

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

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

DEPOSITION OF SAUL FERRIS
APPEARING REMOTELY FROM
ILLINOIS

October 14, 2021
1:30 p.m.

REPORTED BY:
Renee D. Waishwell
CSR No. 084-004451

APPEARING REMOTELY FROM CHICAGO, ILLINOIS

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I N D E X

WITNESS PAGE

SAUL FERRIS

Direct Examination by Mr. Flynn	4
Cross-Examination by Mr. Talarico	19
Redirect Examination by Mr. Flynn	31

EXHIBITS PAGE

Exhibit No. 1	6
Exhibit No. 2	9

(Exhibits retained by counsel.)

1 REPORTED REMOTELY FROM CHICAGO, ILLINOIS

2 THURSDAY, OCTOBER 14, 2021, 1:30 P.M.

3 (Witness sworn.)

4 SAUL FERRIS,

5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FLYNN:

9 Q. Sir, could you state your name for the record and
10 spell your last name, please.

11 A. Saul Ferris, F-e-r-r-i-s.

12 Q. Thank you. Let the record reflect that this is
13 the discovery deposition of Mr. Saul Ferris taken
14 pursuant to notice and by agreement of the parties.
15 This deposition is being taken pursuant to the rules of
16 the Illinois Supreme Court, the Illinois Code of Civil
17 Procedure and any applicable local rules in McHenry
18 County.

19 Sir, what is your occupation?

20 A. I'm an attorney.

21 Q. And you're licensed in the State of Illinois?

22 A. Since 1985, yes.

23 Q. Okay. And do you focus your law practice on
24 representing plaintiffs in personal injury cases?

25 A. I'd say 50 percent plaintiff personal injury and

1 50 percent criminal defense.

2 Q. Okay. And your office is at 103 South Greenleaf
3 Avenue, Suite G in Gurnee, Illinois?

4 A. Correct.

5 Q. And are you a principal in a law firm?

6 A. Yes.

7 Q. And what is the current name of that law firm?

8 A. Ferris and Thompson.

9 Q. Okay. And was it known as Ferris, Thompson &
10 Zweig?

11 A. I'm a partner.

12 Q. I'm sorry. Go ahead.

13 A. Mr. Zweig -- Mr. Zweig is disabled. He had
14 several health issues that caused him to retire.

15 Q. Okay. And back in 2015, the firm was known as
16 the Law Offices of Ferris, Thompson & Zweig, Limited?

17 A. Correct.

18 Q. Okay. Are you familiar with a gentleman by the
19 name of Paul Dulberg?

20 A. Yes.

21 Q. Okay. And do you have an independent
22 recollection of Mr. Paul --

23 A. I saw him as a potential client. He -- if I
24 bumped into him on the street, I would not recognize
25 him, because I only had a telephonic encounter and an

1 in-person encounter for 15 minutes or so on -- back in
2 2015.

3 Q. Okay. Have you reviewed some documents today
4 to -- in preparation for the deposition today to refresh
5 your recollection of the matter?

6 A. You provided me with a letter, which I will
7 authenticate as being my letter dated March 4, 2015, and
8 then you asked me to -- if there was any documentation,
9 such as my file, which I do not have. I purged a file
10 after four years, and it has been six years. But I keep
11 my calendar -- I've kept my calendar since I started
12 vexing as a civilian, meaning I was in the military,
13 initially, and got out in 1989, and I have a calendar
14 for every client I've seen since.

15 Q. Okay. And you provided me with a copy, two pages
16 of -- of material -- photocopies from your personal
17 calendar; is that correct?

18 A. Yes.

19 Q. Okay. And why don't we identify the two
20 exhibits. If I could direct your attention to Exhibit
21 1, which was, I believe, emailed to you to my secretary,
22 Linda Walters.

