


From: Paul Dulberg pdulberg@comcast.net 
Subject: Re: Dulberg v Mast et al; Discovery
Date: July 26, 2019 at 5:09 PM
To: The Clinton Law Firm juliawilliams@clintonlaw.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

PD

Hi Julia,
I have attached 4 files with notes for possible changes to the answers.
I thought we had this all worked out at the last court date but so much has changed since the documents we received from the defense so I tried to incorporate what was learned thus far but I have to leave it up to you to determine what is best since we are so late.
Please let me know if you need anything.
Thank you,
Paul



Notes on
Answers.zip

On Jul 23, 2019, at 4:42 PM, Julia Williams <juliawilliams@clintonlaw.net> wrote:

Dear Paul,

First, we have not completed our discovery disclosure to the other side. We need to do so. Mast and the Popovich firm sent discovery requests to you (through us) some time ago. You sent responses and then we have modified them. We need to finalize these responses and send them. I received additional time, but we are well over our time and we need to get this completed.

Attached are the responses that I sent for your review on July 2, 2019 based upon your prior changes.

Please review and respond by the end of the week.

Second, you sent a file for our review on July 8, 2019.

The file consisted of:

1. A memo outlining what was contained in the file, as well as some notes on the document production that we received from Popovich.
2. A list of documents that appear to be missing from Popovich/Mast's discovery production.
 - a. We will review the production and request supplemental information from Popovich/Mast
3. A list of documents that appear to be missing from Dulberg discovery production that we produced to the other side.
 - a. We will review the production and documents provided by you to us to determine whether these are actually missing.
4. A timeline of the Dulberg/McGuire settlement
5. A list of questions for Mast
 - a. We will keep this list for incorporation into our questioning when we are preparing for depositions.
6. Table of Contents for Mast/Popovich Document Production
7. Table of Contents for Dulberg Production
8. Emails by Date.

Thank you for providing the information. The timeline and tables of content will be especially helpful.

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P: 312.357.1515
F: 312.201.0737
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immediately.

On Jul 2, 2019, at 5:26 PM, Julia Williams <juliawilliams@clintonlaw.net> wrote:

Dear Paul,

Attached are the updated drafts of the discovery responses for your review. There are some notes highlighted in yellow.

If you are comfortable with the answers, we will remove the notes that are not actual answers and produce them to the other side. I have your verification so I do not need that again.

I have also attached the documents that we produced to opposing counsel. Please note that we did not include documents that you produced to us that we considered privileged. We will now waive that privilege and do a supplemental production of documents, whereby we hand over more relevant documents.

Let us know if you have questions on the documents.

Best Regards,

Julia Williams
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Dulberg's Answers to Popovich Interrogatories to Plaintiff 2019 July 2.docx
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Dulberg Answers to Thomas Popovich Expert Interrogatories Draft 2019 July 2.docx
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Dulberg RTP Resposes 2019 July 2.docx
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457.5 MB

DULBERG'S ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF 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 and the actual injury sustained.

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

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

Notes to Julia:

A. "actual injury sustained" should be removed from both the McGuires and Gagnon answers.

Reason: None of them are treating Dr's. Thus, none of them have "actual knowledge of the injuries" other than what they might have heard through their attorneys or other unknown sources.

B. Should treating Dr's be listed here?

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.

Notes to Julia:

A. Answer to 5 does not depict the "exact words exchanged" portion of

the question. Also, Dulberg didn't have a recording of the exact words so exact words are impossible to produce but Dulberg does have a recollection of the event in question.

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.

Notes to Julia:

A. Not included in answer 5 is; Earlier in the day Dulberg did help William McGuire move branches to the garden and also started the chainsaw once for Gagnon while Gagnon was up in the tree. This is in Dulberg's deposition and I would refer the defense to that.

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. Have you suffered any serious personal 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. 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. Seks. Treated with inhaler and antibiotics
4. 2005. Broken Foot. Treated at Centegra Hospital in McHenry. Scott Dulberg stepped on Paul Dulbergs bare right foot.

Notes to Julia:

A. the number 13 question appears to have the number 14 question attached at the end.

B. "Dr. Seks" should read Dr. Sek

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.

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

Notes to Julia:

A. I would consider the enlarged prostate treated by Dr Berger at the Uro Center in Lake Zurich as major and the dog bite as minor but perhaps I'm wrong? It's up to you.

B. I made a mistake. It's Dr Elterman and or Dr Tarnauskas at the Elterman Center in Skokie who continue to monitor the prostate for changes. I see one or the other depending on availability.

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.

Notes to Julia:

A. "whether the expense and/or loss in question has been paid" other than ongoing Medical treatments and prescriptions for Dystonia, all medical costs were paid in full by the Bankruptcy Trustee out of Dulberg's Bankruptcy Estate. The ongoing treatments and prescriptions are paid by Dulberg for initial out of pocket expenses. Then, Medicare and supplemental Medical and part D prescription drug Insurance kick in to cover the rest.

