owner's manual recommends that other people (bystanders) be kept at least 35 feet from someone operating a chainsaw. This is because the chainsaw operator should be focusing his attention on his task, not bystanders. Chainsaws are noisy and anyone around them should be wearing ear protection thus muffling emergency calls for help. It is recommended that bright clothing be worn by all bystanders and operators to help operators see people who might inadvertently move into the danger

zones. This distance of 35 feet may be a bit overcautious, but the intent is to keep bystanders beyond the reach of the saw, limbs or trees being cut. The operator is the person in control of his saw and responsible for whatever results from his cutting. When trees are being felled, bystanders should be beyond the height of the tree; 2 tree heights is the recommended distance. If this rule had been followed, Mr. Dulberg would not have been cut.

Page 7 of the owner's manual has some additional recommendations that might apply to this incident. Cutting with chainsaws is fatiguing even for professional sawyers who use their saws everyday. For the occasional operator, chainsaw work can be very exhaustive. In this incident, Mr. Gagnon not only used a chainsaw when he was not accustomed to using one, but he also climbed a tree and delimbed it as he climbed. By the time Mr. Gagnon stop limbing and started removing secondary limbs from the primary limbs, he must have been very fatigued even with frequent breaks as described by Mr. Dulberg. The warning of the owner's manual not to cut when fatigued is very important in that fatigue impairs judgment, reduces response time and probably impairs reflexive actions. Simply put, we make mistakes when we are tired.

Another factor of this incident may have been a loose chain. New saw chains stretch when first used. This saw was probably new; this may have been its first application. The owner's manual discussed how to tension the chain on page 17 and describes proper break-in of the chain. The chain should have been tightened after the engine had become warm and later after some use. A loose chain might jump off the bar. Pertinent to this incident was that a loose chain will not decelerate as fast as a properly tightened one. Without the chain brake engaged, the chain continues to travel along the bar until it naturally comes to a stop. Mr. Dulberg said he tried to move away from the saw chain but could not escape its travel path. With a properly tensioned chain, it may have stopped before contacting his arm or at least been traveling at a slower speed and caused less damage to his arm.

After the review of the above evidence, it is my opinion that Mr. Gagnon was fully responsible for this accident and his parents – the McGuires – were also somewhat responsible by letting their son, Mr. Gagnon, use their chainsaw – a potentially dangerous tool – without enforcing the warnings and instructions available in the owner's manual. Mr. Gagnon was in full control of the saw and Mr. Dulberg was his assistant. Mr. Gagnon could have prevented this accident by following the instructions given in the owner's manual. The instructions in the owner's manual are quite clear and unambiguous, and if followed, would have prevented this accident. Mr. Gagnon admits that he was relatively inexperienced in the use of chainsaws, and therefore, should have been more careful while using such a potentially dangerous tool.

Respectfully submitted,



Dr. Bobby L. Lanford, PhD

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
) Plaintiff,)
)
 vs.) No. 17 LA 377
)
)
 THE LAW OFFICES OF THOMAS J.)
 POPOVICH, P.C., and HANS MAST,)
)
) Defendants.)

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS
MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, for their motion to compel Plaintiff to answer written discovery, state as follows:

1) On November 28, 2017, Plaintiff Paul Dulberg ("Dulberg") filed a complaint for legal malpractice against Defendants, more than two years after Defendants withdrew their appearance for Dulberg in his personal injury action against Defendant David Gagnon in *Dulberg v. Gagnon*, Case No. 12 LA 178 in the Circuit Court of McHenry County, Illinois (the underlying complaint), which arose out of a chainsaw accident.

2) At the time of the original filing in the instant matter, Plaintiff was represented by the Gooch Law Firm, and the complaint against Popovich was signed by Thomas W. Gooch, III. (Complaint, Ex. A)

3) In ¶20 of Exhibit A, Dulberg invoked the "discovery rule" in an attempt to toll the two year statute of limitations for legal malpractice claims under 735 ILCS 5/13-214.3. He alleged that Mast and Popovich had provided Dulberg false and misleading information in

connection with his settlement in the premises liability case with Gagnon's co-defendants, Bill and Carolyn McGuire in the premises liability case, and that Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016.

4) The Gooch firm withdrew from representing Dulberg in the instant case, and the Clinton Law Firm substituted as his counsel, with attorney Julia Williams as the primary handling attorney.

5) On December 6, 2018, Dulberg filed his second amended complaint in this case (Ex., B) filed by the Clinton Law Firm. As compared to Exhibit A, Dulberg's allegations regarding the "discovery" on his cause action against Popovich are slightly different. In ¶¶ 56 and 57 of his second amended complaint, Dulberg alleges that he did not learn that false and misleading information had been provided to him until the mediation in December 2016 based on the expert opinions that Dulberg retained for the mediation.

6) Dulberg gave a discovery deposition in this case on February 19, 2020 (Ex. C). Dulberg was questioned about the "discovery" of his cause of action against Popovich and his law firm beginning on page 106 of his deposition (See also, page 108 where plaintiff Dulberg testified that his attorney at the time, Randy Boudin had told him to seek an independent opinion from an attorney that handles malpractice matters, and that Dulberg received that opinion on or about December 16, 2016 from Thomas Gooch.) Dulberg again confirmed that Gooch provided him with the legal opinion on December 16, at page 112 of his deposition. See also, pp. 113 and 114.

7) At Dulberg's deposition, Ms. Williams asserted the attorney-client privilege on behalf of her client relative to Gooch's advice in December 2016, but over the objection allowed

Dulberg to testify concerning the substantive the discussions. The substantive testimony was sparse and vague. At p. 126 of his deposition, Dulberg agreed that his discussion with any malpractice lawyer in December 2016 is responsive to interrogatory no. 1 from Hans Mast (Ex. D). At p. 127 of his deposition, Dulberg responded to the following question:

Q: How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A: Yes.

Q: That's what you've alleged here in this complaint.

A: Yes.

8) On July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December of 2016, including the following production requests. (Ex. E)

9) On July 30, 2020, Julia Williams, then Dulberg's counsel requested 28 days to respond to Popovich's supplemental request for production. Counsel for Popovich agreed, but then received notice of the Clinton Law Firm's motion to withdraw on August 18, 2020.

10) On September 10, 2020, this Honorable Court granted the Clinton Law firm's motion to withdraw as Dulberg's counsel. Dulberg currently has a *pro se* appearance filed on his own behalf.

11) The attorney-client privilege exists to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information. *Waste Management, Inc. v. International Surplus Lines Ins. Co.*, 144 Ill. 2d 178, 190 (1991); *Daily v. Greensfelder, Hemker & Gale, P.C.*, 2018 IL App (5th) 150384, ¶1122-23. However, it is not unconditional, and it is the privilege, not the duty to disclose, that is the exception. *Id.* Illinois adheres to a strong policy of encouraging disclosure, with an eye toward

ascertaining that the truth which is essential to the proper disposition of a lawsuit. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 35; Daily, 2018 IL App (5th) 150384 at ¶ 23. Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." *Waste Management, Inc.*, 144 Ill. 2d at 190; Daily, 2018 IL App (5th) 150384, ¶ 23.

While the Illinois Supreme Court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists where the client voluntarily injects into a case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications. *Center Partners, Ltd.*, 2012 IL 113107 at ¶ 35; Daily, 2018 IL App (5th) 150384 at Irri 24-25. The Illinois Supreme Court in *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.* illustrated that the test in determining whether the exception exists is whether or not the communications in question are necessary to resolve the truthfulness of a factual or legal issue that was introduced by the client holding the privilege. 189 Ill. 2d 579 (2000). Furthermore, when a plaintiff places at issue in a case the extent to which multiple attorneys representing it proximately caused its alleged damages, all communications between the plaintiff and its attorneys are discoverable "to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of plaintiff's claims." Daily, 2018 IL App (5th) 150384 at ¶¶31- 32 (finding that the "at-issue" exception applied because "there is an issue of whether [plaintiffs' attorneys] contributed to the cause . . . and the relative contribution of each to the plaintiffs' damages").

12) In *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004), the Plaintiff's husband met with an attorney 4 days after her medical procedure (in March 1999) that was the subject of a medical malpractice claim. The claim was untimely filed, and the doctor sought production of

records relative to the husband's meeting with the attorney. The patient asserted that production would violate the attorney-client privilege. The court affirmed the trial court's finding that the privilege was waived when she voluntarily injected the statute of limitations issue into her case, alleging she did not discover her medical malpractice claim until June 1999. This case is on point and binding.

13) At pages 133-142 of his deposition, Dulberg admitted that he communicated in writing with Gooch regarding Popovich's breaches of the standard of care, and the bases for same.

14) Based on all of the above, Dulberg has placed the discovery of his malpractice claim "at issue" and must produce any and all communications which form the basis for his "discovery" of his malpractice claims, and the bases for his argument that the 2 year statute of limitations should be tolled.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their motion to compel Plaintiff to answer written discovery and produce requested documents and that Plaintiff be required to answer the outstanding written discovery and produce all documents requested in Exhibit D within 14 days of the presentation of this motion, deny any and all objections to said production, including any objection based on the attorney-client privilege, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN

KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
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Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 1711117451
17LA000377
11/26/2017
McHenry County, Illinois
22nd Judicial Circuit

NOTICE

THIS CASE IS HEREBY SET FOR A
SCHEDULING CONFERENCE IN
COURTROOM 201 ON
02/27/2018 AT 9:00 AM.
FAILURE TO APPEAR MAY RESULT IN
THE CASE BEING DISMISSED OR AN
ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as

"DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint
against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as
"POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the
following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was
such a resident at all times complained of herein.
2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm
operating in McHenry County, Illinois, and transacting business on a regular and daily basis in
McHenry County, Illinois.
3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW
OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of
Illinois, and was so licensed at all times relevant to this Complaint.

4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of \$260,000.00, along with lost wages in excess of \$250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as Exhibit A.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as Exhibit B, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as Exhibit A, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

11. That as Exhibit B reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them

there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of \$5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of \$5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of \$660,000.00 in gross, and a net award of \$561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to \$300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as Exhibit D.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois,

McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the

mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

- a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;
- b) Failed to thoroughly investigate liability issues against property owners of the subject property;
- c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;
- d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;
- e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;
- f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;
- g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;


j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of \$5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys THE GOOCH FIRM,


Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.


Thomas W. Gooch, III

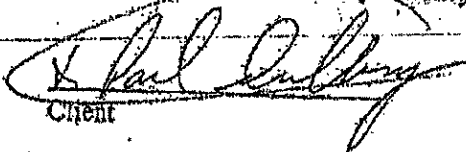
Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20____.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~44~~ 44% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

LAW OFFICES OF THOMAS J. POPOVICH

By: 

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797



Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000

Page 8 of 19

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

COPY

MAY 15 2012

KATHARINE M. KAGAN
McHENRY CITY CLERK

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.:

17LA178

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,
County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE
lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 20 ON
JUNE 28, 2012, AT 10:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 20 ON
JUNE 28, 2012, AT 10:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

ALL-STATE LEGAL
PLAINTIFF'S
EXHIBIT
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scared and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

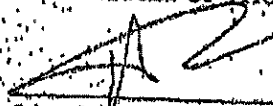
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

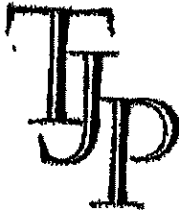
22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.


One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 05203684



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smg
Enclosure



WAUKESHA OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKESHA, IL 60085

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012-LA-178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

- c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

Notary Public



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.)

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

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711117451 / Case #17LA000

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
v.	)	No. 17 LA 377
)	
THE LAW OFFICES OF THOMAS J.)	
POPOVICH, P.C., and HANS MAST,)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

**COUNT I
LEGAL MALPRACTICE**

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.
2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.
3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.
16. Gagnon was acting on behalf of Caroline and William and at their direction.
17. Caroline, William, and Gagnon all knew or should have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.
18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.
19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.
20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.
21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.
22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.
23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.
24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being trained in operating the chainsaw.
25. Gagnon was operating the chain saw in close proximity to Dulberg.
26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of \$260,000, lost wages in excess of \$250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for \$5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the \$5,000.00, "the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their \$5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the \$5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of \$5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for \$5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to \$100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the \$5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

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

53. In December of 2016, Dulberg was awarded a gross amount of \$660,000 and a net award of \$561,000 after his contributory negligence was considered.

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

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

- a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
- b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
- c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing

Dulberg that Gagnon's insurance policy was "only \$100,000" and no insurance company would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and through emails, into accepting a settlement with the McGuires for \$5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

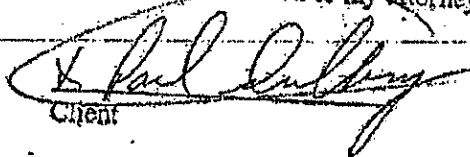
Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20____.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~44 1/3~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: 

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT

A

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

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Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

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C 1206 V2

STATE OF ILLINOIS)
COUNTY OF McHENRY) SS

COPY

MAY 25 2012

KATHARINE M. KELLY
McHENRY CITY, ILL. CLK

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,

vs.

No.:

17LA178

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants,

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count 1

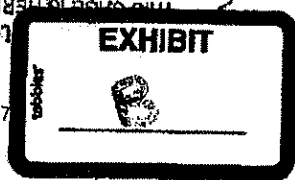
Paul Dulberg vs. David Gagnon, Individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,
County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE
lived, controlled, managed and maintained a single family home located at 1016 W. Elder
Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 8.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 202 ON
JULY 20, 2012, AT 2:00 PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 8.10
ON JULY 20, 2012, AT 2:00 PM
CONFERENCE IN COURTROOM 202
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.



Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 08:53 AM / Transaction #17111117451 / Case #17LA000377

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
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3. On June 28, 2011, the Defendant DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuire's.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, not work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.


One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 544-3797
ARDC No. 06203684

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Dave's Best and oldest friend John
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Shelia today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:

Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.

— Original Message —

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
Subject: Re: Dave's Best and oldest friend John

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul
Paul Dulberg
847-497-4250

Sent from my iPad

On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

Sent from my iPhone

On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Only 5, That's not much at all.
Is this a take it or leave it or do we have any other options?

If you want a negligence case for the homeowners ask what happened immediately after the accident.

Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

Hans

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
Subject: Dave's Best and oldest friend John

Hans,

Just spoke with John Choyinski again about talking with you.

I am leaving your number with him as he has agreed to talk with you about David Gagnon.

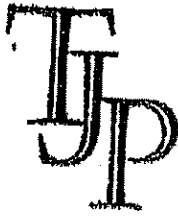
I believe he will try and call sometime tomorrow.

Paul

Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

Sorry for the rant but Dave was a complete ass all the way and deserves this.

Paul Dulberg
847-497-4250
Sent from my iPad



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
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THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KONNAR

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smg
Enclosure



WAUKESHA OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKESHA, IL 60085

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711117451 / Case #17LA000377

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

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GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; Improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012-LA-178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

- o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

Notary Public

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: McGuire settlement
Date: December 28, 2016 10:21:55 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.

Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.

I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:

SSD has to be part of it...its not going to effect anything...
We can't prevent disclosure of the amount...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
Subject: Re: McGuire settlement

What and why do those questions have any relevance at all and why do they need to be part of this agreement?
Particularly the one about being eligible.

Also, I cannot warrant against what SSDI, Medicare or any other government institution wishes to do.

Is it possible to make this agreement blind to the McGuires or David Gagnon?

What I mean is can we make it so that the amount of money cannot be told to them in any way?

It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.

Paul Dulberg
847-497-4250

Sent from my iPad

On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:

Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
Subject: McGuire settlement

Here is a copy of the first page.

It has check boxes and one of the check boxes says;

I am not eligible to receive SSI or SSDI.

Another says;

I am not receiving SSI or SSDI.

As you know, I have applied for SSDI and SSI



From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Memo
Date: December 27, 2016 6:11:20 PM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: February 22, 2015 at 7:42:25 PM CST
To: Hans Mast <hansmast@att.net>
Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of course he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:

Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only \$100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.

Sent from my iPhone

On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Let's not be harsh. We have a couple of weeks till dr Kujawa's billing arrives.
I agree showing me the memo is a good idea it's just not the accuracy I expected.
I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.

What's left for me?

Facebook, scrap booking, crafts, etc... A life of crap...

With ongoing pain and grip issues in my dominate arm/hand that are degenerative.

This is as total as it gets for us in the working class short of being paralyzed or dead.

I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.

What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.





Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391EMAG

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.PIS75,000.LNL75,000.

 The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 25 • Chicago, IL 60602
 312.960.2260 • info@adrsystems.com • www.adrsystems.com

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-28-2017 09:53 AM / Transaction #1711117451 / Case #17LA000

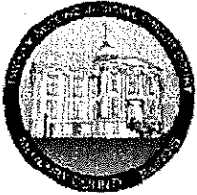
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

Page 25 of 25



Pamela Walker

From: McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
Sent: Monday, December 10, 2018 1:37 PM
To: George K. Flynn; Pamela Walker
Subject: 17LA000377 - 2 Documents Filed



17LA000377

DULBERG, PAUL VS MAST, HANS, ET AL

Doc Type	COAA
Description	COMPLAINT - AMENDED
Date Filed	12/6/2018
Image Link	View Document Image

Doc Type	NOTF
Description	NOTICE - FILING
Date Filed	12/6/2018
Image Link	View Document Image

NOTE: E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

Page 1

1 IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
2 McHENRY COUNTY, ILLINOIS
3
4 PAUL DULBERG,)
5 Plaintiff,)
6 vs.) 17 LA 377
7 THE LAW OFFICES OF THOMAS J.)
8 POPOVICH, P.C., and HANS EAST,)
9 Defendants.)
10
11 The deposition of PAUL DULBERG, called for
12 examination, taken pursuant to the provisions of the
13 Code of Civil Procedure and the rules of the Supreme
14 Court of the State of Illinois pertaining to the
15 taking of depositions for the purpose of discovery,
16 taken before KAREN PILEGGI, a Notary Public within
17 and for the County of DuPage, State of Illinois, and
18 a Certified Realtime Reporter of said state, at 150
19 South Wacker Drive, Chicago, Illinois,
20 February 19, 2020, at the approximate hour of 1:00
21 p.m.
22
23
24

Page 2

1 PRESENT:
2 THE CLINTON LAW FIRM,
3 111 West Washington Street, Suite 1437,
4 Chicago, Illinois 60602,
5 312-357-1515, by:
6 MS. JULIA C. WILLIAMS,
7 juliewilliams@clintonlaw.net,
8 appeared on behalf of the Plaintiff;
9
10 KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
11 150 South Wacker Drive, Suite 1700,
12 Chicago, Illinois 60606,
13 312-431-3700, by:
14 MR. GEORGE K. FLYNN,
15 gflynn@karballaw.com,
16 appeared on behalf of the Defendants.
17
18
19
20
21
22
23 REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
24 CSR License No. 64-3404

Page 3

1 (WHEREUPON, the witness was
2 duly sworn.)
3 PAUL DULBERG,
4 called as the plaintiff herein, having been first
5 duly sworn, was examined and testified as follows:
6 EXAMINATION
7 BY MR. FLYNN:
8 Q. Let the record reflect that this is the
9 discovery deposition of Paul Dulberg taken by
10 agreement of the parties and pursuant to notice.
11 This deposition is being taken pursuant
12 to the Rules of the Illinois Supreme Court, the
13 Illinois Code of Civil Procedure and any applicable
14 local rules in McHenry County.
15 Sir, could you state your name and spell
16 your last name for the record.
17 A. Palm Dulberg, D-u-l-b-e-r-g.
18 Q. What is your address?
19 A. 4606 Hayden Court, McHenry,
20 Illinois 60051.
21 Q. How long have you lived there?
22 A. Forty-nine years.
23 Q. Who do you live there with now?
24 A. Mike McArtor.