23 (Ferris Deposition Exhibit No. 1
24 was remotely introduced.)
25

1 BY MR. FLYNN:

2 Q. Is Exhibit 1 in front of you a March 4, 2015,
3 letter bearing your signature?

4 A. Yes.

5 Q. Okay. And that letter was -- you know, is on
6 your firm's letterhead and -- at least as it stood at
7 the time, March 4, 2015?

8 A. Yes.

9 Q. Okay. And that is your signature on this piece
10 of paper, Exhibit 1?

11 A. Yes.

12 Q. Okay. And did you draft this?

13 A. Yes.

14 Q. You did draft this letter?

15 A. Yes.

16 Q. Okay. Did you draft this letter after meeting
17 with Mr. Dulberg regarding a potential legal
18 representation on his behalf?

19 A. Yes.

20 Q. Okay. And the letter was dated March 4, 2015,
21 correct?

22 A. Yes.

23 Q. Okay. Did you write the letter after you met
24 with him?

25 A. Yes.

1 Q. And do you know when you met with Mr. Dulberg?

2 A. Yes. It was on March 26th at 2:00 o'clock.

3 Q. Okay. And we'll talk about the entry in your
4 diary in a few moments. The letter indicates that he
5 consulted with your firm on December 31, 2014, in
6 regards to his personal injury case.

7 Do you know why the letter references a
8 December 31, 2014, date?

9 A. I -- I can't explain the discrepancy between my
10 calendar and the date indicated. I -- I -- it was too
11 long ago. I don't know why.

12 Q. Okay. Is it possible that Mr. Dulberg initially
13 contacted your office on December 31, 2014, but you
14 didn't actually meet with him until February or March?

15 A. No. I -- I didn't know this was an issue. Can
16 you -- if you want, my -- my 2014 calendar is in my
17 drawer. I can pull it out and look at December 31st.

18 Q. If you have it handy.

19 A. This March date was another meeting. I do, if
20 you give me about one minute.

21 Q. Absolutely. Thank you.

22 A. So I have my 2014 calendar, and I'm looking at
23 December -- well, all right. December 31st. Even
24 though I'm -- well, that's -- that's New Year's Eve.
25 Let me see. I normally would not meet with clients New

1 Year's Eve, but let me see. And, in fact, there is no
2 entry on December 31st, 2014. Oh, that's -- it's a
3 typo.

4 Q. Okay. Fair enough. Why don't I direct your
5 attention then to Exhibit 2, the second page.

6 (Ferris Deposition Exhibit No. 2
7 was remotely introduced.)

8 BY MR. FLYNN:

9 Q. Is Exhibit 2 a photocopy of the cover page of
10 your 2015 calendar, along with a date from
11 February of 2015?

12 A. Correct.

13 Q. Okay. There is some handwriting on the second
14 page, and I don't want to get into the clients and
15 confidential information. But is there an entry on
16 Thursday, February 26th, relative to Paul Dulberg?

17 A. Yes.

18 Q. And is this your handwriting?

19 A. It indicates a meeting, yes.

20 Q. Okay. It indicates a meeting, and I see a few
21 numbers, 2:00 o'clock and 4:00 o'clock. Can you tell me
22 what those mean?

23 A. That signifies that the meeting was originally
24 scheduled for 4:00 o'clock. And either myself or the
25 potential client asked that it be moved up to 2:00

1 o'clock, so I drew in there it's 2:00 o'clock.

2 Q. Okay. And next to the 4:00 o'clock entry, it
3 says, Paul Dulberg. There's a dash, and then it says
4 chain saw PI 6-28-11, dash. What does that mean?

5 A. I oftentimes to distinguish cases try and
6 summarize them by the nature of the case. And chain
7 saw -- I put chain saw because the client had called me
8 and said that he was injured by a chain saw, which is
9 horrifying and very memorable. And the other reason why
10 I remember it so well is because I -- I own a chain saw;
11 and I have a two-and-a-half acre wooded lot, and I use
12 my chain saw probably three, four times a month.