B. Dulberg still owes his mother Barbara Dulberg approximately \$70,000 for paying Dulberg's mortgage payments and the property taxes between the time of the bankruptcy and the SSDI award. This was a loan and is on record with (I think its called) the Illinois Department of Health and Human Services whom Dulberg had to file with them to receive aid until SSDI kicked in.

C. Dulberg may owe the State of Illinois for the aid received and may also owe Social Security Disability for the full amount if the social security rules change or it is ever determined that Dulberg is no longer permanently disabled. This amount Dulberg could potentially owe back grows every month.

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 advised 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 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.

Notes to Julia:

A. Should we refer to Masts emails and all correspondence from October 2013 forward for documented proof and not just what was said in the meetings or telephone conversations?

B. "advised" should read "told" in all instances of this answer.

C. Should we add the letter between Mast and Barch dated October 22, 2013 that clearly shows that the "\$5,000 offer" Mast referred to in November/December 2013 emails, phone conversations and meetings from Barch was actually a counter offer to Masts original offer of \$7500 back in October 2013 which again we just learned of during the document exchange and was withheld from the case file to subsequent council?

D. Should we list all the documents to this question that we received during the recent document exchange that were not originally included with the case file and did not make it to subsequent council?
I believe withholding information is the same as being false and

misleading, But this is up to you.

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

Notes to Julia:

A. INTERROGATORIES TO Should Read INTERROGATORIES TO

INTERROGATORIES

1. State the name, address, telephone number and occupation of each person you will call as a witness at the time of trial of this cause and identify each witness as: (1) a lay witness; (2) an independent expert witness; or (3) a controlled expert witness.

ANSWER:

A. Lay Witnesses

(4) 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 when the McGuires moved for Summary Judgment against Dulberg in the December 2013 meeting. Kost is also expected to testify as to Mast expressing urgency in accepting the McGuires' offer.

Notes to Julia:

A. December should be November

(6) Caroline McGuire. Investigation Continues.

Caroline McGuire is expected to testify as to the facts and circumstances of the accident and consistent with his testimony in the case 2012 LA 178.

Notes to Julia:

A. his should read her

Notes to Julia:

A. Shouldn't Scott Dulberg and Michael McArtor be added to the list as lay witness here?

5t+IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Notes to Julia:

A. 5ttn should be removed from the above line

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.

Notes to Julia:

A. This should read; All relevant documents in Plaintiff's possession have been produced and will be updated if more become available.

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.

Notes to Julia:

A. This should read; All relevant documents in Plaintiff's possession have been produced and will be updated if more become available.

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.

Notes to Julia:

A. This should read; All relevant documents in Plaintiff's possession have been produced and will be updated if more become available.

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.

Notes to Julia:

A. This should read; All relevant documents in Plaintiff's possession have been produced and will be updated if more become available.

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.

Notes to Julia:

A. This should read; All relevant documents in Plaintiff's possession have been produced and will be updated if more become available.

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.

Notes to Julia:

A. This should read; All relevant documents in Plaintiff's possession have been produced and will be updated if more become available.

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.

Notes to Julia:

A. This should read; All relevant documents in Plaintiff's possession have been produced and will be updated if more become available.

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.

Notes to Julia:

A. This should read; All relevant documents in Plaintiff's possession have been produced and will be updated if more become available.

DULBERG'S ANSWERS TO DEFENDANT HANS MAST'S
INTERROGATORIES TO PLAINTIFF PAUL DULBERG

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 advised 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 advised that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

Notes to Julia:

A. In the recent document exchange Dulberg has learned that Mast had made a settlement offer to Barch on October 22, 2013, without Dulberg's consent, and that Mast later represented Barch's counteroffer as an original offer to Dulberg in November 2013. Mast also did not include this document in the case file to subsequent council.

B. Dulberg has never received Gagnon's answers to Dulberg's interrogatories that Mast submitted to Gagnon in October, 2012. Mast again asked for the answers to the interrogatories in February, 2013. See POP 000268.

Also, neither of these documents, the original interrogatories nor the request for answers were turned over with the case file to subsequent council.

C. In the request for production to the McGuires, Mast asked for a certified copy of the insurance policy in June of 2012.

Also, There is no evidence in the documents Mast received the certified copy of the Insurance policy.

D. In the request for production to the Gagnon, Mast asked for a certified copy of the insurance policy in October of 2012 and again in February 2013. There is no evidence in the documents Mast received the certified copy of the Insurance policy.

E. There is no evidence that Mast consulted with any liability experts for their opinions regarding liability of either the McGuires or Gagnon.

F. Julia, it is obvious our files are different from theirs and that they didn't turn over all the documents to subsequent council.

G. Should we change all instances of "advised" to "told" in the answer?

Reason, the word "advised" seems to assume Dulberg had a choice. Using "told" does not and is what Mast actually did. I leave this up to you to decide the best wording.

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.

Notes to Julia:

A. McGuires never told Dulberg the insurance limits but rather gave Dulberg the policy number and insurance company name and contact information.

B. Dulberg became aware of the \$300,000 limit in July of 2019 after the document disclosure.

C. Dulberg cannot speak as to when any attorneys may have become aware.