Page 4

1 Q. Did your mother live there at some point
2 throughout the history of this case?
3 A. Yes.
4 Q. I'm just going to go over a few rules for
5 the deposition. I know you've testified at least
6 one time in a deposition before because you
7 testified in the underlying personal injury case,
8 correct?
9 A. Correct.
10 Q. Have you testified in any other
11 depositions before?
12 A. No.
13 Q. I'll just remind you of a few rules that
14 I'm sure you were aware of back then when you gave
15 your deposition.
16 The court reporter is here to take down
17 everything that you and I say. She can only take
18 down one at a time so I'd ask that before you answer
19 a question, let me finish the entire question.
20 Okay?
21 A. Yes.
22 Q. I'll try to do the same. I'll try to let
23 you respond before I ask a follow-up question.
24 You just nodded your head. That's



800.211.DEPO (3376)
EsquireSolutions.com

EXHIBIT C

<p style="text-align: right;">Page 5</p> <p>1 another good point to make. She can't take down 2 nods of the head, shrugs of the shoulders or other 3 hand gestures. Your answers need to be verbal. 4 From time to time we forget those rules 5 and I may just point to the court reporter as a 6 reminder, if that's okay. 7 A. Yes. 8 Q. If you need to take a break at any time, 9 feel free to stop me. I just ask that it's not 10 while a question is pending that has not been 11 answered. Fair enough? 12 A. I'll try to do that. 13 Q. If you've answered a question, I will 14 assume you understood it. Okay? 15 A. Yes. 16 Q. I was asking you about your mother. She 17 lived at the house during the pendency of the 18 underlying case? 19 A. Yes. 20 Q. Is she still alive? 21 A. Yes. 22 MS. WILLIAMS: Can we define "underlying case"? 23 BY MR. FLYNN: 24 Q. The underlying case is a personal injury</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. The building, as I understand it, is a 2 duplex; is that right? 3 A. No. 4 Q. Were there two apartments in the building 5 at one time? 6 A. No. 7 Q. Was there a point in time where you and 8 your mother lived in one half of the house and 9 Mike McArtor lived in the other half? 10 A. Yes. 11 Q. How was that arrangement with respect to 12 the location of the living spaces, if you can 13 describe it? 14 A. It has a walkout basement. He had the 15 downstairs with an exit out the back. We had the 16 upstairs with an exit out the front. 17 Q. Have you ever been convicted of a crime 18 of fraud, dishonesty or deceit? 19 A. No. 20 Q. Besides the hiring of the Popovich firm 21 in connection with the underlying personal injury 22 case, up to that point in time had you ever had an 23 occasion to hire a lawyer? 24 A. I did during a traffic accident, and I</p>
<p style="text-align: right;">Page 6</p> <p>1 case that you filed against Bill and Caroline 2 McGuire and David Gagnon. 3 A. That sounds correct. 4 Q. We'll get into the dates of the filing a 5 little bit later. We'll call that, generally, the 6 underlying case. 7 Your mother lived at the house at that 8 time? 9 A. Yes. 10 Q. Did she own the house? 11 A. No. 12 Q. Do you own the house currently? 13 A. Yes. 14 Q. Does anyone else own the house? 15 A. No. 16 Q. How long have you owned it? 17 A. I think I first purchased it off my 18 parents in '97, '98, something like that. 19 Q. Did you hire a lawyer in connection with 20 that transaction? 21 A. No. 22 Q. Were your parents represented by a 23 lawyer? 24 A. No.</p>	<p style="text-align: right;">Page 8</p> <p>1 don't remember the year. 2 Q. Were you injured in about 2002? Does 3 that sound right? 4 A. Roughly. 5 Q. Who did you hire? 6 A. I might get the name wrong because it's 7 been a long time. I think it was Weiss and Michling 8 and something else. It was a lawyer right outside 9 the courthouse in Woodstock. 10 Q. A McHenry County lawyer? 11 A. Yeah. 12 Q. It was a personal injury case? 13 A. Yeah. It was a car accident. 14 Q. Did you file a lawsuit in that case? 15 A. I don't think we needed to. 16 Q. You just filed an insurance claim? 17 A. They did, yes. 18 Q. You settled it? 19 A. Yes. 20 Q. Any other occasions to hire a lawyer 21 between that time and the time you hired the 22 Popovich firm? 23 A. May I consult for a minute because I'm 24 not sure how to answer that.</p>



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<p style="text-align: right;">Page 9</p> <p>1 Q. Why don't you just tell me why you can't 2 answer it. 3 A. Because I've hired lawyers, but they were 4 for the company that I had. That's different. 5 Q. I'm asking general questions about any 6 interaction you've had with hiring lawyers. Any 7 experience you've had with hiring lawyers. 8 A. I had a corporate lawyer. My mom and dad 9 hired a lawyer for me when I was a kid. It was 10 something. And myself, just the corporate lawyer, 11 the car accident lawyer and the Popovich firm. 12 Q. Have you ever been married? 13 A. No. 14 Q. So you never hired a divorce lawyer. 15 Good. How old are you now? 16 A. Forty-nine. 17 Q. The underlying case arose out of an 18 injury that occurred on June 28, 2011, correct? 19 A. That sounds correct. 20 Q. How old were you at that time? 21 A. Forty-one. 22 Q. Besides the underlying lawsuit against 23 the McGuires and Mr. Gagnon, had you ever filed any 24 other lawsuit up until that point in time?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I missed morning call, roll call. If 2 you're not there, you're AWOL. 3 Q. Absent without leave? 4 A. Yes. 5 Q. What is the highest level of education 6 that you've attained? 7 A. I do not have a degree. Two years of 8 college. 9 Q. You graduated from high school? 10 A. Yes. 11 Q. Was that in Johnsbury in 1988? 12 A. Yes. 13 Q. Did you know Mr. Gagnon from Johnsbury 14 High School? 15 A. Not from high school but just after high 16 school. 17 Q. Just coincidentally you attended the same 18 high school? 19 A. He was three years older than I was. I 20 didn't know who he was until after high school. 21 Q. You had some education after high school 22 but did not receive a degree, correct? 23 A. Correct. 24 Q. Where did you study?</p>
<p style="text-align: right;">Page 10</p> <p>1 A. No. 2 Q. Have you filed any lawsuits since that 3 time besides the lawsuit against Popovich and Mast? 4 A. No. 5 Q. Do you have any military experience? 6 A. Yes. 7 Q. Please tell me about that. 8 A. Army National Guard. Illinois Army 9 National Guard. 10 Q. How long have you been in the National 11 Guard? 12 A. I'm not currently in it. 13 Q. When were you, from when to when? 14 A. I may not get the year correct. '88 or 15 '89 to '92 or '93, somewhere in there. 16 Q. What was your highest rank when you were 17 discharged from the National Guard? 18 A. When I was discharged? 19 Q. Correct. 20 A. I don't know. I've gotten moved up and 21 moved down. I don't know where I ended up. 22 Q. How was it that you were discharged? 23 A. Less than honorable. 24 Q. What was the cause?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I had a couple classes at McHenry County 2 College and McMurray College. 3 Q. What did you study? 4 A. The first two years. The basics. 5 Q. General studies? 6 A. Yeah. I did a criminal justice course. 7 I did a macro/microeconomics. I did psychology, 8 sociology. The normal stuff. 9 Q. How did you meet David Gagnon? 10 A. Through a mutual friend. 11 Q. When was that? 12 A. I want to say, roughly, 1990. 13 Q. Was your home located somewhere fairly 14 close to his parents' home or his mom and stepdad's 15 home? 16 A. Two streets away. 17 Q. That's where you were injured on June 28, 18 2011, was at David Gagnon's mom's house and his 19 stepdad's house? 20 A. Yes. 21 Q. And their name is McGuire? 22 A. Yes. 23 Q. Generally speaking, you were injured 24 assisting David with a chainsaw trying to cut down a</p>



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1 tree?
2 A. He was cutting a branch.
3 Q. Cutting branches off a tree, correct?
4 A. Cutting up the branches after they were
5 off the tree.
6 Q. Could you tell me a little bit about your
7 work history. Do you have any licenses or
8 certifications?
9 A. I'm certified to run printing presses.
10 Or at least I was.
11 Q. You worked for Sharp Printing, Inc. from
12 '91 to 2011; is that right?
13 A. Ninety-one? No. I would say 1999.
14 Q. Did you own that corporation?
15 A. Yes. Well, partner. I was a partner. I
16 didn't own like...
17 Q. It was an Illinois corporation?
18 A. Yes.
19 Q. Were you —
20 A. A stockholder.
21 Q. Let me just finish my question so she can
22 take us down.
23 You were a stockholder in Sharp Printing,
24 Inc.?

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1 A. Yes.
2 Q. Who else were the stockholders?
3 A. Mike McArtor and Scott Dulberg and at
4 that time it was Herbert Dulberg.
5 Q. What does that mean? Do you mean Scott's
6 name was Herbert?
7 A. No. Scott Dulberg was an owner and
8 Herbert Dulberg was an owner. Three different
9 Dulbergs: me, my brother, my dad.
10 Q. And Mike McArtor?
11 A. Yes.
12 Q. There were four owners at what time?
13 A. Until my dad died and then it went to
14 three.
15 Q. Was that business incorporated?
16 A. Yes.
17 Q. Did a lawyer assist the corporation with
18 setting up the corporation?
19 A. Yes.
20 Q. When did that happen?
21 A. 1999.
22 Q. Did you hire the lawyer yourself?
23 A. All three of us did. All four of us.
24 Sorry.

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1 Q. What was the name of that attorney?
2 A. McAndrews, and I don't remember the rest
3 of it. It was McAndrews in McHenry. I can get you
4 the rest of that information.
5 Q. They are based in Crystal Lake, Illinois?
6 A. It used to be in McHenry when we did
7 that.
8 Q. Patrick McAndrews, he was also identified
9 as the registered agent of that corporation?
10 A. Yes.
11 Q. It was voluntarily dissolved on April 8,
12 2011; is that right?
13 A. That's what the Secretary of State's
14 Office has, yes.
15 Q. Is that your understanding as well?
16 A. I was corrected. My partners — I was
17 corrected. It was actually after the accident. How
18 it got to end up with that date, I'm not sure.
19 Q. What was corrected, exactly?
20 A. Well, do you want me to — Mike read my
21 deposition and he said, "You got that wrong." I
22 said, "What do you mean?" because I answered it
23 twice in that deposition.
24 I was thinking that Juskie happened

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1 before the accident. Sharp Printing wasn't actually
2 dissolved until after the accident when we decided
3 to sell off the equipment and end it all. That's
4 the honest truth.
5 Q. I will represent to you that the Illinois
6 Secretary of State's Website as of today shows that
7 the company was involuntarily dissolved on April 8,
8 2011. So it's your testimony that that is not true?
9 A. I don't know how they come up with that.
10 Q. Why don't we break it down and start with
11 why the corporation was involuntarily dissolved. Do
12 you know that?
13 A. Involuntarily? I don't know. It may be
14 that I was late on paying the corporate licensing
15 thing, which we just pay a fine and did it. We
16 didn't renew it because we decided to end it.
17 We had a ten-year thing, I think, on it.
18 I may be wrong. I've got to go back and look at the
19 records.
20 Q. Is it possible that the corporation was
21 actually involuntarily dissolved by the Illinois
22 Secretary of State on April 8, 2011?
23 A. Sure.
24 Q. Did Sharp Printing, Inc. file corporate



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1 tax returns while it was a going concern?
2 A. We had a problem the couple of years
3 before the accident because I was not up in Illinois
4 and I usually did that with the lawyer and the
5 accountant and things got screwed up while I was
6 taking care of a loved one who was dying down in
7 Florida.
8 Q. Did the corporation ever file tax
9 returns?
10 A. Oh, yes.
11 Q. When did they file?
12 A. Quarterly and annually.
13 Q. Until what year?
14 A. Roughly somewhere in 2008. I was missing
15 things because I was not here. I know we missed a
16 few.
17 Q. I believe you testified in your
18 underlying deposition that Sharp Printing, Inc. was
19 not dissolved as a result of your June 28, 2011
20 chainsaw accident, correct?
21 A. Yes, I did. I stood corrected by my
22 partners.
23 Q. So is it your testimony that the
24 corporation was dissolved because of your personal

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1 injury?
2 A. I don't know how to answer that without
3 going back and looking at records.
4 Q. Was the company winding down up until
5 about the time you were hurt?
6 A. The company books got screwed up when I
7 was down in Florida and I was back up in Illinois in
8 2010 getting back on my feet and I was going to pick
9 things back up, get everything paid up, the fines
10 and everything.
11 Q. Who were you taking care of in Florida?
12 A. My grandmother.
13 Q. You were gone from when until when?
14 A. I want to say from the mid to end of 2007
15 until somewhere in the beginning of 2010.
16 Q. Was anyone running Sharp Printing during
17 that period of time?
18 A. Mike McArtor.
19 Q. Did Sharp Printing have any customers for
20 that three-year period?
21 A. Yes, they did.
22 Q. How many?
23 A. I'm not sure, without looking at the
24 books.

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1 Q. Can you estimate what the yearly revenues
2 were for Sharp Printing in the year 2007?
3 A. In 2007? I'd have to look at the books,
4 to be honest with you.
5 Q. Was it more than \$5,000?
6 A. Yes.
7 Q. Was it more than \$100,000?
8 A. No.
9 Q. Was it more than \$20,000?
10 A. Yes.
11 Q. Same line of questioning with respect to
12 2008. Do you know what the revenues were for Sharp
13 Printing in '08?
14 A. Are you asking me what we reported or
15 what we made and put into accounts for equipment?
16 Q. I'm asking you about revenues.
17 A. Total sales?
18 Q. Total revenues.
19 A. In two thousand...?
20 Q. 2008.
21 A. I'd have to go back and look.
22 Q. Can you estimate what they were?
23 A. No, because I wasn't there.
24 Q. Do you know how many customers the

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1 company had in 2008?
2 A. We had a few, I know that. I don't know
3 how many. Mike was handling it and it got messed
4 up.
5 Q. What types of customers did Sharp
6 Printing have in 2007 and 2008?
7 A. What kind of customers?
8 Q. Right. What did you do?
9 A. We printed on t-shirts. We printed on
10 CDs. We printed on anything that wasn't wet. We
11 printed on glass, all different stuff.
12 Q. Were there any full-time employees of
13 Sharp Printing in '07 and '08?
14 A. In '07 and '08, no.
15 Q. Just the owners?
16 A. Just the owners.
17 Q. Did all the owners operate the business?
18 A. Yes.
19 Q. Including your brother?
20 A. Yes.
21 Q. What were the yearly revenues of Sharp
22 Printing in 2009?
23 A. I don't know.
24 Q. What about 2010, do you know?



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<p style="text-align: right;">Page 21</p> <p>1 A. No.</p> <p>2 Q. When did Sharp Printing start selling its</p> <p>3 equipment?</p> <p>4 A. I put up the ad in August. I think</p> <p>5 August. I might be off by a month or two. August</p> <p>6 of 2011.</p> <p>7 Q. Did you sell any equipment prior to</p> <p>8 August 2011?</p> <p>9 A. No.</p> <p>10 Q. What type of equipment did Sharp</p> <p>11 Printing, Inc. have or own?</p> <p>12 A. Mostly textile screen printing equipment,</p> <p>13 but we had other screen printing stuff too. Paper.</p> <p>14 Q. Where was the equipment located?</p> <p>15 A. My home.</p> <p>16 Q. Did you require a license to conduct this</p> <p>17 business out of your home?</p> <p>18 A. We had what was called a temporary –</p> <p>19 we're in a rural area so we didn't have to have</p> <p>20 that.</p> <p>21 Q. In any event, you didn't have a license,</p> <p>22 correct?</p> <p>23 A. We had a license to do business there,</p> <p>24 yes.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. You did not earn a salary from Sharp</p> <p>2 Printing, correct?</p> <p>3 A. No.</p> <p>4 Q. You did not earn an hourly wage, correct?</p> <p>5 A. No.</p> <p>6 Q. I think your interrogatory answers</p> <p>7 indicate you didn't take a profit or a draw,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. How much, if any, money did you earn from</p> <p>11 Sharp Printing in 2011?</p> <p>12 A. Can I ask how to define that? In 2011 I</p> <p>13 didn't pull any.</p> <p>14 Q. Did you earn any income whatsoever from</p> <p>15 Sharp Printing in 2010?</p> <p>16 A. I don't think so.</p> <p>17 Q. You were down in Florida for '07 to 2010?</p> <p>18 A. Sometime in early 2010, yes.</p> <p>19 Q. Did you earn any income from Sharp</p> <p>20 Printing from 2007 to 2010?</p> <p>21 A. No.</p> <p>22 Q. Were you working in Florida?</p> <p>23 A. No.</p> <p>24 Q. Is it fair to say you were unemployed</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. In that location?</p> <p>2 A. Yes.</p> <p>3 Q. Did customers ever come to the shop?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall how many customers the</p> <p>6 business had in 2010?</p> <p>7 A. Not in 2010.</p> <p>8 Q. Was it more than five?</p> <p>9 A. Yes.</p> <p>10 Q. Was it more than 100?</p> <p>11 A. It might be around that. I don't know,</p> <p>12 specifically.</p> <p>13 Q. In 2010 you may have had 100 customers</p> <p>14 that you did t-shirt screen prints for?</p> <p>15 A. Possibly. I'm not saying that is the</p> <p>16 number, but it's possible.</p> <p>17 Q. Did Sharp Printing have any customers in</p> <p>18 2011?</p> <p>19 A. Mike was finishing up one customer's</p> <p>20 thing in the spring of 2011, yes. We don't – I'll</p> <p>21 give you – we don't typically get much work between</p> <p>22 January 1st and the first warm days of Spring. We</p> <p>23 sell t-shirts and not a lot of people buy during</p> <p>24 that period. They just don't.</p>	<p style="text-align: right;">Page 24</p> <p>1 from 2007 to 2010?</p> <p>2 A. Yes. I was not officially collecting</p> <p>3 unemployment.</p> <p>4 Q. You weren't an employee of any business</p> <p>5 or working for any individual, correct?</p> <p>6 A. I did do some work for Mark. I did some</p> <p>7 traveling back and forth from Florida to Illinois</p> <p>8 back and forth during that time. When I was up</p> <p>9 here, I did do some work for Juskie Printing. Not</p> <p>10 much, though.</p> <p>11 Q. What is Juskie Printing?</p> <p>12 A. Juskie Printing is another one that I had</p> <p>13 listed as an employer in the underlying case.</p> <p>14 Q. What are they?</p> <p>15 A. Another print broker.</p> <p>16 Q. Where are they located?</p> <p>17 A. I don't know the exact address, but it's</p> <p>18 off of Chicago Avenue off of 355 going south.</p> <p>19 MS. WILLIAMS: I think he's asking what city.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't know how the cities break up down</p> <p>22 there.</p> <p>23 BY MR. FLYNN:</p> <p>24 Q. Somewhere in the western suburbs of</p>



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<p style="text-align: right;">Page 25</p> <p>1 Chicago?</p> <p>2 A. Yes.</p> <p>3 Q. How long did you have a relationship with</p> <p>4 Juskie Printing?</p> <p>5 A. Since the early 2000s.</p> <p>6 Q. What type of printing did Juskie do?</p> <p>7 A. Offset, mostly.</p> <p>8 Q. What does that mean?</p> <p>9 A. Prints on paper.</p> <p>10 Q. Did you have a set schedule at any time</p> <p>11 working for Juskie?</p> <p>12 A. I don't know what you mean by "a set</p> <p>13 schedule."</p> <p>14 Q. Did you have a particular number of hours</p> <p>15 per week?</p> <p>16 A. No. The jobs I got were project based.</p> <p>17 Q. How many projects did you have from 2007</p> <p>18 to 2011 for Juskie?</p> <p>19 A. Probably a few hundred quick little</p> <p>20 things, yeah. At least.</p> <p>21 Q. Do you know what you earned from working</p> <p>22 at Juskie in 2007?</p> <p>23 A. Not without looking at the returns, I</p> <p>24 don't know offhand.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. Who is Mark?</p> <p>2 A. Mark owns Juskie Printing.</p> <p>3 Q. I think your interrogatory answers</p> <p>4 indicated from 1999 through 2006 you were employed</p> <p>5 in a barter situation; is that right?</p> <p>6 A. With Mark, yes.</p> <p>7 Q. What does that mean, exactly?</p> <p>8 A. Well, he would owe me money and he would</p> <p>9 give me printing equipment instead of cash.</p> <p>10 Q. He owed you money for working for him?</p> <p>11 A. Well, he owed both Sharp Printing and me,</p> <p>12 personally, money. They are two different things.</p> <p>13 But he would just pay by saying, hey, I've got this</p> <p>14 or I've got this paper cutter or this or that. It</p> <p>15 was a barter.</p> <p>16 Q. So you worked for him from 1999 to 2006</p> <p>17 but did not earn any income in the traditional</p> <p>18 sense?</p> <p>19 A. No money changed hands.</p> <p>20 Q. He gave you things to pay you for</p> <p>21 projects?</p> <p>22 A. Correct.</p> <p>23 Q. You gave a deposition in the underlying</p> <p>24 case on January 24, 2013. Does that sound right?</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. How often were you in the Chicago area in</p> <p>2 2007?</p> <p>3 A. I didn't leave here until, I want to say,</p> <p>4 August or September of '07.</p> <p>5 Q. And then thereafter?</p> <p>6 A. I was not back that year.</p> <p>7 Q. You didn't work for Juskie in 2008,</p> <p>8 correct?</p> <p>9 A. I might have done some stuff.</p> <p>10 Q. You're not sure?</p> <p>11 A. I'd have to go back and look.</p> <p>12 Q. Were you in Florida?</p> <p>13 A. Part of the time, yeah.</p> <p>14 Q. How often did you come back and forth</p> <p>15 between —</p> <p>16 A. About every three months I tried to get</p> <p>17 back up here.</p> <p>18 Q. For how long?</p> <p>19 A. Sometimes a few weeks. Sometimes a</p> <p>20 month.</p> <p>21 Q. Did you come back and work or did you</p> <p>22 take care of other things?</p> <p>23 A. If I'd let Mark know I was back, "I've</p> <p>24 got something for you or I don't."</p>	<p style="text-align: right;">Page 28</p> <p>1 A. If it says it on there, yes.</p> <p>2 Q. You took an oath that day?</p> <p>3 A. Yes.</p> <p>4 Q. You told the truth?</p> <p>5 A. I tried to, to the best of my knowledge,</p> <p>6 on that day, yes.</p> <p>7 Q. You told the truth in response to all of</p> <p>8 the questions that day, correct?</p> <p>9 A. I tried to, yes.</p> <p>10 Q. You testified you were last employed</p> <p>11 prior to the accident in May of 2011?</p> <p>12 A. That would be with Juskie, yes.</p> <p>13 Q. It's accurate —</p> <p>14 A. Actually, I wasn't employed. I was a</p> <p>15 1099 so I was self-employment.</p> <p>16 Q. When in May did you stop working for</p> <p>17 Juskie, whether it be as an employee or an</p> <p>18 independent contractor?</p> <p>19 A. I believe it was the end of May.</p> <p>20 Q. Then from the beginning of June until</p> <p>21 your accident on June 28, 2011, you were not</p> <p>22 employed; is that an accurate statement?</p> <p>23 A. Correct.</p> <p>24 Q. You were not even acting as an</p>



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<p style="text-align: right;">Page 29</p> <p>1 independent contractor for any business from that 2 period of time, correct? 3 A. Not during that month, no. 4 Q. Your deposition testimony from 2013 is 5 typed up on 175 pages. I don't intend to go back 6 over each of those details. 7 A. Okay. 8 Q. It's fair to say you were injured, your 9 arm was injured on June 28, 2011, correct? 10 A. Correct. 11 Q. Which arm was that? 12 A. My right arm. 13 Q. As a result of the injury, you hired the 14 Popovich law firm to explore a recovery in the case? 15 A. I hired them to represent me, yes. 16 Q. You hired them to represent you and file 17 a lawsuit against David Gagnon who was operating the 18 chainsaw that injured you, correct? 19 A. He was one of them, yes. 20 Q. I'm asking you if you hired him to — 21 listen to the question, please. 22 David Gagnon was operating the chainsaw, 23 correct? 24 A. Correct.</p>	<p style="text-align: right;">Page 31</p> <p>1 of 2012, is that the correct time period? 2 A. I don't think so. I don't think they 3 filed it until then, but I might be wrong. I'd have 4 to go back and look. 5 Q. Was there a retainer agreement executed 6 in May 2012? 7 A. I don't think I paid a retainer. 8 Q. Did you execute an attorney engagement 9 agreement in May 2012? 10 A. I believe it was much earlier than that. 11 Q. You only executed one engagement letter 12 or engagement agreement with Popovich, correct? 13 A. Yeah. 14 Q. Before you executed or came to an 15 arrangement with Popovich, had you talked to any 16 other lawyers about investigating — 17 A. One. 18 Q. Let me finish the question. 19 — investigating or filing the lawsuit? 20 A. Yes. 21 Q. Who was that? 22 A. I went back to the same firm that handled 23 the car accident for me years earlier. 24 Q. What was the name of that firm?</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. No one else was operating the chainsaw? 2 A. Correct. 3 Q. You also hired Popovich to sue Bill and 4 Caroline McGuire, correct? 5 A. Correct. 6 Q. They were the land owners where your 7 accident occurred? 8 A. They did own the land, yes. 9 Q. The accident occurred at their house, 10 correct? 11 A. Correct. 12 Q. This was in the backyard, so to speak? 13 A. Yes. 14 Q. Hans Mast was the primary handling 15 attorney at the Popovich firm for your case? 16 A. That's who I met with, yes. 17 Q. Did any other lawyer communicate with you 18 while Popovich was handling your case? 19 A. The lady who sat in on my deposition. 20 Ms. Freeman I think it is. I'm not sure about that. 21 Q. Generally speaking, Hans Mast, though, 22 was the primary handling attorney? 23 A. Yes. 24 Q. Before you hired the Popovich firm in May</p>	<p style="text-align: right;">Page 32</p> <p>1 A. They changed names when I went back 2 there. It was Weiss — I have to go back through 3 paperwork and get you the actual name. 4 Q. They are known as a personal injury firm; 5 is that right? 6 A. Yes. 7 Q. Why did you not hire them to take your 8 case? 9 A. The man who handled my case previously 10 with the car accident was no longer with the firm 11 and they said go find somebody else. 12 Q. I'm not sure what one has to do with the 13 other. 14 A. I don't either. I just said okay and I 15 went and found somebody else. 16 Q. Did you meet with an attorney at that 17 firm? 18 A. Yes. 19 Q. Did you tell them what happened with your 20 incident? 21 A. Yes. 22 Q. They told you that they did not want to 23 take the case; is that right? 24 A. Yes.</p>



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1 Q. They declined the case?
2 A. They declined the case.
3 Q. Did they tell you why they declined the
4 case?
5 A. No.
6 Q. You next went to the Popovich firm?
7 A. Yes.
8 Q. They took the case?
9 A. Yes.
10 Q. They, ultimately, filed a lawsuit against
11 Gagnon and the McGuires on May 15, 2012; is that
12 right?
13 A. Yes.
14 Q. You reviewed the lawsuit and approved it,
15 correct?
16 A. I didn't — I never got anything to
17 review.
18 Q. Did you ever read the lawsuit?
19 A. No. I was never given any paperwork.
20 Q. Back to the incorporation of Sharp. What
21 interaction did you have with corporate lawyers when
22 they were first retained?
23 A. McAndrews?
24 Q. Correct.