13 So I'm intimately familiar with chain saws, and I
14 was very interested in -- when this client described my
15 worst nightmare, which was getting injured by a chain
16 saw. So I put chain saw to remind me what kind of case
17 it was. And the 6-28-11 would be the date that the
18 client indicated the incident happened. And, normally,
19 I wouldn't put down the date of the incident in the
20 client appointment number, but in 2015, that was past
21 the -- the statute of limitations, which would be two
22 years minimum in Illinois, generally speaking.

23 And so that -- I -- I knew that the statute had
24 run. The first question I asked the client was, Was
25 suit filed? He said suit had been filed, and so -- but

1 wanted to discharge his attorney. So I agreed to meet
2 with him and discuss his case.

3 Q. Okay. And you actually did meet with him on
4 Thursday, February 26, 2015, correct?

5 A. Yes.

6 Q. And there's also a -- what appears to be a sticky
7 note, which is also photocopied with this page. Do you
8 see some handwriting below the 4:00 o'clock entry?

9 A. Yes.

10 Q. Okay. There's a name Paul and then a phone
11 number and then some other language. Can you tell me
12 what that says and what it means?

13 A. So Mr. Dulberg could verify or not whether --
14 whether that's his phone number. But my belief is that
15 that's Paul Dulberg's telephone number, which I jotted
16 down in case I had to reschedule or the client didn't
17 show up, and I could call and say where -- are you
18 coming? Printer and graphic design would -- would have
19 to be what Paul said his occupation was. There would be
20 no other explanation for that. David, I have a vague
21 recollection as being the referral source. There was a
22 gentleman that did hardscaping around my property, and
23 David put in a pond in front of my house. And he lived
24 in McHenry County, and, I believe, he was the one who
25 referred Paul. The mystery to me is 12 LA 178. I mean,

1 that -- the LA letters are not -- due to workmen's comp,
2 WC -- or -- or maybe that was the name of the case that
3 was filed that he told me. Because it would be a
4 complete waste of my time to see him if suit hadn't been
5 filed beyond the statute of limitations.

6 Q. Sure.

7 A. I think I jotted down -- and you gentlemen
8 probably know this, that it -- perhaps it's the existing
9 case that was filed?

10 Q. I can't say for sure. But I do believe McHenry
11 County uses the LA designation in their Law Division,
12 and they have something to do with arbitration. But --

13 A. Well, then that makes sense. So that was some
14 McHenry County case that he said was pending.

15 Q. Okay. Fair enough. And I don't want to
16 speculate or testify myself, so -- for what it's worth.
17 If I could direct your attention then to Exhibit 1.
18 But, first, you noted that the chain saw accident was
19 memorable. Do you recall seeing any part of his injury
20 to his arm, by chance?

21 A. I just -- as far as meeting with the client, I
22 just have a vague recollection. Like I said, I -- if
23 he -- if he bumped -- bumped into me in the street, I
24 would not recognize him.

25 Q. Okay.

1 A. So -- and no, I don't remember seeing the injury.

2 Q. Okay. All right. You decided ultimately not to
3 accept his case, correct?

4 A. Correct.

5 Q. Did you send him a declination letter?

6 A. I call it a disengagement letter, but declination
7 letter sounds very descriptive and accurate. I guess
8 they're interchangeable. I -- I've always called it a
9 disengagement letter. I think your -- your word is
10 better. I'll use that from now on.

11 Q. Well, I think in my legal malpractice seminars
12 engagement and disengagement is probably used more
13 often, to be honest, so...

14 A. Disengagement suggests you've been engaged, and I
15 was never engaged. I like your word better.

16 Q. Good point. In any event, this March 4, 2015,
17 letter is your declination or disengagement letter,
18 correct?

19 A. Correct.

20 Q. You never did accept Mr. Dulberg as a client?

21 A. No.

22 Q. Okay. And you told him as much here in the
23 letter?

24 A. Correct.

25 Q. Okay. And if I could direct your attention to

1 the last sentence of the first paragraph, could you read
2 that for me into the record?

3 A. The last sentence of the first paragraph?

4 Q. Correct.

5 A. I believe you should not have settled with the
6 property owners for \$5,000.

7 Did you say the last sentence? I'm sorry.

8 Q. The two last two sentences.

9 A. Two? There are no other reasons -- there are
10 other reasons for my decision.

11 Q. Okay. And did you have an understanding as to
12 who the parties were in the existing lawsuit when
13 Mr. Dulberg came to see you?

14 A. So, again, my -- to the best of my recollection,
15 he was cutting trees as a favor and he was injured and
16 then was -- he sued the property owners -- or settled
17 with the property owners for the med pay.

18 Q. Okay.

19 A. And -- and I -- I was concerned that that would
20 have invited a motion to dismiss if suit was brought
21 against the property owners fearful that they would
22 argue that that the matter was settled. But I -- I
23 don't recall if he signed a release. Those details I
24 don't know.

25 Q. Okay. Do you know when you drafted the letter

1 and how you drafted it?

2 A. So the -- because this is more or less a form
3 letter, in -- in my opinion, the December 31st date
4 was -- was a date relating to another client, and I just
5 didn't change the date. But the reason why the date of
6 letter March 4th makes sense in terms of when the
7 potential client came in was on -- on February 26th, so
8 March 4th would have been about five days later. And
9 when you have a potential statute of limitations issue,
10 it's advisable to get your declination letter -- see, I
11 stole your word already -- get your declination letter
12 out sooner than later.

13 Q. Okay. And there was a weekend in between the
14 date of your meeting and the date that the letter was
15 finalized, correct?

16 A. Correct.

17 Q. Okay. And did this letter get mailed to
18 Mr. Dulberg at the address listed on the top of the
19 letter?

20 A. To the best of my knowledge, yes.

21 Q. Okay. And would that have just been sent by
22 regular U.S. postal mail?

23 A. Correct. If it was certified mail, the letter
24 would so indicate.

25 Q. Okay. So this would -- this letter was sent, to

1 the best of your knowledge, by U.S. Mail, First Class?

2 A. Yes.

3 Q. Did you ever communicate with Mr. Dulberg after
4 you sent this letter to him?

5 A. Not to my recollection, no.

6 Q. Okay. You -- he never contacted you in order to
7 correct the date contained in the first paragraph?

8 A. No.

9 Q. Okay. And he didn't contact you to further
10 inquire as to the reasons for your declination of his
11 case?

12 A. No.

13 Q. Okay. Do you have any reason to believe that
14 Mr. Dulberg wouldn't have received this letter from you
15 within seven days of March 4, 2015?

16 A. That's a better question for the United States
17 Postal Service than it is for me.

18 Q. I don't have --

19 A. I put it in the mail. And it was out of my
20 hands.

21 Q. How long have you been practicing law,
22 Mr. Ferris?

23 A. Since 1986.

24 Q. And have you sent a lot of letters to clients or
25 to opposing counsel or otherwise in your business during

1 that time period?

2 A. Yes.

3 Q. Have you ever had any issues with the U.S. Postal
4 Service not delivering letters, as far as you know?

5 A. Other than a letter being returned for the
6 incorrect address, no.

7 Q. And this letter was not returned for any reason,
8 correct?

9 A. To the best of my knowledge, no.

10 Q. Okay.

11 A. I -- I would have put that in the file and had
12 been concerned that my declination was not communicated
13 with the potential client. I would have acted on that.
14 So I -- I don't recall any of that happening.

15 Q. So because you were mindful of the statute of
16 limitations issue, you wanted this letter to get to him
17 as soon as it could?

18 A. Yes.

19 Q. Okay. And you're -- do you believe he would have
20 received this, barring any mistakes with the post
21 office, he would have received it, at least, within 30
22 days of March 4, 2015?