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1 A. What relationship?
2 Q. What experience did you have with
3 McAndrews when you first retained them?
4 A. He was good.
5 Q. How often did you meet with him or speak
6 to him?
7 A. Once a year.
8 Q. Did he file corporate returns or other
9 documents for the company?
10 A. No. I had to file them. He just made
11 sure they were all done right, I believe.
12 Q. Have you ever had occasion to hire a
13 criminal lawyer?
14 A. I did in 1990. My mom and dad had to
15 hire one. Not me.
16 Q. Did you hire a criminal lawyer for your
17 mom and dad?
18 A. No. They hired one for me.
19 Q. Who was that?
20 A. Give me a second. You're digging back
21 far in my memory. Driscoll was the last name.
22 Q. This was a McHenry County-based criminal
23 lawyer?
24 A. No. Des Plaines.

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1 Q. What was the general nature of the reason
2 for the need for a lawyer?
3 A. Drug possession.
4 Q. Were you convicted of it?
5 A. Yes. I pled guilty.
6 Q. That was a Cook County case, then?
7 A. No. It was a McHenry County case.
8 Q. The lawyer was in Des Plaines, though?
9 A. Yes.
10 Q. But he represented you in McHenry County
11 in criminal court?
12 A. Yes.
13 Q. Throughout the case you met with the
14 lawyer?
15 A. A few times.
16 Q. While Popovich represented you in the
17 underlying personal injury case, did you ever
18 communicate with any other lawyers about your case?
19 A. At the end, yes.
20 Q. Popovich withdrew sometime in March 2015?
21 A. Correct.
22 Q. And Brad Balke entered his appearance on
23 March 19, 2015. Does that sound correct?
24 A. That is correct.

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1 Q. Popovich also withdrew that day, right?
2 A. I don't know if it was on the same day.
3 I'd have to look at the paperwork.
4 Q. Besides Mr. Balke, had you talked to any
5 other lawyers towards the end of the relationship
6 with Popovich?
7 A. Yes.
8 Q. How many?
9 A. Hundreds.
10 Q. Hundreds of lawyers?
11 A. I'm not kidding. Yes.
12 Q. Did you ask those lawyers to take your
13 case?
14 A. I asked them to review it.
15 Q. Did any of them take the case?
16 A. No.
17 Q. They all reviewed it, though?
18 A. Yes. Most took the time to review it.
19 Q. Did any of them tell you why they didn't
20 want to take the case?
21 A. There were different reasons I got from
22 various. Some people just didn't get back to me and
23 some people wrote me letters. I think I gave you
24 some of those. But I got various reasons back from



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<p style="text-align: right;">Page 37</p> <p>1 attorneys.</p> <p>2 Q. I don't recall seeing any lawyers, but I</p> <p>3 would ask you to search for those.</p> <p>4 MS. WILLIAMS: We'll search for those. I'll</p> <p>5 make a note.</p> <p>6 BY MR. FLYNN:</p> <p>7 Q. As you sit here, do you recall the basis</p> <p>8 for any attorney declining to take your personal</p> <p>9 injury case over from Popovich?</p> <p>10 A. Say that again.</p> <p>11 Q. As you sit here today, do you recall any</p> <p>12 of the reasons why any attorney declined to take</p> <p>13 your personal injury case over from the Popovich</p> <p>14 firm?</p> <p>15 A. Yes.</p> <p>16 Q. What were those reasons?</p> <p>17 A. I remember a few. One I was looking at</p> <p>18 local lawyers in McHenry County and I was told</p> <p>19 like — I can name them. My sister was married to</p> <p>20 him.</p> <p>21 Anyway, I was told if Tom Popovich says</p> <p>22 you don't have a case, you don't have a case and</p> <p>23 we're not even going to look at it. That I got a</p> <p>24 lot of it.</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. Who was that?</p> <p>3 A. There was at least three firms downtown</p> <p>4 here right near the Daley Center that I came down to</p> <p>5 see and I don't remember their names, but they — I</p> <p>6 got the same thing out of all three of them.</p> <p>7 Q. Did any of the lawyers give you any other</p> <p>8 reason for declining your case?</p> <p>9 A. Mostly it was because they knew Popovich</p> <p>10 or it was the McGuire settlement.</p> <p>11 Q. Did any lawyer tell you that they didn't</p> <p>12 want to take your case because there was</p> <p>13 questionable liability against David Gagnon?</p> <p>14 A. No.</p> <p>15 Q. Did any lawyer tell you that there was</p> <p>16 questionable liability against the property owners,</p> <p>17 the McGuires?</p> <p>18 A. No.</p> <p>19 Q. We're jumping ahead, but did you have</p> <p>20 different lawyers that handled a binding arbitration</p> <p>21 or binding mediation for you in the underlying case?</p> <p>22 A. Yes.</p> <p>23 Q. Their name was Baudin?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. That's one reason. Any others?</p> <p>2 A. That I got locally a lot of. As I</p> <p>3 started to work away from local further out finding</p> <p>4 attorneys, the thing was your decision to settle</p> <p>5 with the McGuires was a mistake and we don't take it</p> <p>6 because of that.</p> <p>7 Q. Who said that?</p> <p>8 A. Sal Ferris.</p> <p>9 Q. When did you speak to Sal Ferris?</p> <p>10 A. I don't know the exact date.</p> <p>11 Q. When did he —</p> <p>12 A. He wasn't the only one.</p> <p>13 Q. When did he say that to you, that you</p> <p>14 just described?</p> <p>15 A. He said it in a letter and he said it on</p> <p>16 the phone and he sent me an e-mail, I think. I</p> <p>17 don't remember the ways that he contacted me. I'd</p> <p>18 have to go back and look.</p> <p>19 MS. WILLIAMS: We'll find it.</p> <p>20 BY MR. FLYNN:</p> <p>21 Q. Besides Sal Ferris, can you recall any</p> <p>22 other attorney, specifically, that told you they</p> <p>23 wouldn't take the case because of your settlement</p> <p>24 with the McGuires?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Why did Brad Balke not handle the binding</p> <p>2 arbitration?</p> <p>3 A. I fired him.</p> <p>4 Q. When did you fire Brad Balke?</p> <p>5 A. I'd have to look at the dates. I'm not</p> <p>6 sure, exactly.</p> <p>7 Q. Why did you fire him?</p> <p>8 A. Because he forced me to undergo the exact</p> <p>9 mediation at the McHenry County court in front of</p> <p>10 Judge Meyer that Hans Mast set up that I</p> <p>11 specifically said no to.</p> <p>12 Q. When was this mediation?</p> <p>13 A. I'd have to look at the dates again.</p> <p>14 Q. Was it a pretrial conference?</p> <p>15 A. Yes.</p> <p>16 Q. You actually attended this pretrial</p> <p>17 conference?</p> <p>18 A. Yes, I did.</p> <p>19 Q. What happened?</p> <p>20 A. I said no.</p> <p>21 Q. You said no about what?</p> <p>22 A. They offered an amount of money and I</p> <p>23 said no.</p> <p>24 Q. The defendants offered an amount of</p>



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1 money?
2 A. Yes.
3 Q. Was this before or after the McGuires
4 settled out of the case?
5 A. They were settled.
6 Q. So there was an offer of settlement from
7 David Gagnon or his insurer?
8 A. Yes.
9 Q. Do you recall what that amount of money
10 was?
11 A. \$50,000.
12 Q. You refused the offer?
13 A. Yes.
14 Q. Why did that cause you to fire
15 Brad Balke?
16 A. He wouldn't take it any further than that
17 and he agreed to when I hired him. He agreed that
18 that was not going to be the end of it and then he
19 changed his tune, and I said, you know what -- and
20 the other thing was, I finally got through to the
21 Baudins who I wanted to take the case because they
22 had helped my family -- his dad helped my family
23 many eons earlier.
24 Q. Did you ever talk to Brad Balke about the

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1 liability or lack of liability by the McGuires, the
2 property owners in the case?
3 A. I don't think so. We were on the Gagnon
4 case.
5 Q. You didn't discuss the McGuires?
6 A. There may have been a word or something,
7 but that's not what he was there for.
8 Q. He never gave you an opinion one way or
9 the other whether the settlement was appropriate?
10 A. I don't believe Brad did, no. Like I
11 said -- I don't think he did.
12 Q. At some point after your accident did you
13 hire the Daley Disability Law Firm?
14 A. Yes.
15 Q. Was that for --
16 A. I didn't hire.
17 Q. I know you're anticipating what I'm
18 saying.
19 A. I was trying to correct myself. I did
20 not hire.
21 Q. Either way, let me try to get out my
22 question before you raise any kind of response, just
23 so she can take down --
24 A. Count before I answer.

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1 Q. That's a good idea.
2 Did you ever retain the Daley Disability
3 Law Firm?
4 A. NO.
5 Q. Did you have any relationship with Daley
6 Disability --
7 A. Yes.
8 Q. -- Law? Let me finish it before you
9 answer. I know you're anticipating what you think
10 I'm going to say, but it might not come out the way
11 you think. Either way, she can't take down both of
12 us talking over each other.
13 What relationship did you ever have with
14 the Daley Disability Law Firm?
15 A. They stepped in as a substitute counsel
16 for the law firm that I did hire.
17 Q. You originally hired some other law firm
18 to represent you in connection with social security
19 disability?
20 A. Yes.
21 Q. What was the name of that original law --
22 A. The lady's ladies name was
23 Margaret Bradshaw.
24 Q. You terminated your relationship with her

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1 one way or another?
2 A. No.
3 Q. Why did Daley Disability Law substitute
4 in for her?
5 A. I was told by -- I have to go back and
6 look at the communications exactly how it happened,
7 but I was told that, basically, they are going to be
8 taking over the hearing part of it. I don't know
9 why. I don't know whether they sub out work. I
10 don't know how it works.
11 Q. Would it be fair to say that you first
12 retained Ms. Bradshaw in 2012 sometime?
13 A. I'd have to go back and look.
14 Q. Is that approximately when you applied
15 for social security?
16 A. It sounds like it.
17 Q. The Daley Disability Law Firm came in
18 sometime in 2012 as well?
19 A. I don't know exactly when. I don't know.
20 Q. Would it be 2012 or 2013?
21 A. I know that they were there and -- I know
22 that something had to be signed when we went in for
23 the hearings. Margaret Bradshaw had to sign
24 something for the judge allowing Daley Disability to



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<p style="text-align: right;">Page 45</p> <p>1 represent me at the hearings. I don't know when 2 exactly they got involved. That's behind the 3 scenes. I didn't have anything to do with that. 4 Q. Did you file for bankruptcy while your 5 personal injury case was pending? 6 A. Yes. 7 Q. When did you file for bankruptcy? 8 A. I'd have to look at the paperwork again, 9 but I don't believe that was until, I want to say, 10 about eight or nine months, but I'm guessing, after 11 the McGuire settlement. 12 MS. WILLIAMS: The question was what month and 13 year. 14 BY THE WITNESS: 15 A. I don't know exactly. I'd have to go 16 back and look at the paperwork. 17 BY MR. FLYNN: 18 Q. Did you hire a lawyer to represent you in 19 a bankruptcy? 20 A. Yes. 21 Q. Who was that lawyer? 22 A. David Stretch. 23 MS. WILLIAMS: If it helps, we can stipulate to 24 the date the bankruptcy was filed.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Did Caroline McGuire give a deposition in 2 that case? 3 A. I believe so, yes. 4 Q. Were you present for that dep? 5 A. No. 6 Q. What about Bill McGuire's deposition? 7 A. I was not present. 8 Q. Did you e-mail back and forth with 9 Hans Mast a fair amount during the Popovich firm's 10 representation of you? 11 A. By "fair amount," what do you mean? 12 Q. Did you regularly e-mail with Hans Mast? 13 A. Yes. 14 Q. Those e-mail communications have all been 15 produced in this case? 16 A. Yes. 17 Q. On to the exhibits. This will be 1. 18 (WHEREUPON, a certain document was 19 marked Exhibit No. 1, for 20 identification, as of 02/19/2020.) 21 BY MR. FLYNN: 22 Q. Let me show you what's been marked as 23 Exhibit 1. These are one set of your Answers to 24 Interrogatories in our case, the current legal</p>
<p style="text-align: right;">Page 46</p> <p>1 MR. FLYNN: That's fine. I think we've got 2 some e-mails that may reflect when it was. I just 3 wondered if he knew offhand. 4 MS. WILLIAMS: I can stipulate, at least, that 5 it was 2014. 6 BY MR. FLYNN: 7 Q. You filed for bankruptcy while the 8 Popovich firm was still representing you — 9 A. Yes. 10 Q. — in the underlying case, correct? 11 A. Yes. 12 Q. Sometimes I'll still pause in my question 13 so if you could please pause before you answer. 14 In the underlying case you answered 15 written discovery; is that true? 16 A. I believe so. 17 Q. Then you later testified at your 18 deposition January 24, 2013, correct? 19 A. If that's the date, yes. 20 Q. Ultimately, David Gagnon was also 21 deposed, true? 22 A. Yes. 23 Q. Were you present for his deposition? 24 A. No.</p>	<p style="text-align: right;">Page 48</p> <p>1 malpractice case you filed against the Popovich firm 2 and Hans Mast. 3 Do you recognize this document? 4 A. Yes. 5 Q. We've been providing you with various 6 copies of the signature page in the case that's been 7 back and forth between me and your counsel. 8 I don't, frankly, know if this 9 verification that's attached is the one that went 10 with this document, but I'll just ask you, for the 11 record, if these are your answers, that's your 12 signature, and that this verification is accurate? 13 A. That is my signature on there, yes. 14 Q. What was the e-mail address you used 15 in the communication with Hans Mast? 16 A. Primarily it was pdulberg@comcast.net. 17 Q. His address was hansmast@comcast.net? 18 A. And he switched it to at&t.net. 19 Q. Did you use some other e-mail address as 20 well? 21 A. I may have accidentally e-mailed him a 22 couple of times from a Yahoo account. 23 Q. In answering discovery in our case, the 24 legal malpractice case, did you search through both</p>



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<p style="text-align: right;">Page 49</p> <p>1 of those e-mail accounts of yours?</p> <p>2 A. I no longer have the Yahoo account.</p> <p>3 Q. Did you search through the Comcast</p> <p>4 account?</p> <p>5 A. Yes.</p> <p>6 Q. Did you search for PDFs or attachments to</p> <p>7 those e-mails that you produced?</p> <p>8 A. Everything that I got, I turned over. I</p> <p>9 had converted the e-mails to PDFs because Comcast</p> <p>10 started purging the e-mails after so many years, so</p> <p>11 I turned them all into PDFs.</p> <p>12 MS. WILLIAMS: The question was what did you</p> <p>13 search in your in box.</p> <p>14 BY THE WITNESS:</p> <p>15 A. What did I search?</p> <p>16 BY MR. FLYNN:</p> <p>17 Q. Let me ask you a different question.</p> <p>18 You produced e-mails in this case?</p> <p>19 A. Yes.</p> <p>20 Q. You turned e-mails into PDFs and sent</p> <p>21 them to your lawyer; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Some of the e-mails I reviewed have an</p> <p>24 icon that indicates there was a PDF or some other</p>	<p style="text-align: right;">Page 51</p> <p>1 A. Yes.</p> <p>2 Q. That's generally a fair summary of Hans'</p> <p>3 opinion?</p> <p>4 A. Not quite exactly those words, but yeah.</p> <p>5 Q. The McGuires' liability as property</p> <p>6 owners was questionable because based on Hans'</p> <p>7 analysis of the evidence, they did not control the</p> <p>8 work or the manner of work of David Gagnon on the</p> <p>9 date of the accident; is that a fair summary?</p> <p>10 A. Depends on which time he said that.</p> <p>11 Q. Did he say things like that over and over</p> <p>12 again?</p> <p>13 A. He did say things like that, yes.</p> <p>14 Q. Again, I don't want to go over the facts</p> <p>15 you already testified to with regards to the date of</p> <p>16 the accident. At some point in time was</p> <p>17 William McGuire swimming in the swimming pool?</p> <p>18 A. Yes.</p> <p>19 Q. Was that an above ground pool or —</p> <p>20 A. Above ground.</p> <p>21 Q. Was there a fair amount of time during</p> <p>22 the day that Mr. McGuire was inside the house</p> <p>23 watching television?</p> <p>24 A. Maybe — he went inside the house for</p>
<p style="text-align: right;">Page 50</p> <p>1 attachment to the e-mail. Do you understand that?</p> <p>2 A. Yes.</p> <p>3 Q. Did you produce the attachments to each</p> <p>4 of the e-mails in this case?</p> <p>5 A. We went through that. I produced the</p> <p>6 attachments that I still had.</p> <p>7 Q. There were some that were not available,</p> <p>8 correct?</p> <p>9 A. Yeah. When I looked at them, 99 percent</p> <p>10 of them were already part of some other document</p> <p>11 that we turned over. I think 100 percent of them.</p> <p>12 Q. At some point in time while Hans was</p> <p>13 handling your case, did he start to communicate with</p> <p>14 you relative to his analysis of the McGuires'</p> <p>15 liability in the case?</p> <p>16 A. Yes.</p> <p>17 Q. Did he start to generally advise you that</p> <p>18 he didn't believe that there was a strong case for</p> <p>19 liability against the McGuires?</p> <p>20 A. Yes.</p> <p>21 Q. Is it fair to say that Hans' opinion was</p> <p>22 that the McGuires did not have liability in the case</p> <p>23 because they did not control the work that</p> <p>24 David Gagnon was doing?</p>	<p style="text-align: right;">Page 52</p> <p>1 probably about 45 minutes before the accident</p> <p>2 happened. I don't know that he was watching</p> <p>3 television.</p> <p>4 MR. FLYNN: Let's mark the next exhibit as 2.</p> <p>5 (WHEREUPON, a certain document was</p> <p>6 marked Exhibit No. 2, for</p> <p>7 identification, as of 02/19/2020.)</p> <p>8 BY MR. FLYNN:</p> <p>9 Q. Showing you what's been marked as</p> <p>10 Exhibit 2, which is an e-mail chain including</p> <p>11 e-mails from November 18, 2013, are these e-mails</p> <p>12 between you and Hans Mast?</p> <p>13 A. It looks like it, yes.</p> <p>14 Q. I think the time stamps on these e-mails</p> <p>15 go from the bottom, which would be page 2, to the</p> <p>16 top of the first page, correct?</p> <p>17 A. It's backwards, yes.</p> <p>18 Q. In the original e-mail at 1:28 p.m., did</p> <p>19 Hans Mast relay to you a \$5,000 settlement offer</p> <p>20 from the McGuires?</p> <p>21 A. Which — where are you at?</p> <p>22 Q. We're on Exhibit 2, which is also labeled</p> <p>23 as Bates label POP 181. At the bottom of the page,</p> <p>24 does Hans relay to you a settlement offer for</p>



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<p style="text-align: right;">Page 53</p> <p>1 \$5,000?</p> <p>2 A. Yes.</p> <p>3 Q. He was telling you that the McGuires'</p> <p>4 attorney offered to settle the case for \$5,000?</p> <p>5 A. Yes.</p> <p>6 Q. Did you have an understanding that that</p> <p>7 was a settlement just for the McGuires, not</p> <p>8 including David Gagnon?</p> <p>9 A. Yes.</p> <p>10 Q. In the e-mail Hans says, quote, "As we</p> <p>11 discussed, they have no liability in the case for</p> <p>12 what Dave did as property owners. So they will</p> <p>13 likely get out of the case on a motion at some</p> <p>14 point, so my suggestion is to take the \$5,000 now."</p> <p>15 Is that an accurate reading?</p> <p>16 A. Of that sentence, yes.</p> <p>17 Q. Is it fair to say that he suggested that</p> <p>18 you take the \$5,000 but didn't force you to take it?</p> <p>19 A. It says, "So my suggestion is..."</p> <p>20 Q. Then did you respond to the e-mail?</p> <p>21 A. Yes.</p> <p>22 Q. Hans replied again at 8:07 p.m. that same</p> <p>23 day, right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 55</p> <p>1 David was an independent contractor and that the</p> <p>2 McGuires weren't liable because they had hired</p> <p>3 somebody outside even though it's their own son,</p> <p>4 he's an adult, outside to do the work and that they</p> <p>5 weren't responsible.</p> <p>6 Q. By the way, how old was David at the time</p> <p>7 that this accident occurred?</p> <p>8 A. I'm adding. If I was 41 — I don't know</p> <p>9 what his birthday is, but I'm assuming he would be</p> <p>10 44, 45.</p> <p>11 Q. Is it fair to say that there were two</p> <p>12 40-plus-year-olds, a 41- and a 44-year-old trimming</p> <p>13 trees with a chainsaw in David's parent's backyard</p> <p>14 that day, correct?</p> <p>15 A. I was not using it. There was one</p> <p>16 44-year-old using a chainsaw.</p> <p>17 Q. You, the 41-year-old was holding some</p> <p>18 branches for him?</p> <p>19 A. Yes. Just before the accident, yes.</p> <p>20 Q. Up until this point in time when Hans is</p> <p>21 providing this legal analysis to you, you had a fair</p> <p>22 number of occasions to interact with lawyers, as</p> <p>23 we've discussed today, correct?</p> <p>24 A. At this point, the only lawyer that I</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. He said, "Paul, whether you like it or</p> <p>2 not, they don't have a legal liability for your</p> <p>3 injury because they were not directing the work."</p> <p>4 Is that right?</p> <p>5 A. Part of it, yes.</p> <p>6 Q. Was my prior summary of Hans' legal</p> <p>7 analysis a fair summary in view of these e-mails and</p> <p>8 his opinion that he relayed to you?</p> <p>9 A. I think it went further than this, and</p> <p>10 other things, but yes.</p> <p>11 Q. As far as these e-mails, I've</p> <p>12 accurately —</p> <p>13 A. This e-mail, yes.</p> <p>14 Q. What else did he tell you about the</p> <p>15 McGuires and why he didn't think they would be found</p> <p>16 liable in the case?</p> <p>17 A. I'm pulling out of memory because I can't</p> <p>18 quote which document it's off of.</p> <p>19 Q. That's what we're here for.</p> <p>20 A. I can only give you the gist.</p> <p>21 Q. I'll ask you for the exact language, but</p> <p>22 if you don't have it —</p> <p>23 A. At one point he defined what an</p> <p>24 independent contractor is for me and he said that</p>	<p style="text-align: right;">Page 56</p> <p>1 interacted with was the first one.</p> <p>2 Q. I'm talking about in your lifetime. You</p> <p>3 had a corporate lawyer, you had a criminal lawyer,</p> <p>4 another personal injury lawyer —</p> <p>5 A. I didn't hire —</p> <p>6 Q. Let me finish. You had experience with</p> <p>7 lawyers representing you up to this point in time?</p> <p>8 A. Yes.</p> <p>9 Q. Did you have an understanding that</p> <p>10 lawyers evaluate cases differently?</p> <p>11 A. Yes.</p> <p>12 Q. And judges evaluate cases differently?</p> <p>13 A. Sure. That's fair.</p> <p>14 Q. Would it be fair to say that some laws in</p> <p>15 our country are clearer and some are open to</p> <p>16 interpretation?</p> <p>17 A. I think all of them are.</p> <p>18 MS. WILLIAMS: Objection. Calls for</p> <p>19 speculation.</p> <p>20 If you understand the question, you can</p> <p>21 answer it.</p> <p>22 BY MR. FLYNN:</p> <p>23 Q. Would you say, for example, that the tax</p> <p>24 code is a little more clearcut than common law</p>