23 A. I -- I can't speak to the processing time of the
24 postal service. It's really not for me to say.

25 Q. If you thought that it might take as long as a

1 month to get to him, would you have sent it by certified
2 mail?

3 A. No. To -- to be honest, no, because I -- I think
4 the rule is the mailing date. And there -- from my end,
5 there wasn't -- there wasn't any deadline that was
6 coming up within a 30-day period that I -- I can recall,
7 so the time was not of the essence. But getting a
8 letter out within a week, declining a potential case, I
9 felt I was timely on my end.

10 Q. What is your expectation as far as delivery time
11 when you send any letter by U.S. Mail?

12 A. Locally, two days. Could be as fast as one day.

13 Q. Okay. What about within the State of Illinois?

14 A. Two days, you know, statewide. Nationally, two
15 to three days -- then. I think it's changed now very
16 recently.

17 Q. Letters --

18 A. New stories -- new stories about the postal
19 system slowing down, but that's now.

20 Q. So here in 2021, when you send a letter by U.S.
21 Mail, it takes little bit longer than two or three days
22 to get to its recipient?

23 A. According to the newspapers, yes. Yeah. It's a
24 very political issue right at the moment, but it wasn't
25 in 2015.

1 MR. FLYNN: I don't think I have any further
2 questions.

3 THE WITNESS: Okay.

4 CROSS-EXAMINATION

5 BY MR. TALARICO:

6 Q. Good afternoon, sir.

7 A. Good afternoon.

8 Q. My name is Alphonse Talarico, and I represent the
9 Plaintiff. And I want to go over some of the statements
10 you've made in this deposition -- discovery deposition,
11 just for clarifying.

12 I'm looking at what has been submitted and marked
13 as Exhibit 2, which appears to be your 2015 DayMinder.
14 And I think you testified as to that; is that correct?

15 A. Yes.

16 Q. Okay. I only see the excerpts from one page,
17 that's the February 26th, which was a Thursday. I
18 believe it's marked as a Thursday. My independent
19 calendar says it was a Thursday. So I'm not asking you
20 if it was or not. I'm just going to assume based on
21 your daily reminder and the -- and my bar association
22 daily reminder.

23 You noted that he -- you were contacted for a
24 chain saw personal injury matter. And I believe you
25 testified that the date he told you the accident took

1 place was June 28th, 2011; is that correct?

2 A. Yes.

3 Q. Okay. Did -- how best -- how best connected
4 with -- I was unclear. Please clarify for me, did you
5 meet with Mr. Dulberg on this day?

6 A. Yes.

7 Q. Did Mr. Dulberg have anybody accompany him on
8 this day?

9 A. I have a vague recollection of the meeting, but
10 I -- I -- he came alone, to the best of my memory.

11 Q. Okay. And it's just asking a lot of you to
12 remember a client that you -- you -- I mean, not a
13 client, a client you -- you didn't choose to take. But
14 there's a need to ask you what you remember, so please
15 bear with me.

16 So he came alone. You also testified that prior
17 to that -- I don't want to put words in your mouth.
18 Attorney to attorney to attorney, three attorneys, no
19 words in your mouth.

20 Did he call on a different day to set up the
21 appointment?

22 A. Yes.

23 Q. Okay. Do you have any recollection of that, what
24 day he called?

25 A. I don't note that. I'll get a telephone call.

1 I'll screen the call. And if it sounds like a case that
2 is a potential, viable case, I will write -- I'll ask
3 the client when are you available to meet. And then I
4 will -- I will put the entry in my calendar. But I
5 don't enter when the call came in.

6 Q. Now, do you still retain the entire 2015 daily
7 minder, if you would?

8 A. Yes. I have it. I have it right here.

9 Q. Do you -- are there other occasions in that 2015
10 daily minder where you had contact, where you wrote down
11 a contact with Mr. Dulberg?

12 A. I -- I did search the file to -- excuse me -- the
13 calendar. And I see no other entries for Mr. Dulberg
14 other than the entry which was provided. And I wasn't
15 trying to -- I was trying to be somewhat cautious with
16 regard to client confidentiality, which is why I cut off
17 the page. And I did put another client's name on the
18 same page, but that's public record. He was charged
19 criminally, so I'm not worried about any ARDC on that.
20 But, you know, I can -- I can just -- I can hold up, if
21 you could see the -- the page behind it, and there's no
22 entries for Mr. Dulberg.

23 Q. Thank you, sir.

24 A. And then this is the page on the opposite --
25 with -- with the note and Mr. Dulberg, the entry. I'm

1 sorry. I don't know how to post it on Zoom.

2 Q. Neither do I, sir. Neither do I.

3 A. All right.

4 Q. So -- but -- okay. I saw it. Thank you.

5 MR. TALARICO: Mr. Flynn, did you have an
6 opportunity to see what was being displayed?

7 MR. FLYNN: I did. Thank you.

8 MR. TALARICO: Okay.

9 BY MR. TALARICO:

10 Q. Well, you already showed me the answer to my next
11 question, so I'll pass by. I was going to ask you
12 what's under the sticky, but you already showed me
13 what's under the sticky, correct?

14 A. Nothing.

15 Q. Nothing. That's right. Thank you. Let's move
16 on to Exhibit 1. By the way, if it turns out that --
17 that you have a recollection of a later contact between
18 you and Mr. Dulberg, I'd like you to keep -- give that
19 document, so I can subpoena it, if necessary. If it's
20 something like that that evolves during this discussion
21 or something thereafter, I think that would be the
22 appropriate thing to do for a lawyer.

23 I want to draw your attention to Exhibit 1.
24 There is a date on that that says March 4, 2015. You
25 believe -- you testified you believe that's the day that

1 you drafted this letter? Did you actually -- I'm sorry.
2 Let me -- what I'm trying to get to is, did you type the
3 letter up? Or did you give it to -- maybe just do some
4 type of dictation and have someone type it up for you?

5 A. I do have a secretary that types letters for me.
6 I either dictated it or took the form, disengagement
7 letter, and made hand changes to it, which the secretary
8 would have changed, and then I signed it. But March 4th
9 would have been the date that it went out in the mail.

10 Q. Okay. Thank you. And you testified that you
11 sent it by regular mail to Mr. Dulberg?

12 A. Yes.

13 Q. Okay. So if it was regular mail, which we can
14 eliminate who signed for it -- and it was -- again, I
15 just want to make sure I have the facts right, because I
16 believe you testified that it never was returned to you.
17 So your assumption was that it was properly delivered?

18 A. I can only assume that.

19 Q. Right. I understand that. Sure. But I guess
20 the one question you can answer is it never was returned
21 to you?

22 A. Which it was not; that's correct.

23 Q. Thank you. On Exhibit 1, sir, the accident
24 referred to, it does not correspond with your daily
25 reminder and with your recollection of the date he told

1 you the accident took place. And you have no
2 explanation as to what January 24th, 2013, had to do
3 with Paul Dulberg?

4 A. Oh, I don't think I was asked about that -- that
5 date but --

6 Q. I get to now ask you.

7 A. Yeah.

8 Q. It says -- Exhibit 1 says, your accident of
9 January 24, 2013. Is that correct? Is that what it
10 says?

11 A. That's what my letter says, yes.

12 Q. And isn't it correct, sir, that Exhibit 1, your
13 daily reminder, it has the date of accident -- well,
14 refer -- refers to 6-28 of 2011?

15 A. Correct. So in my opinion, what happened was --
16 this is a form letter. The disengagement or declination
17 letter is a form letter to which I use over and over.
18 And apparently, I made a mistake by indicating -- well,
19 I don't know what the accident date is. You gentlemen
20 know when it was. So if the date's wrong, it's wrong,
21 because it wasn't change on the form letter.