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1 that's created by cases and case precedent?
2 A. I'm not real familiar with tax law. I
3 have accountants for that.
4 Q. How about an easier question. The stop
5 sign means that you stop, and if you go through it,
6 it's pretty clear that you're liable for a traffic
7 violation?
8 A. I'll agree with that.
9 Q. The legal liability for a property owner
10 in Illinois might be a little more complicated; is
11 that a fair statement?
12 A. I don't know.
13 Q. Would it be fair to say, in your opinion
14 or your knowledge of the law, the property owner
15 isn't necessarily liable because somebody is injured
16 on their property?
17 A. Are you talking about what I know now or
18 what I knew back when this was?
19 Q. At any time.
20 A. What I know now is in the circumstances
21 that we were in, they were very liable.
22 Q. I'm just asking if -- just because
23 somebody is injured on a property owner's property,
24 they are not necessarily liable, correct? Other

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1 factors are required too.
2 MS. WILLIAMS: I'm going to object for -- he's
3 not an expert and can't testify to legal analysis.
4 BY MR. FLYNN:
5 Q. As you sit here today, do you know
6 whether a premises liability case involves multiple
7 factors to prove liability against the property
8 owner?
9 A. I don't know. I'd say that's fair.
10 You're asking the wrong person for that.
11 Q. It was Hans' opinion that the McGuires
12 did not control the work based on the evidence,
13 correct?
14 A. In my opinion?
15 Q. That's not what I'm asking.
16 Was it Hans' opinion --
17 A. I can't --
18 Q. Let me just finish.
19 Did Hans tell you that it was his opinion
20 that the McGuires were not liable because they did
21 not control the work?
22 A. He said that right there, yes.
23 Q. Do you believe that he truly felt that
24 way? That was his legal opinion?

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1 A. Do you want the Monday morning
2 quarterbacking version or at the time?
3 Q. I'm asking if at that time you felt that
4 he truly believed that the McGuires did not have
5 liability?
6 A. At the time I trusted him, yes. I hired
7 him to represent me, and yeah.
8 Q. You believed that he was relying his
9 honest legal opinion to you at that time?
10 A. Yes.
11 Q. Including on November 18, 2013?
12 A. Yes.
13 Q. You did not accept the settlement offer
14 of \$5,000 that he relayed to you on that day,
15 correct?
16 A. Correct.
17 Q. Did you ultimately meet with Hans to
18 discuss the settlement offer?
19 A. I think it was the day before this, but
20 I'm not sure. It was either the day before or the
21 day after.
22 MS. WILLIAMS: I think the question was, did
23 you meet with him, at all, not the date.
24

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1 BY THE WITNESS:
2 A. Yes.
3 MR. FLYNN: Can we mark this as Exhibit 3,
4 please.
5 (WHEREUPON, a certain document was
6 marked Exhibit No. 3, for
7 identification, as of 02/19/2020.)
8 BY MR. FLYNN:
9 Q. Showing you what's been marked as
10 Exhibit 3. Do you recognize this memorandum?
11 A. Yes.
12 Q. You may have seen it from the document
13 production that we made in this case. This is a
14 memorandum drafted by Hans Mast, which purportedly
15 memorializes a meeting that he had with you on
16 November 20, 2013.
17 Does this refresh your memory as to when
18 you met with him or if you met with him?
19 A. If he took the memorandum on the same
20 day, then sure.
21 Q. In the memo Hans says, "I met with Paul
22 and his friend."
23 Do you see that?
24 A. Yes.



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1 Q. Did you meet with Hans and some third
2 person —
3 A. Yes.
4 Q. — at or about this time regarding the
5 case?
6 A. Yes.
7 Q. Who was that friend?
8 A. Tom Kost.
9 Q. Who is Tom Kost?
10 A. My brother.
11 Q. Not that it matters necessarily for
12 privilege purposes, but can you tell me how Tom Kost
13 is your brother?
14 A. We have the same mom.
15 Q. He was with you and observed the meeting
16 between you and Hans?
17 A. Yes.
18 Q. The \$5,000 settlement offer was
19 discussed, correct?
20 A. Yes.
21 Q. At that time did Hans, again, relay his
22 opinion as to the questionable liability about the
23 McGuires — strike that.
24 Did he relay to you his opinion about the

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1 questionable nature of the McGuires' liability?
2 A. At the meeting with Tom, yes.
3 Q. He advised you they maintain they were
4 not directing Dave's work. That was the McGuires'
5 position, correct?
6 A. I don't know that he stayed on that at
7 that meeting. At different times he gave different
8 reasons.
9 Q. The next line says, "Paul maintains the
10 McGuires controlled everything that Dave was doing."
11 Is that an accurate reflection of your
12 opinion?
13 A. Yes.
14 Q. As you sit here today, do you know if
15 that statement is consistent with your own
16 deposition testimony from the underlying case?
17 A. Yes.
18 Q. We'll come back to that. Did you tell
19 Hans that you wanted to read the depositions of the
20 McGuires and David Gagnon's depositions?
21 A. Say that again.
22 Q. Did you tell Paul that you wanted to read
23 the depositions of the McGuires and Dave Gagnon's
24 depositions?

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1 A. Did I tell Paul?
2 Q. I'm sorry. Did you tell Hans that?
3 A. That I wanted to read the McGuires and
4 David Gagnon's depositions?
5 Q. Yes.
6 A. Yes, I did.
7 Q. What was the purpose of your wanting to
8 review those depositions?
9 A. Hans had told me that what they said in
10 their depositions meant that they had no liability.
11 Q. You wanted to review the testimony to
12 determine whether you wanted to consider the \$5,000
13 settlement offer; is that correct?
14 A. Right.
15 Q. Did you do that?
16 A. Eventually, yes.
17 Q. Before you accepted the offer?
18 A. I think so.
19 Q. So sometime after this meeting on
20 November 20, 2013 and before you accepted the
21 settlement offer on January 29, 2014, did you review
22 those three deposition transcripts?
23 A. I'll correct you. I did not accept the
24 offer on January 20th. I signed a release on

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1 January 29th.
2 Q. Fair point. Did you read the depositions
3 between those two dates, November 20, 2013 and
4 January 29, 2014?
5 A. Yes.
6 Q. Those are —
7 A. I believe I asked him -- I don't know --
8 it may be a little earlier because I don't know that
9 I asked him before or after the meeting. I don't
10 remember. I'd have to go back in the e-mails to
11 give the date.
12 Q. Some point in time between those two
13 dates you read the depositions?
14 A. I may have asked for them before. I
15 don't know without seeing the e-mail. It was,
16 roughly, in the last quarter of that year, yes. Or
17 the first month. I don't remember the first time
18 that I asked to read them. I don't remember off the
19 top of my head.
20 Q. At any point in time did you ever grant
21 Hans authority to make a settlement demand in the
22 case?
23 A. No.
24 MR. FLYNN: Mark this as Exhibit 4.



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<p style="text-align: right;">Page 65</p> <p>1 (WHEREUPON, a certain document was 2 marked Exhibit No. 4, for 3 identification, as of 02/19/2020.) 4 BY MR. FLYNN: 5 Q. Showing you what's been marked as 6 Exhibit 4. This is a copy of the original complaint 7 in this instant case. It reflects a filing date of 8 November 28, 2017. 9 Is this your original legal malpractice 10 complaint against the Popovich firm and Hans Mast? 11 A. I believe so. 12 Q. Did you review and approve the 13 allegations in this complaint? 14 A. For the most part. I wanted to reword 15 some things, but the lawyer, they do their thing. 16 Q. At the time you were represented by the 17 Gooch firm is when you filed this lawsuit, correct? 18 A. Yes. 19 Q. Directing your attention back to 20 Exhibit 1, if you still have it. If you could turn 21 to page 10. 22 The answer to Interrogatory No. 24 23 indicates that on November 4, 2013, Mast was granted 24 authority to investigate a settlement but a specific</p>	<p style="text-align: right;">Page 67</p> <p>1 offer to Hans Mast before Christmas Day, which would 2 be December 25, 2013? 3 A. Right. 4 Q. Then did Hans mail to you a settlement 5 release by letter dated January 24, 2014? 6 A. I'd like to see the letter, but yeah, I 7 believe so. 8 Q. I believe it's -- 9 A. I believe he had to mail it a couple 10 times because I didn't get it. 11 MR. FLYNN: Let's mark Exhibit 5. 12 (WHEREUPON, a certain document was 13 marked Exhibit No. 5, for 14 identification, as of 02/19/2020.) 15 BY MR. FLYNN: 16 Q. Showing you what's been marked as 17 Exhibit 5. I'll represent to you that this is a 18 copy of the second amended complaint that you filed 19 in this case by your new lawyers, your current 20 lawyers. If I could direct your attention to 21 Exhibit D attached to this Exhibit 5. 22 Is Exhibit D a January 24, 2014 cover 23 letter from Hans Mast to you enclosing the general 24 release and settlement agreement from defense</p>
<p style="text-align: right;">Page 66</p> <p>1 dollar amount was never provided. Do you see that? 2 A. He was verbally granted authority to 3 investigate, yes. 4 Q. Who did you want him to investigate a 5 settlement with? 6 A. The McGuires. 7 Q. Just the McGuires or the McGuires and -- 8 A. He wanted to do it. I didn't. I said, 9 "If you want to look at that, go ahead." 10 Q. Did you grant him authority to 11 investigate a settlement with David Gagnon as well? 12 A. I don't know if I did or not, off the top 13 of my head, but that would have been much later. 14 Q. Eventually did you tell Hans that you 15 would agree to accept the \$5,000 settlement offer 16 from the McGuires? 17 A. Eventually did I tell him that? 18 Q. Yes. 19 A. Yes. 20 Q. When did you tell him that? 21 A. I want to say just before Christmas in 22 December of 2013. 23 Q. There's no doubt in your mind that you 24 relayed your acceptance of the \$5,000 settlement</p>	<p style="text-align: right;">Page 68</p> <p>1 counsel for Caroline and Bill McGuire? 2 A. That's what it says. 3 Q. In the letter did he ask you to -- it 4 looks like it might be a typo. It says, "Please 5 release and return it to me in the enclosed 6 self-addressed stamped envelope at your earliest 7 convenience." 8 A. Right, but I believe it was just a 9 release -- it was all tied into one. 10 Q. This letter is unsigned. Did you receive 11 the letter unsigned? 12 A. Did I receive this unsigned? 13 Q. Yes. 14 A. Yes. 15 Q. Have you ever seen a signed copy of this 16 letter? 17 A. No. 18 Q. If I could direct your attention to the 19 next page of Exhibit D. Is that page 1 of the 20 general release and settlement agreement? 21 A. Exhibit D? 22 Q. Correct. 23 MS. WILLIAMS: Turn the page. 24</p>



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1 BY MR. FLYNN:
2 Q. Is this what you received attached to the
3 cover letter?
4 A. I don't think so. Let me see. Yes, this
5 looks like it because it's got these things I
6 remember.
7 Q. When did you receive this letter and the
8 attachment?
9 A. I would say I wrote back on January 29th
10 and I probably got it that day, signed it and sent
11 it back.
12 Q. The copy of the release is also unsigned.
13 It's attached as exhibit -- part of Exhibit D to
14 your second amended complaint.
15 Do you see the signature lines and the
16 notary signature here that's missing?
17 A. Yes.
18 Q. Is this the document that you signed and
19 sent back to Hans Mast?
20 A. The document that I signed had my
21 signature.
22 Q. I'm asking if this is the same document
23 that you signed and sent back to him?
24 A. Yes.

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1 Q. Right now we don't have a signed copy. I
2 don't know that I've seen one in the case.
3 MS. WILLIAMS: Can we go off the record for a
4 second?
5 MR. FLYNN: Sure.
6 (WHEREUPON, discussion was had
7 off the record.)
8 BY MR. FLYNN:
9 Q. Is there any doubt, in your mind, that
10 Exhibit D is the letter and attachment that you
11 received from Hans Mast?
12 A. No. I believe that this is it.
13 Q. You signed some copy of this release and
14 sent it back to Hans on January 29; is that correct?
15 A. Yes.
16 Q. You accepted the settlement offer prior
17 to Christmas and presumably defense counsel or Hans
18 drafted the settlement release and then Hans mailed
19 it to you, correct?
20 A. Yes.
21 Q. At any point in time from December 25th
22 until you received this settlement release, did you
23 contact any lawyer to discuss whether it would be
24 appropriate to let the McGuires out for 5,000?

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1 A. I believe I contacted Hans again.
2 Q. Besides Hans, did you talk to anyone
3 else?
4 A. No.
5 Q. Was there anything preventing you from
6 seeking a second opinion from some other lawyer at
7 that time?
8 A. No.
9 Q. Directing your attention to Exhibit E
10 attached to the second amended complaint, the second
11 amended complaint, again, being Exhibit 5. Is this
12 an e-mail from you to Hans on January 29, 2014?
13 A. This is the e-mail chain between me and
14 Hans, yes.
15 Q. Down below at the bottom of the page,
16 January 29 at 10:51 a.m., it appears that you were
17 questioning Hans regarding some of the language in
18 the release, including social security disability
19 check boxes. Do you see that?
20 A. Yes.
21 Q. Hans responded to you and then at the top
22 of the page here at 1:59 p.m. it says, "Okay, it's
23 signed and in the mail."
24 A. Correct.

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1 Q. What did you mean by that?
2 A. I signed it and mailed it.
3 Q. Did you -- where did you mail it from?
4 A. My home.
5 Q. How did you do that?
6 A. Put a stamp on the envelope and put it in
7 the mailbox, put the flag up and waited for the
8 mailman.
9 Q. Is the mailbox attached to your home or
10 is it --
11 A. It's out on the street.
12 Q. You walked down there and you put the
13 mail -- the envelope in the mailbox, put the flag up
14 and --
15 A. That is correct.
16 Q. Your understanding of signing that
17 release and sending it back to your lawyer was that
18 you would agree to take the \$5,000 settlement,
19 correct?
20 A. Yes.
21 Q. Hans didn't deliver the letter to you
22 personally. He mailed it to you, correct?
23 A. He mailed it to me?
24 Q. He mailed it to you.



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1 A. Correct. U.S. mail.
2 Q. Do you recall an allegation in your
3 complaint or amended complaint or second amended
4 complaint in this case alleging that you were
5 pressured or alleging undue influence by Hans in
6 urging you to accept the \$5,000 settlement from the
7 McGuires?
8 A. Yes.
9 Q. How is it, as you sit here today, can you
10 tell me how Hans unduly influenced you to accept the
11 \$5,000 settlement offer?
12 A. I don't know what Hans was thinking. How
13 did I feel influenced?
14 Q. Unduly influenced.
15 Let me put it this way. He didn't put a
16 gun to your head?
17 A. No.
18 Q. He suggested that you take the
19 settlement?
20 A. Correct.
21 Q. He didn't force you to take the
22 settlement?
23 A. Correct.
24 Q. It was your decision?

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1 A. Correct.
2 Q. You signed it and you sent it back to him
3 in the mail?
4 A. Yes.
5 Q. Aside from your e-mails with Hans on
6 January 29, did you call him that day?
7 A. I believe so.
8 Q. Did you also discuss whether it was
9 appropriate to accept the McGuires' \$5,000
10 settlement offer at that time?
11 A. Yes.
12 Q. You deliberated on it and decided to take
13 it, correct?
14 A. There wasn't much -- it was take it or
15 get nothing.
16 Q. You had the opportunity to deliberate on
17 it, correct?
18 A. For that day, yeah.
19 Q. You had reviewed the transcripts of the
20 McGuire depositions and David Gagnon's depositions
21 in order to provide you with some information in
22 order to determine whether to accept the settlement
23 offer, correct?
24 A. I believe I did try to read those, yes.

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1 Q. Did you call Hans or e-mail him and
2 question him with respect to the evidence, the
3 testimony contained in those deposition transcripts?
4 A. Yes.
5 Q. What did you say to him and what did he
6 say to you?
7 A. There were many conversations over the
8 phone and I'm sure some through e-mails.
9 Q. He continued to tell you that it was his
10 opinion that the liability on the McGuires is
11 questionable because they did not control
12 David Gagnon's work that day, correct?
13 A. It depends on which time. Sometimes he
14 said because they didn't tell them how to squeeze
15 the trigger. It depends which time you are talking
16 about.
17 Q. Again, there was nothing preventing you
18 from seeking a second opinion from some other lawyer
19 at the time you signed the settlement release and
20 sent it back to Hans, correct?
21 A. From the time I received it, signed it
22 and sent it back?
23 Q. Right.
24 A. No. It was a matter of hours. I got it

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1 that morning.
2 Q. You decided to mail it that day, right?
3 A. He needed it. He said now or you're not
4 going to get anything.
5 Q. There was nothing preventing you from
6 seeking the advice of another attorney at that time?
7 A. At that time it was time. It was now or
8 nothing.
9 Q. You were in the comfort of your own house
10 when you received the letter, correct?
11 A. Yes.
12 Q. You had the ability to go find another
13 lawyer and ask them to discuss the case at that
14 time. You had done it hundreds of times earlier --
15 strike that.
16 After the settlement with the McGuires,
17 you continued to prosecute the case against Gagnon,
18 correct?
19 A. Yes.
20 Q. Did you have an understanding as to what,
21 if any, insurance coverage he had?
22 A. Yes.
23 Q. How much was that?
24 A. What time frame are you talking about?



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1 Q. What was your initial understanding as to
2 the limits on David Gagnon's insurance coverage?
3 A. Hans Mast told me he had \$100,000.
4 Q. Was that in an e-mail?
5 A. There were — not initially, no, but
6 later on he reiterated that in e-mails, yes.
7 Q. Did you, ultimately, learn that there was
8 some additional amount of coverage with respect to
9 Gagnon's policy?
10 A. Long after Hans Mast was gone, not part
11 of the case.
12 Q. How much was the coverage?
13 A. The Allstate coverage, I believe, was
14 300,000.
15 Q. We'll talk about the settlement later,
16 but did you ultimately settle the case again Gagnon
17 for 300,000?
18 A. I believe it went to binding mediation.
19 Q. Was there an award of \$300,000 based on a
20 high/low agreement?
21 A. Yes.
22 Q. Is it fair to say that if Hans made a
23 mistake about the \$100,000 in coverage, that that
24 was corrected and there was never any harm done as a

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1 result of his —
2 A. No.
3 Q. Explain to me how you were harmed by the
4 representation that there was \$100,000 in coverage.
5 A. You want me to explain?
6 Q. Yes.
7 A. Had I known the value of the case, I
8 would have not filed for bankruptcy.
9 Q. Explain to me why one has something to do
10 with the other.
11 A. Is my family and me going to dump money
12 into a black hole that we can't recover or is there
13 a light at the end of the tunnel where I can pay
14 them back.
15 Q. At the time that you filed for
16 bankruptcy, had any settlement offer been made from
17 David Gagnon or his lawyers to you?
18 A. At the time of when?
19 Q. When you filed for bankruptcy.
20 A. I don't think so. I'd have to check the
21 dates, but I don't think so.
22 Q. As the case was progressing against
23 David Gagnon, were your doctors deposed?
24 A. As the case progressed with David Gagnon,

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1 I believe they were deposed. I don't remember. I'd
2 have to look at the dates.
3 Q. Discovery continued on in the case?
4 A. I believe one doctor was deposed after
5 the McGuire settlement. I'm not sure, though.
6 Q. Did Hans continue to represent you for
7 some period of time?
8 A. Yes.
9 MR. FLYNN: I'll have you mark this as
10 Exhibit 6.
11 (WHEREUPON, a certain document was
12 marked Exhibit No. 6, for
13 identification, as of 02/19/2020.)
14 BY MR. FLYNN:
15 Q. Showing you what's been marked as
16 Exhibit 6. Do you recognize this e-mail chain?
17 A. Yes.
18 Q. This is from September 23, 2014. If we
19 go from the bottom up, it appears that Hans said to
20 you that he wanted to give you the option of finding
21 other counsel at this point if you really want to
22 take the case to trial, which I think ultimately
23 will be necessary. Correct?
24 A. Are we at "before I proceed" or "that's

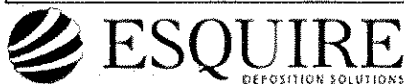
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1 the very reason"?
2 Q. "That's the very reason."
3 Is it fair to say he was suggesting you
4 find another counsel in the case at that point?
5 A. Yes.
6 Q. He also said, "I just do not believe
7 strongly that defense counsel will offer much in the
8 way of settlement."
9 Do you see that?
10 A. Yes.
11 Q. That's his opinion regardless of what he
12 believed the coverage limits to be; is that a fair
13 statement?
14 A. Yes.
15 Q. You responded to him, he responded to you
16 and then you wrote an e-mail to him at 8:25 p.m.
17 that night?
18 A. Okay.
19 Q. Do you see that? Did you say, "First,
20 I'm sorry that I'm not a better witness to help
21 prove David cut me with a chainsaw"?
22 A. Yes.
23 Q. Did you start to look for other lawyers
24 to help you in your case against Gagnon at that