22 Q. Isn't it true that the date of accident reported
23 to you by Dulberg on your daily reminder, 6 -- June
24 28th, 2011, that's what he told you?

25 A. To the best of my recollection, correct.

1 Q. And you testified that you believe the December
2 31st, 2014, date, as far as consulting, is a typo, and
3 you have no entry in your 2014 daily reminder for
4 December 13th -- 31st, I'm sorry -- New Year's Eve,
5 which by the way, I checked it, the late bar association
6 was even closed on that day, that you did not have a
7 meeting with him on that day, on New Year's Eve?

8 A. Correct.

9 Q. Okay. In your letter, sir, which is Exhibit 1, I
10 draw your attention to that. I believe the first
11 sentence you speak to -- you speak to Mr. Dulberg
12 capsulizing what his conversation was with you -- was
13 about -- was about, it -- and that stated -- it states,
14 your personal injury case. Is that correct?

15 A. Yes.

16 Q. But in your conversation with Mr. Flynn
17 responding to his questions, you were talking about a
18 statute of limitations. What statute of limitations
19 were you talking about?

20 A. My understanding of the statute of limitations is
21 for personal injury, it's two years in the State of
22 Illinois. I -- I don't even remember where this
23 happened, if it was in McHenry or -- then it would have
24 been Illinois, and a two-year statute would have
25 applied.

1 Q. Okay. So what I'm getting at is Mr. Dulberg
2 talked to you about a personal injury matter; is that
3 correct?

4 A. Yes.

5 Q. And the statute you're referring to is a personal
6 injury statute in the State of Illinois, correct?

7 A. Yes.

8 Q. Okay.

9 A. There are exceptions, of course, to the general
10 rule, the discovery rule and so forth.

11 Q. Your letter of Exhibit 1, the letter of March
12 4th, it says in the second to last sentence, I believe
13 you should not have settled with the property owners for
14 \$5,000; is that correct?

15 A. Yes.

16 Q. Were you analyzing Mr. Dulberg's case based on
17 the financial aspects of a personal injury case. Is
18 that why you declined it?

19 A. I was concerned with two things. One, proving
20 liability, that's No. 1; and No. 2 was when he told me
21 that he accepted \$5,000 from the property owners, that's
22 a very common med pay amount, and, as you know, med pay
23 is paid out without regard to fault as long as the
24 injury occurred on the property. And when he told me
25 that, I was concerned that the property owners would

1 file a motion to dismiss if that \$5,000 was construed as
2 a settlement.

3 As you know, Counsel, sometimes release language
4 is included in a med paycheck -- or it's included in the
5 release that's sent with the med paycheck.

6 And so I was just very concerned about it. And I
7 just -- you know what, most disengagement letters are
8 very generic. This is very unusual for me to comment on
9 any specifics of the case. But I -- I was very
10 sympathetic to this injury for reasons stated. And the
11 gentleman was referred by a guy who did great work for
12 me. And so I was trying to be as helpful as I possibly
13 could by saying that.

14 Q. Okay. That brings us back to Exhibit 2. With
15 all due respect, sir, the name David -- let me get back
16 to Exhibit 2. On the sticky note you had -- you
17 testified earlier today that you believe that it was
18 someone who referred Mr. Dulberg to you. Do you recall
19 the name of the defendant in the case that Mr. Dulberg
20 brought to you and asked you to take over? Do you
21 recall the name of the defendant?

22 A. No.

23 Q. Would you be surprised to know that his name was
24 David?

25 A. That -- that could be the reason I wrote down

1 David. You could be absolutely correct on that.

2 Q. Okay.

3 A. Versus the referral source. I was -- I was
4 guessing, basically.

5 Q. Okay. So at that time, you did not have any
6 personal dealings, knowledge, or whatever with a David
7 Gagoan, who is a defendant in this matter?