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<p style="text-align: right;">Page 81</p> <p>1 point in time?</p> <p>2 A. I believe I did, that summer. This is</p> <p>3 fall, September.</p> <p>4 Q. You had already started looking for new</p> <p>5 lawyers?</p> <p>6 A. I believe that Hans had told me to start</p> <p>7 looking for a new lawyer in April of that year.</p> <p>8 Q. Did he say why?</p> <p>9 A. We'd have to read his thing. He says</p> <p>10 why.</p> <p>11 Q. Do you recall why he said that to you?</p> <p>12 A. He did not feel that the case was</p> <p>13 provable against David. He did not feel the value</p> <p>14 of the case was worth it. He did not feel --</p> <p>15 actually, this is 2014. The dates are rough.</p> <p>16 Q. He thought the case against David was</p> <p>17 difficult, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever described the case as a he</p> <p>20 said, she said with respect to the facts of the</p> <p>21 accident?</p> <p>22 A. He described that to me many times.</p> <p>23 Q. Have you also --</p> <p>24 A. And I used that back, yes.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. With respect to what points?</p> <p>2 A. All of it. He was dumping me and he was</p> <p>3 coming up with his own excuses.</p> <p>4 Q. You and David were the only ones that</p> <p>5 witnessed this accident?</p> <p>6 A. Correct.</p> <p>7 Q. Based on your understanding of how the</p> <p>8 evidence came out in the case, would you agree that</p> <p>9 there were differences with respect to the version</p> <p>10 of events?</p> <p>11 A. Oh, yeah.</p> <p>12 Q. There were differences between what he</p> <p>13 said happened and what you said happened?</p> <p>14 A. Oh, definitely.</p> <p>15 Q. Would it be fair to say, then, it would</p> <p>16 be up to the trier of fact, whether it be a judge or</p> <p>17 a jury, to determine who they believed?</p> <p>18 MS. WILLIAMS: Objection. Calls for a legal</p> <p>19 conclusion.</p> <p>20 You can answer, if you understand.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I believe it would be up to a judge or</p> <p>23 jury, sure.</p> <p>24</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Have you ever described this case as a he</p> <p>2 said, she said case?</p> <p>3 A. I may have. I don't know.</p> <p>4 Q. It is your word against David Gagnon's as</p> <p>5 to what happened and whose fault it was that day?</p> <p>6 A. That's what Hans explained to me as what</p> <p>7 the problem was.</p> <p>8 Q. Did you ever describe the accident as a</p> <p>9 he said, she said?</p> <p>10 A. I don't think I called David a "she said"</p> <p>11 or me a "she said." I don't know. Right here I do.</p> <p>12 Q. What do you say there?</p> <p>13 A. I said, "I'm sorry that I'm not a better</p> <p>14 witness to help prove David cut me with a chainsaw."</p> <p>15 Q. He was denying that he even cut you,</p> <p>16 correct?</p> <p>17 A. No, he never denied that.</p> <p>18 Q. What was your reason for writing this</p> <p>19 sentence in that way?</p> <p>20 A. Because Hans said that he believed David</p> <p>21 over me.</p> <p>22 Q. With respect to what fact at issue?</p> <p>23 A. His deposition versus mine. He said that</p> <p>24 I didn't make a good witness.</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MR. FLYNN:</p> <p>2 Q. At the bottom of Exhibit 7 you say,</p> <p>3 "Bottom line Hans... do the best you can with what</p> <p>4 you got."</p> <p>5 I'm sorry. I didn't mark this one yet.</p> <p>6 My apologies.</p> <p>7 (WHEREUPON, a certain document was</p> <p>8 marked Exhibit No. 7, for</p> <p>9 identification, as of 02/19/2020.)</p> <p>10 BY MR. FLYNN:</p> <p>11 Q. Showing you what's been marked as</p> <p>12 Exhibit 7. Is this an e-mail chain between you and</p> <p>13 Hans?</p> <p>14 A. I don't think it's a chain. I think it's</p> <p>15 one.</p> <p>16 Q. Point is well taken. It's you writing to</p> <p>17 Hans?</p> <p>18 A. Yes.</p> <p>19 Q. At the bottom it sounds like you had been</p> <p>20 in the hospital with a migraine and then you wrote,</p> <p>21 "Bottom line, Hans... do the best you can with what</p> <p>22 you got."</p> <p>23 A. Yes.</p> <p>24 Q. What did you mean by that?</p>



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<p style="text-align: right;">Page 85</p> <p>1 A. He wanted to settle, and I can tell you 2 right now this letter was written after a very 3 traumatic experience and — let me read it and 4 refresh myself. I'm melting down in this letter. 5 Q. You said after a traumatic experience. 6 Are you referring to the bankruptcy filing from that 7 day? 8 A. That, in combination with migraines, yes. 9 Q. David Stretch was your lawyer that filed 10 bankruptcy for you? 11 A. Yes. 12 Q. Did you meet with Mr. Stretch and discuss 13 the bankruptcy process before you hired him? 14 A. Yes. 15 Q. How long did you meet with him? 16 A. I think I asked about it. I don't know. 17 It may have been a couple of months or a couple 18 weeks before it got filed. I wanted to learn about 19 it. 20 Q. Did you, ultimately, list the case 21 against David Gagnon as an asset in your bankrupt 22 filing? 23 A. Yes, I did. 24 Q. Is that why the bankruptcy trustee became</p>	<p style="text-align: right;">Page 87</p> <p>1 to between April and the time you drafted this 2 e-mail on September 26? 3 A. I couldn't count that high, probably. 4 Q. Quite a few? 5 A. Yeah. 6 Q. Did any of them take your case? 7 A. No. 8 MR. FLYNN: Mark this as Exhibit 8. 9 (WHEREUPON, a certain document was 10 marked Exhibit No. 8, for 11 identification, as of 02/19/2020.) 12 BY MR. FLYNN: 13 Q. Showing you what's been marked as 14 Exhibit 8. Is this an e-mail from you to Hans Mast? 15 A. Yes. It's an e-mail chain, yes. 16 Q. On February 22, 2015 at 7:42 p.m. you 17 wrote to Hans, correct? 18 A. Yes. 19 Q. Halfway down in that e-mail message you 20 said, quote, "Now I'm left wondering... how hard it 21 is to sue an attorney?" 22 A. That is true. 23 Q. You wrote that? 24 A. Yes.</p>
<p style="text-align: right;">Page 86</p> <p>1 involved with the binding mediation? 2 A. Yes. 3 Q. Did you ever meet the bankruptcy trustee? 4 A. Yes. The first one. 5 Q. What was the name of that person? 6 A. The first one was Heeg was her last name. 7 H-e-e-g, I think. 8 Q. Again, we established that Brad Balke 9 became your lawyer in the case on March 19, 2015, 10 correct? 11 A. Yes. 12 Q. Is it fair to say that your relationship 13 with Hans Mast was deteriorating over the fall and 14 beginning of the winter of 2015? 15 A. I would say it had been deteriorating 16 long before that. You can see from the last exhibit 17 I'm melting down and it was already started 18 deteriorating. 19 Q. By the time you drafted Exhibit 7, had 20 you talked to other lawyers about taking your case? 21 A. I have to go back and look, but probably. 22 If he told me to look at other lawyers in April 23 before this, yes. 24 Q. How many lawyers would you say you talked</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. The next line you wrote, "And yes, I am 2 and have been looking for someone who will take this 3 case..." 4 A. That is not in reference to suing the 5 attorney. That was in reference to the Gagnon case. 6 Q. What did the reference to suing an 7 attorney mean? 8 A. That was me being angry. 9 Q. With Hans? 10 A. Yes. I was seeing red. 11 Q. You're suggesting that you may sue him? 12 A. Yeah. I didn't know that I could. I'm 13 wondering about it. 14 Q. You, basically, made a threat, whether it 15 be a veiled threat or an overt threat to sue him, 16 correct? 17 A. Yes. 18 Q. You, ultimately, sued him for legal 19 malpractice, right? 20 A. Yes. 21 Q. Is that what you had in mind when you 22 wrote this? 23 A. No. This was about dropping Gagnon. The 24 malpractice is about dropping the McGuires.</p>



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1 Q. This —
2 A. We're talking — this is 2015.
3 Q. In this 2015 e-mail you are suggesting to
4 Hans that you may sue him because of the McGuire
5 settlement; is that right?
6 A. No.
7 Q. Then what is it that you're saying to
8 him?
9 A. That if he damaged the Gagnon case, I
10 didn't know if he did or didn't, and I'm threatening
11 because I'm angry. You can see, again, I'm melting
12 down here. These are emotional outbursts, I guess.
13 Q. Moving up the page a little bit also on
14 February 22, 2015 at 8:14 p.m., you say, "To be
15 honest, you took this case knowing it was my word
16 versus his."
17 A. Yes.
18 Q. He said, he said, right?
19 A. Yes.
20 Q. Is that a fair characterization of the
21 case, your word against David's?
22 A. That's how Hans kept describing it.
23 That's the way I put it back to him, yes.
24 Q. You didn't correct him or dispute his

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1 characterization, did you?
2 A. No. I used his characterization.
3 Q. You agreed with it?
4 A. He said — how did it go? We had
5 conversations between these e-mails on the phone.
6 Then we would hang up and I would get angry and type
7 it in an e-mail, type whatever it was that bothered
8 me so he had it.
9 Q. Let me ask another question, if that's
10 okay.
11 Did you ever correct Hans if he called
12 this a he said, he said case? Did you ever say it's
13 more than that?
14 A. Do I ever say it's more than that?
15 Q. Did you ever correct him? If he said
16 it's a he said, he said case, did you say no, that's
17 not right?
18 A. He said there's no witnesses. I said,
19 "I'm a witness."
20 Q. You're one of the hes. It's your word
21 against David Gagnon's, as you said in this e-mail?
22 A. Yes.
23 MR. FLYNN: If I could have you mark that as
24 Exhibit 9.

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1 (WHEREUPON, a certain document was
2 marked Exhibit No. 9, for
3 identification, as of 02/19/2020.)
4 BY MR. FLYNN:
5 Q. Exhibit 9, is that Brad Balke's
6 substitute appearance that was filed on March 19,
7 2015 in the case against Gagnon?
8 A. It looks like it, yes.
9 Q. Back to Exhibit 5, which is the second
10 amended complaint. If I could direct your attention
11 to Exhibit F. This appears to be a more complete
12 copy of another e-mail we just talked about. Is
13 Exhibit F more of the February 22, 2015 e-mail
14 chain?
15 A. I'm not sure if that's separate or the
16 same. Oh, it looks like it.
17 Q. At 7:20 p.m. Hans wrote to you and said,
18 "Paul, I can no longer represent you in the case.
19 We obviously have differences of opinion as to the
20 value of the case."
21 Right?
22 A. Yes.
23 Q. He says, "I've been telling you over a
24 year now the problems with the case and you just

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1 don't see them."
2 Correct?
3 A. That's what it says.
4 Q. Obviously, a difference of opinion,
5 right?
6 A. Yes. Are you talking about difference of
7 opinion as to the value or difference of opinion of
8 the problems within the case?
9 Q. Let's go on. He says, "You keep telling
10 me how injured you are and completely ignore that it
11 doesn't matter if you passed away from the accident
12 because we still have to prove that the defendant
13 was at fault. While you think it is very clear, it
14 is not. My guess is that seven out of ten times you
15 will lose the case outright. That means zero.
16 That's why I've been trying to convince you to agree
17 to a settlement. You clearly do not want to."
18 Did I accurately read that?
19 A. Just that part of that paragraph, yes.
20 Q. So Hans is telling you that in his
21 opinion your case against Gagnon you're going to
22 lose it seven out of ten times, correct?
23 A. In this one, yes.
24 Q. He's acknowledging that you may have a



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<p style="text-align: right;">Page 93</p> <p>1 chance.</p> <p>2 A. I think later on he says nine out of ten.</p> <p>3 Q. In this e-mail he says seven out of ten</p> <p>4 you will lose.</p> <p>5 A. Yes.</p> <p>6 Q. He's recognizing three times out of ten</p> <p>7 you may win, right?</p> <p>8 A. I don't know what Hans is thinking.</p> <p>9 Q. Is that what he said?</p> <p>10 A. He says seven out of ten times you lose.</p> <p>11 Q. You understood that there are risks in</p> <p>12 taking the case to trial that you could lose?</p> <p>13 A. There are unforeseen risks, yes.</p> <p>14 Q. There are always risks, period, in taking</p> <p>15 a case to trial?</p> <p>16 A. Yes.</p> <p>17 Q. Before you hired Brad Balke and after</p> <p>18 Hans told you he couldn't represent you, did you</p> <p>19 talk to any other lawyers about taking your case?</p> <p>20 A. Yes.</p> <p>21 Q. How many?</p> <p>22 A. I can't tell you. A lot.</p> <p>23 Q. Did any of them tell you that they</p> <p>24 wouldn't take the case because they didn't think you</p>	<p style="text-align: right;">Page 95</p> <p>1 enters an appearance on March 19. Just the name of</p> <p>2 any lawyer you —</p> <p>3 A. I believe that Sal Ferris that I was</p> <p>4 talking about was one of the lawyers that I talked</p> <p>5 to.</p> <p>6 Q. You're not sure? You believe that he</p> <p>7 was?</p> <p>8 A. In between this time and this time?</p> <p>9 Q. Yes.</p> <p>10 A. I believe it's right around then.</p> <p>11 Q. What type of law practice does Sal Ferris</p> <p>12 have?</p> <p>13 A. I believe personal injury.</p> <p>14 Q. Did you ever talk to him about taking</p> <p>15 your case before that date?</p> <p>16 A. Before the date of this e-mail?</p> <p>17 Q. Yes.</p> <p>18 A. I'd have to look at it.</p> <p>19 Q. He wasn't one of the original attorneys</p> <p>20 that you spoke with at the beginning of the case?</p> <p>21 A. No.</p> <p>22 Q. Fair to say once Balke entered his</p> <p>23 appearance on March 19, 2015 that Mast and Popovich</p> <p>24 were no longer your attorneys, correct?</p>
<p style="text-align: right;">Page 94</p> <p>1 could prevail against Gagnon?</p> <p>2 A. No.</p> <p>3 Q. Not one?</p> <p>4 A. No.</p> <p>5 Q. What are the names of any of the lawyers</p> <p>6 you talked to about taking your case over from</p> <p>7 Popovich?</p> <p>8 A. I can't tell you without looking at</p> <p>9 documents who it was and what date it was, what it</p> <p>10 was between these two.</p> <p>11 Q. I don't think documents I produced would</p> <p>12 help you in that regard.</p> <p>13 I'll just ask you based on your memory</p> <p>14 the names of any lawyers you met with from the time</p> <p>15 Hans wrote this February 22 e-mail —</p> <p>16 A. I believe —</p> <p>17 Q. Let me finish.</p> <p>18 A. I believe —</p> <p>19 MS. WILLIAMS: He has not finished his</p> <p>20 question.</p> <p>21 THE WITNESS: Sorry.</p> <p>22 BY MR. FLYNN:</p> <p>23 Q. From the time that Hans wrote this</p> <p>24 February 22 e-mail and the time that Brad Balke</p>	<p style="text-align: right;">Page 96</p> <p>1 A. When Balke enters his appearance?</p> <p>2 Q. Yes.</p> <p>3 A. I would believe that, yes.</p> <p>4 Q. They were terminated and Balke stepped</p> <p>5 in?</p> <p>6 A. Yes.</p> <p>7 Q. Can you tell me how the binding mediation</p> <p>8 which proceeded on December 8, 2015 evolved and came</p> <p>9 to be.</p> <p>10 A. I was ordered into it from a bankruptcy</p> <p>11 court.</p> <p>12 Q. Why is that?</p> <p>13 A. I believe that the trustee put a motion</p> <p>14 up. I don't know who did it. I assume it was the</p> <p>15 trustee and the court ordered that it be put into</p> <p>16 binding mediation.</p> <p>17 Q. Did you appear at the mediation?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall the name of the mediator?</p> <p>20 A. Not off the top of my head, no.</p> <p>21 Q. One of the exhibits to your second</p> <p>22 amended complaint indicates it was retired Judge</p> <p>23 James Etchingham.</p> <p>24 A. That sounds familiar.</p>



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<p style="text-align: right;">Page 97</p> <p>1 Q. Do you recall how long the mediation 2 lasted? 3 A. All day. 4 Q. Do you know if the parties submitted 5 mediation briefs or statements to the judge? 6 A. I believe both sides submitted a whole 7 bunch of things. 8 Q. The Boudins represented you in this 9 mediation? 10 A. Yes. 11 Q. Because you had fired Balke by this 12 point? 13 A. Oh, yes. 14 Q. Directing your attention, again, to 15 Exhibit 5, the second amended complaint and Exhibit 16 G. Exhibit G is, apparently, a memorialization of 17 the mediation award. Do you see that? 18 A. It's how the judge decided to break it 19 down, yes. 20 Q. Do you see that there's an award for 21 future medical expenses of \$200,000? 22 A. Yes. 23 Q. Since that date of December 8, 2015, have 24 you received any medical treatment relative to your</p>	<p style="text-align: right;">Page 99</p> <p>1 A. I don't know, offhand. 2 Q. Was there any doctor that opined that you 3 would require \$200,000 in future medical expenses? 4 A. I believe so. 5 Q. Who was that? 6 A. I believe that was Dr. Patel. I don't 7 know that she said \$200,000. She was the doctor 8 that was handling it at the time. 9 Q. Did you discuss your injury with the 10 mediator at the mediation? 11 A. He did ask me a few questions. 12 Q. How much time did you spend with him? 13 A. On and off. He would come in and ask me 14 questions and then go away and then come in and 15 would ask me questions and then go away. 16 I don't remember which one was the 17 mediator, which one was the Allstate adjuster, which 18 one was the — I don't remember. 19 Q. You're not sure which one was the 20 mediator? 21 A. They came in and they said they are going 22 to ask you some questions and I answered them. 23 Q. As you sit here today, you don't know how 24 much face time you had with the mediator that day?</p>
<p style="text-align: right;">Page 98</p> <p>1 injuries — 2 A. Yes. 3 Q. Let me finish. Strike the question. 4 Since that date, December 8, 2015, have 5 you received any medical treatment for your injuries 6 incurred on January 28, 2011? 7 A. You're asking since the date of the 8 binding mediation? 9 Q. That's right. 10 A. Yes. 11 Q. What medical treatment have you received? 12 A. I do an ongoing with the neurologist for 13 the dystonia. 14 Q. That's in your right arm? 15 A. Yes. 16 Q. Have you calculated the medical bills 17 that you've incurred since that day? 18 A. No, I have not. 19 Q. Are they anywhere near \$200,000? 20 A. It depends if you calculate with or 21 without insurance. I know what I pay, but then I 22 have to pay for the insurance that pays for that. 23 Q. How much have you paid out of pocket 24 since that date for medical treatment on your arm?</p>	<p style="text-align: right;">Page 100</p> <p>1 A. I don't remember the face of which one is 2 which. 3 Q. Did the issue of lost wages ever come up? 4 A. At the mediation with me? 5 Q. Yes. 6 A. I don't remember. 7 Q. Did you ever make a claim of lost wages 8 of \$250,000? 9 A. I may have. 10 Q. Do you know what that was based on? 11 A. Yeah. 12 Q. What is that based on? 13 A. Past and future. 14 Q. What past wages had you ever earned that 15 could lead to an award of \$250,000? 16 A. To me, that's not a very high number. I 17 think I asked for more than that. It would be an 18 average over a certain number of years plus benefits 19 and that's all lost. 20 Q. Would it be fair to say that your income 21 would be accurately reflected in the tax returns 22 you've produced in this case, so I don't want to ask 23 you about each one of them? 24 A. I would say my personal income, yeah.</p>



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<p style="text-align: right;">Page 101</p> <p>1 Q. Have you filed personal tax returns since 2 2015? 3 A. Tried. 4 Q. I didn't ask you if you tried. 5 A. No. They won't let me. They said I 6 don't make enough anymore. 7 MR. FLYNN: I believe the next exhibit is 10. 8 (WHEREUPON, a certain document was 9 marked Exhibit No. 10, for 10 identification, as of 02/19/2020.) 11 BY MR. FLYNN: 12 Q. I'm handing you what's been marked as 13 Exhibit 10. This is a six-page binding mediation 14 agreement. The copy I have is unsigned. 15 Do you recognize this as the mediation 16 agreement that governed your December 8, 2016 17 mediation? 18 A. Yes. 19 Q. If I could direct your attention to -- 20 first, let me ask you. 21 Do you know why the bankruptcy trustee or 22 the bankruptcy court ordered binding mediation as 23 opposed to nonbinding? 24 A. I have no idea.</p>	<p style="text-align: right;">Page 103</p> <p>1 Exhibit 4, which is the original complaint in this 2 case. Page 4, paragraph 16. 3 A. Okay. 4 Q. There's a sentence that begins with, 5 "Unfortunately, a high/low agreement had been 6 executed by Dulberg reducing the maximum account he 7 could recover to \$300,000 based upon the insurance 8 policy available." 9 Do you see that? 10 A. Yes. 11 Q. It's not your position or testimony that 12 Popovich had anything to do with the high/low 13 agreement? 14 A. That was a mistake in there. No. 15 Q. You would agree that Popovich had nothing 16 to do with the high/low agreement? 17 A. I believe that events that unfolded the 18 way they did was due to Hans Mast's initial 19 assessment of the value of the case. 20 Q. Let me ask it a different way. 21 Did Popovich have any idea that this 22 high/low agreement existed when it was entered into? 23 A. I don't know. 24 Q. Do you have any reason to believe that he</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. On page 4, section F, subsection B -- I'm 2 sorry, 1B. It says, "The parties agree that for 3 this mediation the minimum award to Paul Dulberg 4 will be \$50,000. Also, the maximum award to 5 Paul Dulberg will be \$300,000." 6 Do you see that? 7 A. Yes. 8 Q. Do you know why the parties agreed to 9 this high/low agreement? 10 A. No. 11 Q. Do you recall alleging in your original 12 complaint against Popovich that there was a high/low 13 agreement? 14 A. There is. There was. 15 MS. WILLIAMS: Can you repeat the question, 16 please. 17 (WHEREUPON, the record was read by 18 the reporter as requested.) 19 BY THE WITNESS: 20 A. I don't know. I'd have to read it. 21 MS. WILLIAMS: I asked her to read it. And you 22 had answered it previously. 23 BY MR. FLYNN: 24 Q. Directing your attention back to</p>	<p style="text-align: right;">Page 104</p> <p>1 did? 2 A. I don't know. I don't know how much the 3 Boudins were in contact with them because they 4 worked together. I don't know. 5 Q. What do you mean, "they worked together"? 6 A. They worked together on all different 7 cases. That's a small county out there. 8 Q. Did you ever write to Hans and accuse 9 Popovich of having a conflict of interest because he 10 may have gone to high school with David Gagnon? 11 A. I did learn that. 12 Q. Do you believe the fact that someone went 13 to high school with another person may give rise to 14 a conflict of interest in a lawsuit? 15 A. I was shooting in the dark and guessing 16 why they didn't see this as a viable case. 17 Q. Do you think that was appropriate to send 18 to your lawyer at the time? 19 A. When you're wondering why they are doing 20 what they are doing and you learn that and they were 21 pretty much in the same class and they all knew each 22 other and it's a small town, let me ask you, are you 23 friends with the guy I'm suing? That's an 24 appropriate question.</p>



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<p style="text-align: right;">Page 105</p> <p>1 Q. You didn't say that. You asked if they 2 went to school together. 3 A. Correct. 4 Q. Popovich did not enter into this high/low 5 agreement on your behalf, correct? 6 A. Popovich, no. 7 Q. When I say "Popovich," I mean generally 8 the Popovich firm and your lawyers. 9 A. This was years later. No. 10 Q. They had nothing to do with it, right? 11 A. I wouldn't say anything to do with it. 12 Q. Withdrawn. 13 Who drafted this high/low agreement 14 that's contained in the mediation agreement? 15 A. I'm not sure who drafted it. 16 Q. Would it have been either the mediator, 17 the bankruptcy trustee, your lawyers or the defense 18 attorneys? 19 A. I assume that this would have been an 20 agreement of all of them. 21 Q. You don't think Popovich had anything to 22 do with drafting this high/low agreement, do you? 23 A. I don't know that he did or didn't. 24 Q. Do you have any reason to believe that he</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Correct. 2 A. The liability of the McGuires. 3 Q. What was false about it? 4 A. What made them liable and what didn't. 5 Q. What is it you learned to dispute what 6 you were told? 7 A. I learned from a reliability expert that 8 had the report there that day that the McGuires 9 provided the tools which made Gagnon an agent of the 10 McGuires. He was working at their behest. 11 Q. Who was this liability expert? 12 A. What's his name? 13 Q. He's a doctor? 14 A. Yes. 15 Q. Continue on with that paragraph. 16 "Following mediation, Dulberg was advised to seek an 17 independent opinion from an attorney handling legal 18 malpractice matters and received that opinion on or 19 about December 16, 2016." 20 Do you see that allegation? 21 A. Yeah. 22 Q. Who advised you to seek an independent 23 opinion from an attorney handling legal malpractice 24 matters?</p>
<p style="text-align: right;">Page 106</p> <p>1 did? 2 A. At this point, no. 3 Q. Continuing on in Exhibit 4. Directing 4 your attention to the bottom of page 4, 5 paragraph 10. 6 A. Exhibit 4. Say it again. 7 Q. The bottom of page 4, paragraph 20. This 8 is your complaint against Popovich and Mast. 9 A. This has been amended since then. 10 Q. I understand. Paragraph 20 reads, 11 "Following the execution of the mediation agreement 12 with the high/low agreement contained therein and 13 the final mediation award, Dulberg realized for the 14 first time that the information Mast and Popovich 15 had given Dulberg was false and misleading and that, 16 in fact, the dismissal of the McGuires was a serious 17 and substantial mistake." 18 Do you see that? 19 A. Yes. 20 Q. Can you tell me, as you sit here today, 21 what false and misleading information did Mast and 22 Popovich give you? 23 A. That I realized on the day of the — 24 following the execution of the mediation agreement?</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I believe that was Boudin. 2 Q. You believe that or you know that? 3 A. I know that. 4 Q. You alleged it in this complaint so it's 5 important that we know who that was. 6 A. Yes, that was Boudin. 7 Q. Boudin told you to seek an independent 8 opinion from an attorney that handles malpractice 9 matters? 10 A. Yes. 11 Q. It says you received that opinion on or 12 about December 16, 2016. 13 A. Yes. 14 Q. That's separate and apart from any 15 opinion you may have received from a liability 16 expert, a doctor, an expert on chainsaws? 17 A. Yes. 18 Q. Who was the lawyer that you received a 19 legal opinion from on December 16, 2016? 20 A. I believe that would be Thomas Gooch. 21 Q. The drafter of this complaint? 22 A. I'd have to look at the dates because I 23 think — December 8th was the mediation; is that 24 right?</p>



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<p style="text-align: right;">Page 109</p> <p>1 Q. Correct.</p> <p>2 A. So the 16th would sound about right to be</p> <p>3 meeting with Gooch, but I can get that date.</p> <p>4 Q. You met with Gooch --</p> <p>5 A. Soon, within weeks. It was quick.</p> <p>6 Q. Now that the door has been opened, you</p> <p>7 fired Gooch in this case, correct?</p> <p>8 A. Yes.</p> <p>9 Q. He drafted this complaint and he's also</p> <p>10 the one that gave you an opinion about legal</p> <p>11 malpractice liability on the part of my clients?</p> <p>12 A. Yes.</p> <p>13 Q. What is it that he told you on</p> <p>14 December 16, 2016?</p> <p>15 MS. WILLIAMS: Objection. I don't think we've</p> <p>16 waived that privilege, but -- can we go off the</p> <p>17 record for a second?</p> <p>18 MR. FLYNN: I don't want to go off the record.</p> <p>19 I've asked this interrogatory in about five</p> <p>20 different ways and it hasn't been answered</p> <p>21 appropriately.</p> <p>22 The allegation was made in the complaint.</p> <p>23 That's why I drafted the interrogatory the way I</p> <p>24 did. I don't think that there's been a square</p>	<p style="text-align: right;">Page 111</p> <p>1 admissible. Are you agreeable to that?</p> <p>2 MR. FLYNN: I'm agreeable to continuing on for</p> <p>3 a few minutes. I want to explore. I'll try to lay</p> <p>4 foundation for -- to confirm this wasn't anyone</p> <p>5 else, for starters. Why don't we continue on and if</p> <p>6 you need to raise it again, we can talk.</p> <p>7 MS. WILLIAMS: Otherwise, I'm just going to</p> <p>8 raise it to every single question you ask. I just</p> <p>9 don't want to have to continue to make the objection</p> <p>10 as to -- if questions are asked about advice given</p> <p>11 by a legal malpractice attorney, I'm going to raise</p> <p>12 an objection as to that.</p> <p>13 MR. FLYNN: Okay. But this is why we had the</p> <p>14 201K conferences, multiple 201K conferences. It was</p> <p>15 made clear, to me, that there was a waiver with</p> <p>16 respect to subsequent counsel.</p> <p>17 MS. WILLIAMS: Tom Gooch isn't subsequent</p> <p>18 counsel.</p> <p>19 MR. FLYNN: The allegation has been made in</p> <p>20 this complaint and apparently this is subsequent</p> <p>21 counsel subsequent to my client's representation.</p> <p>22 MS. WILLIAMS: It is a different case. It's</p> <p>23 not subsequent counsel in the underlying case. It's</p> <p>24 a new case.</p>
<p style="text-align: right;">Page 110</p> <p>1 answer to it. This is clear that you're talking</p> <p>2 about a legal opinion.</p> <p>3 BY THE WITNESS:</p> <p>4 Q. Is this the same wording as we have in</p> <p>5 the current complaint?</p> <p>6 BY MR. FLYNN:</p> <p>7 Q. It's not exactly.</p> <p>8 A. What would this be valid for, then?</p> <p>9 Q. You've raised a response to a statute of</p> <p>10 limitations defense in this case and placed your</p> <p>11 knowledge of the malpractice and the date of</p> <p>12 incurring of an injury at issue.</p> <p>13 Because your discovery of malpractice has</p> <p>14 been placed at issue, it's our position that you've</p> <p>15 waived privilege anyhow with respect to this</p> <p>16 conversation on December 16, 2016.</p> <p>17 A. I'm not sure --</p> <p>18 MS. WILLIAMS: There's not a question pending.</p> <p>19 I'm going to make a standing objection as to</p> <p>20 privilege with Gooch.</p> <p>21 If we can agree that that objection will</p> <p>22 stand, we can go through this line of questioning</p> <p>23 and then if we need to later, have a judge determine</p> <p>24 whether or not that line of questioning is</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. FLYNN: We'll get to the interrogatory in a</p> <p>2 few minutes. I'll pull that out.</p> <p>3 BY MR. FLYNN:</p> <p>4 Q. Let me ask you. Is there any other</p> <p>5 attorney besides Mr. Gooch that gave you an opinion</p> <p>6 that's referenced here on December 16?</p> <p>7 A. No one that isn't privileged.</p> <p>8 Q. Could it have been anyone else?</p> <p>9 A. No.</p> <p>10 Q. So Gooch is the only person that's being</p> <p>11 referenced here in this allegation that's in your</p> <p>12 complaint that's a public record?</p> <p>13 I'm not asking you right now what the</p> <p>14 opinion is. I'm going to do that later. I'm asking</p> <p>15 you who gave it to you. It's not anyone besides</p> <p>16 Mr. Gooch, correct?</p> <p>17 A. Yes. It was Thomas Gooch.</p> <p>18 Q. He drafted the very complaint that that</p> <p>19 allegation is contained in?</p> <p>20 A. Yes.</p> <p>21 Q. Dr. Landford was the liability expert</p> <p>22 that you referenced earlier, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Back to the allegation that Gooch and --</p>



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<p style="text-align: right;">Page 113</p> <p>1 that Popovich and Mast provided you false and</p> <p>2 misleading information. That information was simply</p> <p>3 their legal opinion on the McGuires' liability;</p> <p>4 isn't that correct?</p> <p>5 A. No. There was nothing simple about that.</p> <p>6 That's a very complex series of things that go all</p> <p>7 the way back to before the McGuire settlement.</p> <p>8 Q. They didn't lie to you, did they?</p> <p>9 A. It depends on how you define lie.</p> <p>10 Q. How do you define lie?</p> <p>11 A. If you know better and you say something</p> <p>12 else, that's a lie. Omission is a lie.</p> <p>13 Q. Did they provide you with anything other</p> <p>14 than a legal opinion as to the McGuires' liability?</p> <p>15 A. Yes. They provided me with case laws.</p> <p>16 They provided me with all different stuff. Yes.</p> <p>17 Q. Whatever the advice that was given to you</p> <p>18 on December 16, 2016, you felt that you were mislead</p> <p>19 by Popovich and Mast at that point in time, correct?</p> <p>20 A. At that point in time it was confirmed to</p> <p>21 me that I had a valid case against Popovich.</p> <p>22 Q. You had a valid malpractice case against</p> <p>23 Popovich?</p> <p>24 A. Yes. I did not know before that.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. So this is a valid verification page with</p> <p>2 respect to this discovery document; is that a fair</p> <p>3 statement?</p> <p>4 A. This is supplemental to original answers.</p> <p>5 Q. That's your signature and you agree these</p> <p>6 are your answers?</p> <p>7 A. I've reviewed them and we went over them</p> <p>8 and yes, I agree.</p> <p>9 Q. And they are accurate?</p> <p>10 A. As accurate as we can be.</p> <p>11 Q. If I could direct your attention to</p> <p>12 Interrogatory No. 26. Do you see that?</p> <p>13 A. Okay. Yes, I see it.</p> <p>14 Q. This is similar to what we just talked</p> <p>15 about a few minutes ago. I'll read the</p> <p>16 interrogatory to you. "Identify and describe the</p> <p>17 false and misleading information Mast and Popovich</p> <p>18 provided to you and explain how you realized for the</p> <p>19 first time in December of 2016 that the information</p> <p>20 was false and misleading and the dismissal of the</p> <p>21 McGuires was a serious and substantial mistake as</p> <p>22 alleged in paragraph 56 of your second amended</p> <p>23 complaint."</p> <p>24 Do you see your supplemental answer here?</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. As of December 16, 2016?</p> <p>2 A. Yes.</p> <p>3 Q. Why is it that you didn't file that</p> <p>4 lawsuit until nearly a year later on November 28,</p> <p>5 2017?</p> <p>6 A. I believe because Thomas Gooch had some</p> <p>7 health issues and then his wife had some health</p> <p>8 issues. It took a while.</p> <p>9 (WHEREUPON, a certain document was</p> <p>10 marked Exhibit No. 11, for</p> <p>11 identification, as of 02/19/2020.)</p> <p>12 BY MR. FLYNN:</p> <p>13 Q. I'm handing you what has been marked as</p> <p>14 Exhibit 11. This is one set of your supplemental</p> <p>15 Answers to Interrogatories.</p> <p>16 First, I'll ask you if that is your</p> <p>17 verification and signature at the end?</p> <p>18 A. That is my signature.</p> <p>19 Q. Again, I don't know if that verification</p> <p>20 was attached to this original document. It may have</p> <p>21 been. But there's been some confusion with respect</p> <p>22 to these verification pages. This is your signature</p> <p>23 and you answered these interrogatories, correct?</p> <p>24 A. Yeah.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. I see it, yes.</p> <p>2 Q. You reference the mediation award and</p> <p>3 then you state, quote, "At that time Dulberg</p> <p>4 realized that Mast's advice to settle with the</p> <p>5 McGuires for \$5,000 was incorrect because Mast had</p> <p>6 cited Dulberg being able to recover in full from</p> <p>7 Gagnon as his reasoning."</p> <p>8 A. I do.</p> <p>9 Q. Can you explain what that means because I</p> <p>10 don't quite understand it.</p> <p>11 A. Hans Mast assured me -- I want to go back</p> <p>12 to 2013, the Fall between October and the signature</p> <p>13 of the final release for the McGuires.</p> <p>14 He assured me that, he said -- at that</p> <p>15 time he didn't tell me what anybody's policies were.</p> <p>16 He assured me that if we let the McGuires out of the</p> <p>17 case, Gagnon has enough insurance, you're going to</p> <p>18 get everything from him, so it doesn't matter that</p> <p>19 you're carrying the McGuires in the case.</p> <p>20 Q. The next interrogatory is 27. "Identify</p> <p>21 and describe the expert opinions provided to you in</p> <p>22 December 2016 as alleged in paragraph 57 of your</p> <p>23 second amended complaint including the identity of</p> <p>24 the expert, any opinions and any other information</p>



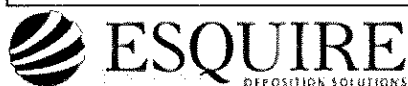
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<p style="text-align: right;">Page 117</p> <p>1 provided by the expert which caused you to learn in 2 the summer of 2016 and became reasonably aware that 3 Mast and Popovich did not properly represent you." 4 What does the summer of 2016 have to do 5 with your discovery of malpractice? 6 A. Technically, I was sent Dr. Landford's 7 report — I might be off a little by a couple months 8 here, but I think in July of that year. And I read 9 it, but I didn't — you don't catch everything the 10 first time you read it. 11 It was not until later that I caught the 12 part of the report that was brought to the 13 attention — it caught my eye when I was sitting 14 there and reading it. 15 Q. You didn't read any of this interrogatory 16 or the original interrogatory as requesting legal 17 opinions that you had alleged that gave you notice 18 that there was a malpractice claim against Mast and 19 Popovich? 20 A. Excuse me? 21 MR. FLYNN: Can you read that back. 22 (WHEREUPON, the record was read by 23 the reporter as requested.) 24</p>	<p style="text-align: right;">Page 119</p> <p>1 A. A valid case, yes. 2 Q. — Mast and Popovich? 3 A. Yes. 4 Q. Why is it you didn't know about this 5 valid case prior to that date? 6 A. Because I hadn't talked to anybody that 7 was a lawyer that specialized in that area. 8 Q. Whatever it is that he said to you gave 9 you the basis for believing you had a valid case 10 against Mast and Popovich? 11 A. Very much so, yes. 12 Q. You're withholding that information from 13 me right now, as we sit here. You won't tell me 14 what that expert said, correct? 15 MS. WILLIAMS: Repeat the question. 16 (WHEREUPON, the record was read by 17 the reporter as requested.) 18 MS. WILLIAMS: I'm asserting attorney-client 19 privilege on behalf of my client for Gooch's advice 20 on December — in December of 2016. 21 However, because I want to move forward 22 with this deposition, if he can answer the question, 23 I believe we should go ahead and move forward and 24 have him answer the question.</p>
<p style="text-align: right;">Page 118</p> <p>1 BY THE WITNESS: 2 A. The way she said it, I don't understand. 3 BY MR. FLYNN: 4 Q. I'll rephrase it. 5 We've known about this allegation in the 6 original complaint since it was filed. You received 7 some legal opinion in 2016. That's why you didn't 8 know you had a malpractice case against Mast and 9 Popovich. 10 We asked you in discovery answers a 11 couple different ways what those legal opinions are. 12 You didn't read 26 and 27 as requesting information 13 about legal opinions? 14 A. I don't know that an expert witness would 15 be considered a legal opinion. Wouldn't that be 16 more like an attorney? 17 Q. I'll ask you again. Why is it that you 18 first became aware of a legal malpractice matter 19 against Mast and Popovich on or about December 16, 20 2016? 21 A. December 16th I was talking to a legal 22 malpractice attorney. 23 Q. You were told that there was a case 24 against —</p>	<p style="text-align: right;">Page 120</p> <p>1 I'll assert the privilege with the 2 understanding that this may have to be briefed 3 later. 4 MR. FLYNN: To be stricken later? 5 MS. WILLIAMS: Right. 6 MR. FLYNN: The substance of the answer he can 7 put on the record. You're just saying you may move 8 to strike it later? 9 MS. WILLIAMS: Right. I want to maintain the 10 privilege with the objection, but I don't want to 11 have to call the judge right now. I don't think 12 it's something we should have to call the judge 13 about right now. 14 MR. FLYNN: Just for the record, I believe it's 15 been placed at issue by virtue of the first amended 16 complaint. The responses to the statute of 17 limitation defenses that were raised in very 18 dispositive motions before Gooch withdrew from the 19 case, the gist of that is the discovery rule has 20 been raised and, therefore, it's our position that 21 the date of discovery has been placed at issue and, 22 accordingly, any legal opinions that were provided 23 to this plaintiff have been exposed and that we're 24 entitled to know what those are.</p>



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<p style="text-align: right;">Page 121</p> <p>1 MS. WILLIAMS: Can I also note one more thing?</p> <p>2 MR. FLYNN: Sure.</p> <p>3 MS. WILLIAMS: In the supplemental — in the</p> <p>4 request it specifically refers to paragraph 57 of</p> <p>5 the second amended complaint, which is different.</p> <p>6 MR. FLYNN: It is different. I'll acknowledge</p> <p>7 that. I believe that the prior original</p> <p>8 interrogatories asked for any opinions relative to</p> <p>9 the discovery of the malpractice. I could be wrong.</p> <p>10 There was a reason I asked this and that's why I</p> <p>11 believe that's what it was about.</p> <p>12 MS. WILLIAMS: So —</p> <p>13 MR. FLYNN: That particular one I agree with</p> <p>14 you is not phrased as calling for —</p> <p>15 MS. WILLIAMS: Right. That's the question that</p> <p>16 was asked. We answered the question that was asked,</p> <p>17 which that particular paragraph does not refer to a</p> <p>18 legal expert. It just merely — I'll read it out</p> <p>19 loud. "It was not until the mediation in December</p> <p>20 of 2016 based on the expert's opinion that Dulberg</p> <p>21 retain for mediation that Dulberg became reasonably</p> <p>22 aware."</p> <p>23 I just want it clear that he did answer</p> <p>24 the question that was asked. I understand your line</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. The Boudins weren't working for free.</p> <p>2 They got something out of it, right?</p> <p>3 A. Yes.</p> <p>4 Q. The trustee took the remainder and paid</p> <p>5 off some of your creditors, correct?</p> <p>6 A. Correct. All of them.</p> <p>7 Q. But the award was paid to the trustee on</p> <p>8 your behalf?</p> <p>9 A. I believe so. I don't know how it</p> <p>10 worked.</p> <p>11 Q. How much was the surplus after your</p> <p>12 creditors were paid?</p> <p>13 A. After just the creditors?</p> <p>14 Q. How much did you get?</p> <p>15 A. How much did I get?</p> <p>16 Q. Yes.</p> <p>17 A. A third.</p> <p>18 Q. I'm asking how much money did you get?</p> <p>19 A. A third of the award.</p> <p>20 Q. Dollars. How much money did you get?</p> <p>21 A. Roughly a hundred.</p> <p>22 Q. \$100,000?</p> <p>23 A. I don't know the exact number. It's</p> <p>24 roughly a hundred.</p>
<p style="text-align: right;">Page 122</p> <p>1 of questioning and we'll agree to move forward.</p> <p>2 MR. FLYNN: I believe there were other</p> <p>3 discovery requests that did point to that and I</p> <p>4 think we can take a break here and I can find them</p> <p>5 fairly quickly because I think we're getting close</p> <p>6 to the end anyway.</p> <p>7 MS. WILLIAMS: Okay.</p> <p>8 BY MR. FLYNN:</p> <p>9 Q. Did you ever receive any money from the</p> <p>10 mediation award?</p> <p>11 A. No. I received money from the bankruptcy</p> <p>12 itself. It was a surplus bankruptcy.</p> <p>13 Q. There was a \$300,000 award given in the</p> <p>14 mediation.</p> <p>15 A. That did not go to me. That went to</p> <p>16 bankruptcy.</p> <p>17 Q. It was collected on your behalf and paid</p> <p>18 to the bankruptcy trustee, correct?</p> <p>19 A. Correct.</p> <p>20 Q. All \$300,000?</p> <p>21 A. I don't know that because I think — I</p> <p>22 don't know how exactly it works. I heard attorneys</p> <p>23 have a lien that's special. I don't know how they</p> <p>24 break it up. I assume it goes to the trustee.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Was there a check that was issued to you?</p> <p>2 A. By the trustee, yes.</p> <p>3 Q. Did you cash it?</p> <p>4 A. Yes.</p> <p>5 Q. At what bank?</p> <p>6 A. McHenry Bank & Trust.</p> <p>7 Q. Do you still have an account there?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have a copy of the canceled check?</p> <p>10 A. I'm sure the bank has a photo thing.</p> <p>11 Q. You can request a copy of the check,</p> <p>12 correct?</p> <p>13 A. I could. I could see if they got it.</p> <p>14 Q. I would ask you to do that. If you have</p> <p>15 any other documentation relative to the payouts that</p> <p>16 were made by the bankruptcy trustee on your behalf,</p> <p>17 we are requesting that information.</p> <p>18 MR. FLYNN: Why don't we take a break and I'm</p> <p>19 going to look for one document and then we're just</p> <p>20 about done here.</p> <p>21 (WHEREUPON, a recess was had.)</p> <p>22 MR. FLYNN: Mark these as the next two.</p> <p>23</p> <p>24</p>



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<p style="text-align: right;">Page 125</p> <p>1 (WHEREUPON, a certain document was 2 marked Exhibit No. 12, for 3 identification, as of 02/19/2020.) 4 (WHEREUPON, a certain document was 5 marked Exhibit No. 13, for 6 identification, as of 02/19/2020.) 7 BY MR. FLYNN: 8 Q. I'm going to show you what I've marked as 9 Exhibits 12 and 13. Twelve are your answers to Hans 10 Mast's interrogatories. Thirteen is your responses 11 to Popovich's request for production. 12 Interrogatory No. 1 from Mast asks, 13 "Identify and describe each and every way that 14 Popovich or Mast breached any duty of care to you, 15 the date of the breach, and when and how you became 16 aware of the breach." 17 Do you understand that? 18 A. Yes. 19 Q. So how is it they committed malpractice? 20 A. May I see it? 21 Q. I'm going to show it to you in a second. 22 I only have one copy. 23 This is basically, how did you first 24 become aware that they committed malpractice?</p>	<p style="text-align: right;">Page 127</p> <p>1 A. This asks for every way Popovich or Mast 2 breached the duty of care. It didn't ask for 3 Gooch's opinion. 4 Q. How did you find out that Mast and 5 Popovich breached the duty of care to you? Because 6 Gooch told you, right? 7 A. Yes. 8 Q. That's what you've alleged here in this 9 complaint. 10 A. Yes. 11 Q. Here I'm asking you, each and every way 12 that they ever breached a duty of care to you. I 13 covered the waterfront. You didn't answer -- 14 A. On the McGuire case it was between 15 October 2013 and January 2014. Yes. There's a 16 multitude of things and that's why I listed a range. 17 Q. I'm asking when you became aware of it, 18 in that interrogatory. Do you see that? 19 A. I became aware of that when Thomas Gooch 20 read them and said there's a problem here. 21 Q. That's not the way you answered the 22 interrogatory, correct? 23 A. I answered the first part. I did not 24 answer after the comma and the and.</p>
<p style="text-align: right;">Page 126</p> <p>1 That's the essence of that interrogatory. 2 Here is your response. I can show that 3 to you. It doesn't reflect any discussion with any 4 malpractice lawyer in December of 2016. 5 Tell me -- 6 A. Let me read it again. We're talking 7 about No. 1 on this? 8 Q. Correct. 9 A. Okay. 10 Q. You understand it? 11 A. Yes. 12 Q. Would you agree that the legal opinion 13 you received on December 16, 2016 is responsive to 14 that interrogatory, whatever it is that you were 15 told? 16 A. Yes. 17 Q. You didn't identify this December 16, 18 2016 discussion in the answer to that interrogatory, 19 correct? 20 A. Say that again. 21 Q. Your discussion with Mr. Gooch on 22 December 16, 2016, that's referenced in your 23 original complaint, you didn't respond and identify 24 it in this answer to the interrogatory, correct?</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. There's no objection and indication that 2 any information is being withheld, correct? 3 A. Excuse me? 4 Q. There's no objection and an indication 5 that you're withholding -- 6 A. I was not withholding. 7 Q. I'll show you Exhibit 13. It asks -- 8 Exhibit 13 are the production requests to you. 9 Number 8 asks for you to produce a privilege log 10 identifying the creator and recipient of any 11 document withheld, the basis for any claimed 12 privilege, the date the document was created and the 13 date the recipient received the document. 14 The answer is, "The plaintiff is only 15 withholding attorney-client communication between 16 his successor counsel." 17 Is that your answer to the production 18 request and did I accurately read No. 8? 19 A. May I consult with her for a minute? 20 Q. Sure. 21 THE WITNESS: Can we go off the record? 22 MS. WILLIAMS: If you can answer the question, 23 answer the question first. 24</p>



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<p style="text-align: right;">Page 129</p> <p>1 BY THE WITNESS:</p> <p>2 A. It's been a while since I've done this,</p> <p>3 so I'm not sure who the successor counsel is. Is it</p> <p>4 her or is it the Boudins or Balke?</p> <p>5 BY MR. FLYNN:</p> <p>6 Q. I think successor counsel, we can both</p> <p>7 agree, the successor counsel in the underlying case</p> <p>8 which would be Balke and then Boudin.</p> <p>9 You didn't identify any documents</p> <p>10 withheld other than documents between you and</p> <p>11 successor counsel, correct?</p> <p>12 THE WITNESS: I believe we waived those, didn't</p> <p>13 we, for Balke and Boudin?</p> <p>14 MS. WILLIAMS: For Balke and Boudin we can</p> <p>15 represent that we waived those.</p> <p>16 BY MR. FLYNN:</p> <p>17 Q. Let me ask a different question.</p> <p>18 Did Gooch communicate with you in writing</p> <p>19 relative to his opinion that you had a legal</p> <p>20 malpractice case against Mast and Popovich?</p> <p>21 A. In writing?</p> <p>22 Q. Yes.</p> <p>23 A. I suppose the agreement between us that</p> <p>24 he would represent me because I had the case is a</p>	<p style="text-align: right;">Page 131</p> <p>1 Popovich did wrong and how it injured you?</p> <p>2 A. How it injured me? Yeah.</p> <p>3 Q. The first part of my question was, did he</p> <p>4 tell you exactly what they did wrong in connection</p> <p>5 with your – their representation of you?</p> <p>6 A. He probably did. I'm not recalling it</p> <p>7 right now. I'm pulling a blank.</p> <p>8 The parts of the conversation I'm</p> <p>9 remembering, and for some reason I'm not pulling it.</p> <p>10 We've been at this a while and this is a long thing.</p> <p>11 Yes, he said based on what he saw, he saw reason for</p> <p>12 malpractice.</p> <p>13 Q. You don't remember any details, as you</p> <p>14 sit here? Did you discuss the liability of property</p> <p>15 owners in Illinois?</p> <p>16 A. Well, if they were just property owners</p> <p>17 in the case, that would be one thing, but they</p> <p>18 weren't just property owners.</p> <p>19 Q. That wasn't my question. I'm asking if</p> <p>20 you discussed it?</p> <p>21 A. Certainly.</p> <p>22 Q. You and Gooch discussed the liability of</p> <p>23 the McGuires in the case?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 130</p> <p>1 document in writing.</p> <p>2 Q. Did he tell you – strike that.</p> <p>3 The discussion that you reference in the</p> <p>4 complaint, paragraph 20 of December 16, 2016, was</p> <p>5 that a face-to-face communication with Gooch?</p> <p>6 A. What number is that?</p> <p>7 Q. Exhibit 4, paragraph 20. The legal</p> <p>8 opinion you received, was it verbal, was it written?</p> <p>9 A. I believe it was verbal.</p> <p>10 Q. Now, I'm going to ask you what he said.</p> <p>11 There was an objection and that will be addressed by</p> <p>12 the Court later. Please tell me what Gooch told</p> <p>13 you.</p> <p>14 A. He read what I brought him, looked</p> <p>15 through some things, and I don't remember if it was</p> <p>16 the same day that we talked to him or he took a day</p> <p>17 or two. I don't remember. He got back to me and he</p> <p>18 said, "You have a case here. You have a valid</p> <p>19 case."</p> <p>20 Q. Did he say why?</p> <p>21 A. On the basis of what I brought to him.</p> <p>22 Yes.</p> <p>23 Q. Specifics, though. I don't want to talk</p> <p>24 about generalities. Did he tell you what Mast and</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. What did you say to him and what did he</p> <p>2 say to you?</p> <p>3 A. I showed him the expert opinion.</p> <p>4 Q. The chainsaw expert?</p> <p>5 A. Yes.</p> <p>6 Q. Did you show him any deposition</p> <p>7 transcripts?</p> <p>8 A. Yes.</p> <p>9 Q. Which ones?</p> <p>10 A. All of them.</p> <p>11 Q. And he read them before you talked?</p> <p>12 A. I don't remember. Like I said, it may</p> <p>13 have been a few days between our initial meeting and</p> <p>14 bringing the whole file that I had and trying to get</p> <p>15 what the Boudins had and letting him go through it.</p> <p>16 I don't remember how long that took.</p> <p>17 Q. How did you transmit the documents to</p> <p>18 him –</p> <p>19 A. My brother carried them.</p> <p>20 Q. Let me finish.</p> <p>21 How did you transmit the documents to</p> <p>22 Mr. Gooch, including the deposition transcripts?</p> <p>23 A. I believe we brought him a box.</p> <p>24 Q. So you physically handed the documents to</p>



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1 him?
2 A. I didn't physically hand them. My
3 brother did.
4 Q. Did you communicate with Mr. Gooch by
5 e-mail, at all, leading up to this meeting?
6 A. No.
7 Q. Did he ever write you any letters?
8 A. An e-mail or regular mail or what are you
9 talking about?
10 Q. Any letters whatsoever.
11 A. Throughout the course of his
12 representation, yes.
13 Q. What about in December of 2016?
14 A. I believe we started communicating in
15 December, yes.
16 Q. But in writing?
17 A. In e-mails, sure.
18 Q. Did he discuss --
19 A. We may have. I'm not -- whenever we
20 started -- whenever he started sending me things and
21 going back and forth, I don't remember the exact
22 date, but it was right after he started representing
23 me, sure, we exchanged e-mails and started, yes.
24 Q. When did Gooch begin representing you?

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1 A. The day that he agreed to represent me.
2 I believe it would have been the day that he decided
3 that he had a case.
4 Q. On or about December 16?
5 A. Yes.
6 Q. At that point in time, or shortly
7 thereafter, he communicated with you in writing the
8 details of the breach of the standard of care
9 committed by Popovich and Mast; is that correct?
10 A. I believe he started to detail those out
11 in the complaint and we were working it back and
12 forth trying to get it right.
13 Q. When did you first exchange drafts of the
14 complaint?
15 A. I'd have to look back in the e-mails. I
16 don't remember the dates.
17 Q. Did you look for any of these e-mails in
18 connection with my discovery requests in this case?
19 A. At the time I think we thought they were
20 privileged.
21 Q. That privilege objection wasn't exactly
22 made. My question is, did you look for them?
23 A. Did I look for them? I have them.
24 Q. I would ask that you preserve each and

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1 every communication between you and Mr. Gooch, all
2 written communications, even phone records that
3 might reflect the dates and times of your phone
4 communications, if any. Did you use a cell phone
5 back then?
6 A. I used VOIP over a data line.
7 Q. Who was your carrier?
8 A. Comcast.
9 Q. Is that still your carrier?
10 A. Yes.
11 Q. Do you have the same phone that you
12 utilized?
13 A. Same phone number for 50 years, yes.
14 Q. What else could you remember that Gooch
15 told you on or about the 16th of December 2016 about
16 Mast and Popovich breaching the standard of care and
17 how it damaged you?
18 A. Say that again.
19 Q. What, if anything, else do you recall
20 about your discussions with Gooch on December 16
21 regarding the breach of the standard of care by
22 Popovich and Mast and how it injured you?
23 A. We discussed the whole scenario between
24 October and January and what happened. It was

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1 pretty detailed. We discussed everything that you
2 see that's been communicated in the e-mails. He
3 didn't have much else to go on other than the
4 documents and the e-mails.
5 Q. You're talking about the e-mails between
6 you and Hans from the fall of 2013?
7 A. Yes.
8 Q. Ultimately leading to the \$5,000
9 settlement?
10 A. Yes.
11 Q. Other than you have a case, what did
12 Gooch say to you?
13 A. He said that they definitely committed
14 malpractice.
15 Q. Did he ever put this in writing?
16 A. Did he ever put it in writing? I think
17 he backed it up by filing a suit. That's
18 documented.
19 Q. Again, the suit wasn't filed until
20 November of 2017.
21 A. Yes, he had some health problems and then
22 his wife had some health problems. Believe me, I
23 was pushing for him to get that done.
24 Q. From December of 2016 until the complaint



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<p style="text-align: right;">Page 137</p> <p>1 was filed, you exchanged some drafts of complaints 2 with him? 3 A. I believe he let me see what he wanted to 4 put in the complaint. I got to review some things. 5 Of course I had, do this or that's not right. In 6 fact, a couple of these things in here we had to 7 definitely – you caught one. He totally worded it 8 wrong. It was wrong. We had to amend. 9 MS. WILLIAMS: His question was, did he give 10 you drafts for you to review? 11 THE WITNESS: Yes. 12 BY MR. FLYNN: 13 Q. These were exchanged by e-mail? 14 A. I believe so, yes. 15 Q. So you would have records of them? 16 A. Yes. 17 Q. Any comments with respect to the 18 pleadings, as well, did you ever ask him questions? 19 Did he explain to you the basis for the allegations 20 in the draft complaints, similar to what you did 21 with Hans? 22 A. Over many times, yes. 23 Q. This is all reflected in e-mails? 24 A. Yes.</p>	<p style="text-align: right;">Page 139</p> <p>1 sorry – Gooch on December 16, other than what we 2 already talked about? 3 A. I discussed the exact same things that 4 you – the same documents that you already have. We 5 went over the case that Mast and Popovich had 6 against the McGuires. He followed through all the 7 way to the end. We went over the whole case. You 8 see as much as he did. 9 Q. Did Gooch ever explain to you why the 10 McGuires would have been liable any more than Mast 11 explained to you that they wouldn't be liable? 12 A. He said he agreed right away. He said 13 that's obvious. 14 Q. Did Gooch ever provide you with any cases 15 or statutes? 16 A. Provide to me, maybe. Maybe. I don't 17 know. 18 Q. Would that be by e-mail? 19 A. It could be. I was in his office quite a 20 few times. He may have. 21 Q. As you sit here today, other than you 22 have a case against Popovich and Mast, what did 23 Gooch tell you specifically that was any different 24 than what Mast and Popovich told you with respect to</p>
<p style="text-align: right;">Page 138</p> <p>1 Q. Ultimately, you didn't file until 2 November of 2017? 3 A. Correct. 4 Q. Popovich ceased being your lawyer 5 March 19 of 2015, correct? 6 A. That sounds about right. 7 Q. Until December 16, 2016, you didn't have 8 any reason to believe there was a malpractice case 9 against – 10 A. Say the date again. 11 Q. Until December 16, 2016, you didn't have 12 any other reason to believe there was a malpractice 13 case against Popovich and Mast? 14 A. I did not know that I had a case, no. 15 Q. You threatened one with respect to the 16 Gagnon case – 17 A. Yes. 18 Q. – at another point in time, correct? 19 A. I think I threatened him a few times in 20 there. Yeah. I was actually nice to what I really 21 wanted to say. 22 Q. Subject to the ruling on these 23 objections, you don't recall any other specific 24 details that you discussed with Popovich – I'm</p>	<p style="text-align: right;">Page 140</p> <p>1 the McGuires' liability? 2 A. That they were definitely liable. He 3 tried to say that – like Popovich and Mast were 4 first- or second-year lawyers and that they may have 5 made a mistake here. 6 I said they've got 20 years in this. You 7 think they'd know the difference. That's the kind 8 of thing. He agreed with me. Twenty years, yeah, 9 they should have known better. 10 Q. Did you ever discuss the specifics of the 11 McGuires' potential liability with Gooch? 12 A. Liability with Gooch? 13 Q. With Gooch, did you ever discuss the 14 specifics of the McGuires' liability other than he 15 thinks you have a case? 16 A. Yes. 17 Q. Did he ever tell you why? What was it? 18 A. Because he agreed with the expert's 19 opinion. 20 Q. The expert on the chainsaw? 21 A. Yes. The liability expert. 22 Q. The expert said you should use safety 23 goggles and gloves and things like that? 24 A. He said more than that, but yes.</p>



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1 Q. Do you know who commissioned that expert
2 report?
3 A. Boudins.
4 Q. Do you know when the first draft of that
5 doctor's expert report was circulated?
6 A. I heard that Boudin got it in February,
7 maybe. I don't think I got it until July, but I'm
8 not sure about that.
9 Q. July of what year?
10 A. The same year as the mediation.
11 Q. Of 2016?
12 A. Yeah.
13 Q. So you actually read it in advance of the
14 mediation?
15 A. I talked about this earlier. I said yes.
16 You don't catch everything the first time you read
17 it. I was sitting there at the mediating table and
18 I was reading it and I caught it and I turned to
19 Randy and I said, after it was over, does this
20 mean — that means.
21 Q. Means what?
22 A. Does this mean the McGuires are liable?
23 Yeah, that means they are liable. He said, call my
24 office after everything and I'll give you a name for

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1 an attorney you should go see.
2 MR. FLYNN: Any follow-up, Julia?
3 MS. WILLIAMS: I have two follow-up questions.
4 EXAMINATION
5 BY MS. WILLIAMS:
6 Q. Did you ever give Hans authority to make
7 a settlement demand regarding Mr. Gagnon?
8 A. I think at one time in one of my meltdown
9 letters I said get whatever you can, but no, I never
10 actually signed anything saying you have the right
11 to offer a settlement.
12 Q. Did you ever give Hans authority to make
13 a settlement demand with regard to the McGuires?
14 A. A demand, no. He said he was going to
15 probe and see what was out there, and I said, if you
16 want to do that, that's fine.
17 MS. WILLIAMS: I have no further questions.
18 MR. FLYNN: Signature?
19 MS. WILLIAMS: We can waive signature.
20 THE REPORTER: Are you ordering this?
21 MR. FLYNN: Yes.
22 THE REPORTER: Regular delivery, e-tran?
23 MR. FLYNN: Yes.
24 THE REPORTER: Copy?

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1 MS. WILLIAMS: Yeah.
2 THE REPORTER: Regular delivery, e-tran?
3 MS. WILLIAMS: PDF.
4 (WHEREUPON, at 4:00 p.m.,
5 the deposition of PAUL DULBERG
6 was concluded.)
7 *****
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DUPAGE)
4 I, KAREN PILEGGI, a Notary Public
5 within and for the County of DuPage, State of
6 Illinois, and a Certified Shorthand Reporter of said
7 state, do hereby certify:
8 That previous to the commencement of
9 the examination of the witness, the witness was duly
10 sworn to testify the whole truth concerning the
11 matters herein;
12 That the foregoing deposition
13 transcript was reported stenographically by me, was
14 thereafter reduced to typewriting under my personal
15 direction, and constitutes a true record of the
16 testimony given and the proceedings had;
17 That the said deposition was taken
18 before me at the time and place specified;
19 That I am not a relative or employee
20 or attorney or counsel, nor a relative or employee
21 of such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in the
23 outcome of this action.
24 IN WITNESS WHEREOF, I do hereunto



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Page 145		
1	set my hand and affix my seal of office at Chicago,	
2	Illinois this 3rd day of March, 2020.	
3		
4	<i>Karen Pileggi</i>	
5	Notary Public, DuPage	
6	County, Illinois.	
7	My commission expires 1/2/24.	
8		
9	CSR Certificate No. 64-3404	
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Page 146		
1	EXAMINATION	
2		Page Line
3	PAUL DULBERG	
4	Examination by Mr. Flynn	3 6
5	Examination by Ms. Williams	142 4
6		
7		
8	EXHIBITS	
9	Deposition Exhibit	Page Line
10	Exhibit No. 1.....	47 19
11	Exhibit No. 2.....	52 6
12	Exhibit No. 3.....	60 6
13	Exhibit No. 4.....	65 2
14	Exhibit No. 5.....	67 13
15	Exhibit No. 6.....	79 12
16	Exhibit No. 7.....	84 8
17	Exhibit No. 8.....	87 10
18	Exhibit No. 9.....	91 2
19	Exhibit No. 10.....	101 9
20	Exhibit No. 11.....	114 10
21	Exhibit No. 12.....	125 2
22	Exhibit No. 13.....	125 5
23		
24		



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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
vs.	)	No. 17 LA 377
)	
THE LAW OFFICES OF THOMAS J.)	
POPOVICH, P.C., and HANS MAST,)	
)	
Defendants.)	

**DEFENDANT HANS MAST'S
INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

DEFINITIONS & INSTRUCTIONS

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of

illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

ANSWER:

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

ANSWER:

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

ANSWER:

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than \$100,000?

ANSWER:

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
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ARDC No. 6239349
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Attorneys for Defendants
gflynn@karballaw.com

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C., and HANS MAST,

Defendants.

No. 17 LA 377

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

TO: Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ George K. Flynn
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

EXHIBIT E

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

/s/ George K. Flynn
One of their Attorneys

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
vs.	)	No. 17 LA 377
)	
THE LAW OFFICES OF THOMAS J.)	
POPOVICH, P.C., and HANS MAST,)	
)	
Defendants.)	

**DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S
SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF**

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. by and through its attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 214, respectfully requests Plaintiff, Paul Dulberg, to produce within 28 days at the law offices of Karbal, Cohen, Economou, Silk & Dunne, LLC, 150 South Wacker Drive, Suite 1700, Chicago, Illinois 60606, the following photographs, documents, objects, and other tangible things:

SUPPLEMENTAL PRODUCTION REQUESTS

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE:

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE:

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE:

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their representation of you or provision of legal services to you.

RESPONSE:

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE:

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition from February 19, 2020.

RESPONSE:

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE:

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

George Flynn

From: George Flynn
Sent: Thursday, September 17, 2020 4:06 PM
To: Paul Dulberg
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Thank you.

Pursuant to Illinois Supreme Court Rule 201(k), please advise when the supplemental discovery answers and documents will be served. As I indicated in court on September 10, I plan to file a motion to compel very soon if we do not receive the sworn answers and all responsive documents.

Best regards,

-----Original Message-----

From: Paul Dulberg <Paul_Dulberg@comcast.net>
Sent: Thursday, September 17, 2020 11:19 AM
To: George Flynn <gflynn@karballaw.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear Mr Flynn,

Please find the attached files named 2020-09-17_Appearance Pro se.pdf and 2020-09-17_ProofOfDelivery.pdf

I have filed these with the McHenry County Clerk via the i2file web site.

Thank you,
Paul

Paul Dulberg
847-497-4250

GROUP EXHIBIT F

George Flynn

From: George Flynn
Sent: Saturday, August 29, 2020 8:59 PM
To: Julia Williams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).

I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.

I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).

The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.

Please feel free to contact me if you would like to discuss this matter.

Very truly yours,

From: Julia Williams <juliawilliams@clintonlaw.net>
Sent: Thursday, July 30, 2020 10:07 AM
To: George Flynn <gflynn@karballaw.com>
Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P: 312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al.
(Circuit Court of McHenry County, IL No. No. 17 LA 377)
Date: July 2, 2020 at 11:11:39 AM CDT
To: "<ed@clintonlaw.net>" <ed@clintonlaw.net>, "<juliawilliams@clintonlaw.net>" <juliawilliams@clintonlaw.net>, "<Marywinch@clintonlaw.net>" <Marywinch@clintonlaw.net>
Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC

150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

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George Flynn

From: George Flynn
Sent: Thursday, July 30, 2020 10:12 AM
To: Julia Williams
Cc: Ed Clinton; Mary Winch
Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Hi Julia. Yes, agreed.

On Jul 30, 2020, at 10:07 AM, Julia Williams <juliawilliams@clintonlaw.net> wrote:

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
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Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg>

P: (312) 431-3641

<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png>

F: (312) 431-3670

<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png>

E: lwalters@KARBALLAW.com

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<2691756v1 - Supplemental Request for Prod. to Plaintiff.PDF>

<2691837v1 - Notice of Service of Discovery Documents -- Supplemental RTP to Plaintiff (FS).PDF>

George Flynn

From: George Flynn <gflynn@karballaw.com>
Sent: Tuesday, September 1, 2020 10:31 AM
To: Julia Williams
Cc: Ed Clinton; Mary Winch; Linda Walters
Subject: RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

Thank you. I understand the position you and your firm are in. I will plan to either file a motion to compel, or advise the court of our intentions to file a motion on September 10.

Stay safe.

Very Truly Yours,


George Flynn


Karbal | Cohen | Economou | Silk | Dunne | LLC

150 S. Wacker Drive

Suite 1700

Chicago, IL 60606

 P: (312) 431-3622

 F: (312) 431-3670

 E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:

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From: Julia Williams <juliawilliams@clintonlaw.net>

Sent: Monday, August 31, 2020 8:45 AM

To: George Flynn <gflynn@karballaw.com>

Cc: Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>; Linda Walters <lwalters@KARBALLAW.com>

Subject: Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

I will certainly pass this along to our client.

Unfortunately, because we are withdrawing, we are not comfortable answering discovery when another counsel may be appearing. Mr. Dulberg is seeking new counsel and would like to have his new counsel answer. I expect that we will be withdrawing on September 10, 2020. The court will grant Mr. Dulberg 21 days to find alternative counsel. Based upon this, it is unlikely that any answers to supplemental discovery will be prepared prior to the end of September.

Thank you again for your time and courtesy in this case. It has been nice to work with you as well.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P: 312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Aug 29, 2020, at 8:58 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.

Please feel free to contact me if you would like to discuss this matter.

Very truly yours,

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Subject: Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Begin forwarded message:

From: Linda Walters <lwalters@KARBALLAW.com>

Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Date: July 2, 2020 at 11:11:39 AM CDT

To: "ed@clintonlaw.net" <ed@clintonlaw.net>,
"juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>,
"Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>

Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

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<image002.png><image003.png><image001.jpg>

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
vs.	)	No. 17 LA 377
)	
THE LAW OFFICES OF THOMAS J.)	
POPOVICH, P.C., and HANS MAST,)	
)	
Defendants.)	

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS
MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND
TO REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021
ORDER ON DEFENDANTS' MOTION TO COMPEL**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Supplement Defendants' Motion to Compel and To Request Hearing on Plaintiff's Compliance with April 6, 2021 Order on Defendants' Motion to Compel, state as follows:

1) Defendants are bringing this motion to supplement their prior Motion to Compel and request a hearing on Plaintiff's compliance with the Court's April 6, 2021 Order (attached as Ex. A).

2) The Defendants never received a file-stamped copy of the draft order which their counsel submitted to the Court for entry on April 2, 2021 (see Group Ex. B, April 2, 2021 email from Linda Walters, and attached Order). Defendants never received a response, nor received electronic notice of the entry of the Order on April 6, 2021, and accordingly did not diary the June 14, 2021 hearing, and thus did not appear.

3) In the Court's April 6, 2021 Order granting Defendants' motion to compel, the Court ordered the Plaintiff to serve a supplemental answer to Mast's Interrogatory No. 1, and amend its responses to Popovich's Supplemental Request. The Court further ordered, "Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

4) On June 1, 2021, the Plaintiff served Exhibit C (Plaintiff's Amended Additional Answer to Defendant Hans Mast's Interrogatory to Plaintiff Paul Dulberg), and Exhibit D (Plaintiff's Amended Additional Response to Defendant The Law Offices of Thomas J. Popovich, P.C.'s Supplemental Request for Production). Dulberg also produced fourteen pages of bates labeled records (See Ex. E).

5) The Plaintiff has not complied with the Court's April 6, 2021 Order. Accordingly, Defendants respectfully request that the Court strike the non-responsive portions of Exhibits C, D, and E and close written discovery.

6) With respect to Exhibit C, Dulberg provide a "non-answer." Dulberg was ordered to specifically answer each discovery request. Mast's Interrogatory No. 1 states as follows: Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. Dulberg's amended additional answer does not describe how there was a breach of the standard of care, he simply identifies a discovery date (December 12, 2016) based upon a binding mediation order. He does not describe the breach of the standard of care, or how, specifically, he became aware of it. He simply writes, "He knew the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016." He does not describe the

discussion or explain how the standard of care was breached, or why his discussion with Tom Gooch enlightened him as to the breach.

7) Moreover, Popovich's supplemental requests for production are aimed specifically at identifying how Dulberg "discovered" his breach of the standard of care, and when he recognized damages as a result of same. In Exhibit D, Dulberg's amended additional response, Dulberg simply attaches various pages from pleadings in this case. He does not attach any discoverable materials, such as emails, letters, etc. Instead, he is simply regurgitating his position in this case. As previously argued in Defendants' Motion to Compel and at hearing, if Dulberg has no documents responsive to the discovery requests, and he has no basis for a tolling of the statute of limitations in this case, then his answer should simply state, "none." Enough is enough. Dulberg's non-responses to this discovery requests should be stricken, and he should be barred attempting to present any additional evidence in support of his tolling theory.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their Motion to Supplement Defendants' Motion to Compel and set hearing on Plaintiff's compliance with April 6, 2021 Order on Defendants' Motion to Compel, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

2926478

Page 3 of 3

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

eSigned by THOMAS A. MEYER 04/06/21 09:09:24 RN0hbgqY

C 1281 v2

Linda Walters

From: Linda Walters <lwalters@karballaw.com>
Sent: Friday, April 2, 2021 10:17 AM
To: proposedorders
Cc: contact@lawofficeofalphonsetalarico.com; George Flynn
Subject: RE: Paul Dulberg v. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (Circuit Court of McHenry County, IL Case No.: 17 LA 000377)
Attachments: 2868280v1 - Proposed Order (4-2-21).PDF; 2867639v1 - Proposed Order (4-2-21).DOCX


On behalf of George Flynn, attached is a copy of a proposed order in both word and pdf format relative to the above. All counsel of record have been copied on this email.


Thank you.
Linda Walters
Asst. to George Flynn

Linda Walters

Karbal | Cohen | Economou | Silk | Dunne | LLC

150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

 P: (312) 431-3641

 F: (312) 431-3670

 E: lwalters@karballaw.com


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Linda Walters

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ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C., and HANS MAST,

Defendants.

No. 17 LA 377

ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

- 1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.
- 2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.
- 3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

Prepared by:

Atty. No. George K. Flynn

ARDC #6239349

Name: Karbal, Cohen, Economou,
Silk & Dunne, LLC

....., 2021

ENTER:

Attorney for: Defendants

Address: 150 S. Wacker Drive, Suite 1700

City: Chicago, IL 60606

Telephone: (312) 431-3700

E-Mail: gfflynn@karballaw.com

.....

Judge

Judge's No.

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICE OF THOMAS J.
POPOVICH, P.C., and HANS MAST

Defendants.

)
)
)
)
) Case No. 17LA 377
)
)
)
)
)

**PLAINTIFF'S AMENDED ADDITIONAL ANSWER TO DEFENDANT
HANS MAST'S INTERROGATORY TO PLAINTIFF PAUL DULBERG**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A.
Talarico, and for his Amended Additional Answer to Defendant Hans Mast's
Interrogatory #1 states as follows:

1. Identify and describe each and every way that Popovich or Mast breached any
duty of care to you, the date of the breach, and when and how you became aware
of the breach.

ANSWER: Between October 2013 and January 2014, Mast told Dulberg that Illinois
law does not permit a recovery against the McGuires' in the circumstances of
Dulberg's case and that he would not receive any recovery from the McGuires. Mast
advised Dulberg that the judge would rule in favor of the McGuires on a motion for
summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

AMENDED ADDITIONAL ANSWER: Dulberg discovered the pecuniary injury on December 12, 2016 based upon a binding mediation award and knew he had a legal malpractice case on December 16, 2016. He knew that the Defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

Dulberg discovered in the defendants' document disclosure, POP 000192, that Mast had in fact sent the McGuires' attorney a \$7,500.00 offer on October 22, 2013 without Dulberg's knowledge and that was before the November 4, 2013 meeting in Mast's office when Mast first asked Dulberg if Mast could probe and see what was on the table for a possible settlement with the McGuires.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Paul Dulberg

June 1, 2021

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICE OF THOMAS J.
POPOVICH, P.C., and HANS MAST

Defendants.

)
)
)
)
) Case No. 17LA 377
)
)
)
)

**PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW
OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR
PRODUCTION**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A.

Talarico, and for his Amended Additional Response states as follows:

I. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's

Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their

representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's
Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133,
and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that
you did not discover until December 16, 2016 that you had been injured or
damaged by Mast or Popovich's negligence in representing you in the claim or
lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's
Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on
December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually
discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November
30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally
available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please
see above)

6. All documents, including letters and email communications between Tom Gooch
on the one hand, and you on the other hand, regarding legal advice he provided to
you on December 16, 2016 and thereafter, that you "had a malpractice case"
against Popovich, as testified by you at pages 129-142 of your discovery deposition

from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's
Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding
the liability of the McGuire's, whether the advice or opinions were rendered at your
mediation of the underlying case (on or about December 16, 2016) or prior thereto,
as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's
Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

/s/ Alphonse A. Talarico
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022

(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.
2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.
3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.
4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid

that he verily believes the same to be true.


Paul Dulberg

June 1, 2021

LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)¹. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of \$5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

B. Alleged Acts of Negligence

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

- a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
- b) Failed to thoroughly investigate liability issues against property owners of the subject property;

¹ The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

EXHIBIT E

28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only \$100,000.00" and no insurance company would pay close to that;

fact.” (*Emphasis added*) (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. “If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards.” *See* 735 ILCS 5/13-215.

45. DULBERG’s Complaint states that DULBERG discovered the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants’ Combined Motion to Dismiss, and for all other relief this Honorable Court

fact.” (*Emphasis added*) (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

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CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants’ Combined Motion to Dismiss, and for all other relief this Honorable Court

mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

- a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;
- b) Failed to thoroughly investigate liability issues against property owners of the subject property;
- c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;
- d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;
- e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;
- f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;
- g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

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b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only \$100,000.00" and no insurance company would pay close to that;



LAW OFFICES

FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
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*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60081

TELEPHONE (847) 268-7770

FAX (847) 268-7771

www.fizlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for \$5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,


Saul M. Ferris

SMF/cl

Dulberg 006502

From: Randy Baudin II <randybaudin2@gmail.com>
Subject: award
Date: December 12, 2016 7:34:42 PM CST
To: pdulberg@comcast.net
1 Attachment, 45.2 KB

Congrats!!



W. Randal Baudin II's LinkedIn Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax

page 2



Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

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.

PIS

75,000.

LNL

75,000.

11

Dulberg 002928


The Honorable James P. Etchingham, (Ret.)

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

Dulberg 002929

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: award
Date: December 13, 2016 10:48:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!



W. Randal Baudin II's LinkedIn Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax

page 2



Binding Mediation Award

Paul Dulberg)	
)	
)	
)	
v.	)	ADR Systems File # 33391BIMAG
)	
)	
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

Dulberg 002930

Comments/Explanation	<i>medical</i>	\$ 60,000.
	<i>future medical</i>	\$ 200,000.
	<i>lost wage</i>	\$ 250,000.
	<i>PIS</i>	75,000.
	<i>LNL</i>	75,000.


The Honorable James P. Etchingham, (Ret.)

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

Dulberg 002931



Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

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 & S

75,000.

LNL

75,000.


The Honorable James P. Etchingham, (Ret.)

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: award
Date: December 13, 2016 10:46:50 AM CST
To: paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!



W. Randal Baudin II's LinkedIn Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax

page 2



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

Dulberg 004884

Comments/Explanation	Medical	\$ 60,000.
	Future medical	\$ 200,000.
	Lost wage	\$ 250,000.
	PIS	75,000.
	LNL	75,000.


 The Honorable James P. Etchingham, (Ret.)

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

Dulberg 004885

1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL DISTRICT
4 McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPOVICH, P.C. and
HANS MAST,

11 Defendants.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 19th day of July,
16 2021, in the McHenry County Government Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by
20 MR. ALPHONSE A. TALARICO (via Zoom)

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN

24 On behalf of the Defendants.

1 THE COURT: Counsel?

2 MR. FLYNN: No. 10, your Honor. I see
3 Mr. Talarico. George Flynn on behalf of
4 defendant/movant.

5 THE COURT: Dulberg versus Mast?

6 MR. FLYNN: Yes.

7 THE COURT: Okay. I saw Mr. Talarico. All
8 right. Mr. Talarico?

9 MR. TALARICO: Yes, Judge. Good morning.

10 THE COURT: All right. Counselor here in court,
11 what's going on?

12 MR. FLYNN: Good morning, your Honor. We
13 brought a motion to supplement our motion to compel.
14 The Court ruled on April 6th and granted defendant's
15 motion to compel and set a June 14 compliance date.

16 THE COURT: Okay.

17 MR. FLYNN: I'm sorry. June 1st compliance date
18 with a June 14 hearing. Somehow I don't believe we
19 got a copy of the file stamped order and it didn't
20 get diaried, so I believe the case was called on
21 June 14 --

22 THE COURT: Okay.

23 MR. FLYNN: -- and a continue date August 19th.

24 THE COURT: You got inadequate compliance, is

1 that ultimately --

2 MR. FLYNN: That's our position, yes.

3 THE COURT: All right. I'm going to pass this.
4 We'll come back to it. And let me see if I can take
5 a look at the compliance at issue.

6 Mr. Talarico, just hang in there. I'll be
7 back at the end of the call.

8 MR. FLYNN: Thank you, your Honor.

9 (Whereupon the afore-captioned
10 cause was recalled.)

11 THE COURT: Let's go to Dulberg. All right.
12 Plaintiff's counsel for the record, if you could
13 identify yourself.

14 MR. TALARICO: Good morning, your Honor. My
15 name is Alphonse Talarico. I represent Paul
16 Dulberg.

17 MR. FLYNN: And good morning again, your Honor.
18 George Flynn on behalf of Popovich and Mast.

19 THE COURT: All right. So tell me what the
20 issue is.

21 MR. FLYNN: Again, your Honor, the Court ruled
22 on April 6th that the plaintiff was directed to
23 provide the specific answers and responses to each
24 interrogatory and production request. So we did

1 receive supplemental production responses and a
2 supplemental interrogatory answer. With respect to
3 the supplemental production, there is one document
4 that I consider to be responsive and that is new.

5 THE COURT: I'm sorry?

6 MR. FLYNN: There is one document that was
7 produced and I consider it to be responsive and a
8 new production. The rest of the documents that were
9 produced, it's unusual. There are actual pleadings
10 from this case that were attached as responsive
11 documents to my discovery requests. I don't see how
12 those -- which basically just set forth the
13 plaintiff's position in this case in response to the
14 various arguments we've made in motions.

15 THE COURT: Well, what is it you're looking for?
16 What didn't you get?

17 MR. FLYNN: I'm looking to strike any of those
18 documents --

19 THE COURT: Okay.

20 MR. FLYNN: -- that are not responsive.

21 THE COURT: Is it -- I mean, really is it
22 necessary to go to the trouble of striking them if
23 they're -- I mean, ultimately they're not going to
24 be relevant as a discovery response.

1 MR. FLYNN: Only -- I just want to make sure
2 there aren't any additional documents that were --

3 THE COURT: Are there any additional documents,
4 Mr. Talarico?

5 MR. TALARICO: Judge, I have no idea if -- it's
6 our position we complied completely. We filed our
7 answers on June 1st. If the Court had -- I don't
8 know if the Court remembers, you had ordered us,
9 plaintiff and defendant, to talk up through
10 June 14th to see if there were any issues. The only
11 response I got from the defendants was an e-mail
12 with one word. As I told you on June 14th, the only
13 word was, Thank you. Now I am totally surprised,
14 73 days later, Judge, and I don't know what else --
15 I want time to respond in writing, Judge. This
16 is --

17 THE COURT: I don't -- I don't want to do that.

18 MR. TALARICO: This has been difficult.

19 THE COURT: This is --

20 MR. FLYNN: Yes, it has, Judge.

21 THE COURT: So what is it you -- what is it you
22 are looking for? Because I have a representation on
23 the record -- and I'm assuming there's an affidavit
24 of compliance.

1 MR. TALARICO: There is.

2 THE COURT: Okay. Then -- and he says, I've
3 given you everything.

4 MR. FLYNN: That's fine with respect to the
5 production response. Now there's the interrogatory
6 answer.

7 THE COURT: All right. Tell me -- we're moving
8 on to the interrogatory.

9 MR. FLYNN: And again, this goes to the statute
10 of limitations on a legal malpractice case. The
11 plaintiff is claiming that he didn't discover it
12 until after the 2 years --

13 THE COURT: Could you keep your voice up a
14 little?

15 MR. FLYNN: Sure. Plaintiff is arguing for a
16 tolling of the statute of limitations on a legal
17 malpractice case. He was asked in Interrogatory
18 No. 1, Identify and describe each and every way that
19 Popovich or Mast breached any duty of care to you,
20 the date of the breach, and when and how you became
21 aware of the breach.

22 His response -- his amended additional
23 response discusses his pecuniary injury, that only
24 addresses damages. With respect to the breach of

1 the standard of care and how he discovered it, he
2 simply says he knew that the defendants breached the
3 standard of care due him based upon a verbal
4 discussion with Attorney Tom Gooch on December 16,
5 2016.

6 THE COURT: Okay.

7 MR. FLYNN: That describes the date. It doesn't
8 describe how he became aware of it, what Gooch told
9 him. Now, again, I know your Honor is aware of the
10 deposition testimony in this case regarding that
11 December 16 time period. If the answer is that
12 Dulberg doesn't remember what Mr. Gooch told him, if
13 Gooch said simply, You have a case, that's fine.
14 That's what they should say. But I've already taken
15 his deposition. There are no specifics that explain
16 to me why Mr. Gooch crystallized this breach of the
17 standard of care on December 16. But if this is all
18 they have, then that's what he should say, is that I
19 don't remember what Mr. Gooch told me.

20 THE COURT: I mean, he's -- I think he's
21 complied. I'm not sure --

22 MR. FLYNN: What is the breach of the standard
23 of care?

24 THE COURT: I'm sorry?

1 MR. FLYNN: And what is the breach of the
2 standard of care? That's what I've asked in the
3 interrogatory. They don't say.

4 THE COURT: Well, I think that -- all right. I
5 guess that is -- my reading on it, it's implied it's
6 a statute of limitations. But --

7 MR. FLYNN: No, the statute of limitations is
8 the issue in this case.

9 THE COURT: All right. What is the --

10 MR. FLYNN: The underlying personal injury
11 case --

12 THE COURT: What is the breach? Did Mr. Gooch
13 advise him what the breach was?

14 MR. TALARICO: Judge, all that Mr. Dulberg
15 recalls was relayed in the responses. There were no
16 recordings that were going on. Nothing was done in
17 writing. I'm not sure how I can possibly respond
18 anymore, to give anymore.

19 THE COURT: I have a representation that this is
20 all there is.

21 MR. FLYNN: That's satisfactory to me. As long
22 as when I file my summary judgment motion there's
23 not some new discovery discussion as to --

24 MR. TALARICO: Judge --

1 MR. FLYNN: -- what the breach was and what --

2 MR. TALARICO: I'm sorry. I hate to interrupt.
3 Judge?

4 THE COURT: Yeah.

5 MR. TALARICO: We -- again, we were -- our
6 response, I believe is in total compliance with the
7 Court order of June 6th and your instructions on
8 that day from the court record. And I'd like to
9 respond in writing to establish that we did that.

10 THE COURT: No. No. I mean, you're -- you only
11 need to respond in writing if we're going to have a
12 hearing. If you want to file a brief that -- just
13 in the file, that's fine, but I think we have a
14 resolution today and I don't want to spend more time
15 reading briefs resolving an issue that's moot. So I
16 think this is resolved. What else is outstanding?

17 MR. FLYNN: I think that does resolve -- the
18 representation resolves both issues, so --

19 THE COURT: I have -- you have advised -- well,
20 you've advised that's all there is, so I'm finding
21 you in compliance.

22 MR. TALARICO: Thank you, your Honor.

23 THE COURT: Okay. Is there anything else we
24 need to do?

1 MR. FLYNN: I suppose with respect to the
2 summary judgment motion that I anticipate, Judge,
3 there was one document that was produced in order to
4 avoid a second deposition of Mr. Dulberg to
5 authenticate this document, which is a letter from
6 Attorney Thompson -- I'm sorry -- Attorney Ferris --
7 that goes to the issue of the statute of
8 limitations. If Mr. Talarico would stipulate to the
9 authenticity of this March 4, 2015 letter on the
10 record, I don't need to send a request to admit
11 for --

12 THE COURT: Can you hear all that?

13 MR. TALARICO: I heard it, Judge, but I'm not
14 familiar with that document. A request to admit
15 would be welcome.

16 MR. FLYNN: Fair enough.

17 MR. TALARICO: Just so I can see what it is.

18 THE COURT: That's fine. We're back again on
19 August 19th. Do you want to delay that date in
20 light of the fact you may be issuing a request to
21 admit?

22 MR. FLYNN: I think that would make sense.

23 THE COURT: All right. So let's strike
24 August 19th and tell me when it makes sense to come

1 back.

2 MR. FLYNN: I'll need at least 30 days, so --

3 THE COURT: 60 days?

4 MR. FLYNN: A 60-day date would be great.

5 THE COURT: How's September 17th? That's a
6 Friday.

7 MR. TALARICO: Fine with me, Judge.

8 MR. FLYNN: That works for me.

9 THE COURT: All right. So that will be at 8:45
10 and then we'll see what you guys want to do when you
11 come back. And are you withdrawing your motion
12 or ...

13 MR. FLYNN: I think that --

14 THE COURT: Or do you want me expressly to find
15 compliance based on representations in open court?

16 MR. FLYNN: I'm not requesting a hearing any
17 longer. I think we resolved the matter. So yeah,
18 I'll withdraw it.

19 THE COURT: All right. Motion's withdrawn. The
20 record still stands. I did find that you were in
21 compliance and we'll deal with the next step
22 whenever it comes up. But I will see you
23 September 17th and if you could draft the order.

24 MR. FLYNN: I will. Thank you, your Honor.

1 THE COURT: All right. Thank you.

2 Mr. Talarico, anything else?

3 MR. TALARICO: No, Judge, thank you for your
4 time.

5 THE COURT: All right. Thank you.

6 (Which were all the proceedings
7 had in the above-entitled cause
8 this date.)
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1 STATE OF ILLINOIS }
2 COUNTY OF McHENRY } SS:
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4 I, CRISTIN M. KELLY, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.
13
14

15 *Cristin M. Kelly*
16 Certified Shorthand Reporter
17 License No. 084-004529
18 Date: August 24, 2021
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