8 A. I have no idea who that is.

9 Q. Okay. Thank you. The last sentence, there is --
10 it's kind of an open-ended statement by you saying,
11 There are no -- there are other reasons for my decision.
12 Do you recall what those other reasons, the unstated
13 ones, were?

14 A. Yes. As I mentioned before, that would have been
15 the liability concern. How do you prove liability? It
16 just wasn't clear to me that the property owners were --
17 were negligent. There -- there would be a potential
18 assumption of risk anytime you use dangerous equipment,
19 so on, and so forth.

20 Q. Exhibit 1, your letter of March 4th, the last
21 paragraph, the last sentence you state, We recommend
22 that you attempt to settle the case at the upcoming
23 pretrial conference with your current attorney; is that
24 correct?

25 A. Yes.

1 Q. Okay. Could you -- could you enlighten us
2 what -- what did you know about the pretrial conference,
3 and then what did you know about his current attorney?

4 A. So the only way that I would have known that is
5 by Mr. Dulberg telling me he had an upcoming pretrial
6 conference. And so I do remember him telling me a
7 pretrial conference was scheduled. But for whatever
8 reason, he did not have confidence or faith in the job
9 his current attorney was doing. But I -- I was
10 encouraging him to get the case settled because there
11 was questionable liability in my opinion.

12 Q. And at the time you wrote this letter, did you
13 know what the pretrial offer from Mr. Gagoan was?

14 A. No.

15 Q. May I ask -- I will ask. You said you signed
16 this. This is your handwriting. You signed it. Who is
17 C. L, or who was C. L.?

18 A. The secretary.

19 Q. What was her name? Is she still employed?

20 A. No. And I'm trying to think of -- what -- what
21 the former secretary would have been back then. Sorry.
22 My memory is fading.

23 Q. It's a lot to ask of anyone to go back.

24 A. I don't -- I don't remember.

25 Q. Okay.

1 A. But that -- that would be the secretary's
2 initials.

3 Q. Okay. You testified today that you, personally
4 -- no. Wait. I'll ask, did you testify today that you,
5 personally, mailed this letter to Mr. Dulberg?

6 A. Yes.

7 Q. Okay. Calling your attention to Exhibit 1, you
8 have Mr. Dulberg's address listed as 3416 West Elm
9 Street in McHenry, Illinois 60050; is that correct?

10 A. Yes.

11 Q. Do you know who lives at -- who -- who owns the
12 property at 3416 West Elm Street in McHenry, Illinois
13 60050?

14 A. I have no idea.

15 Q. Would it surprise you if this was the address of
16 the law firm that was currently representing Mr. Dulberg
17 in the matter that he brought to you?

18 A. It would surprise me.

19 Q. Would it surprised you if this is the address of
20 Tom Popovich's law firm at the time?

21 A. It would, yeah.

22 Q. So according to your testimony, you sent this
23 letter to Mr. Popovich and not to Mr. Dulberg?

24 A. I sent the letter to the address the potential
25 client provided me. I don't make up addresses. So he

1 provided me the address. I had no correspondence or
2 anything from his attorney. I had no idea who his
3 attorney was.

4 Q. Earlier to Mr. Flynn's questioning, you
5 indicated, although you didn't give any guarantees, but
6 you have faith in the U.S. postal department delivering
7 letters to the addresses they're addressed to, yes?

8 A. Sure. Yes.

9 Q. Okay. And this letter did not get returned to
10 you?

11 A. Correct.

12 MR. TALARICO: I have no further questions.

13 MR. FLYNN: I have a few follow-up
14 questions, Mr. Ferris.

15 REDIRECT EXAMINATION

16 BY MR. FLYNN:

17 Q. Were you aware that Dulberg was being represented
18 by Tom Popovich or his law office at the time that he
19 saw you?

20 A. I have no recollection of who his lawyer was. I
21 don't even know that he mentioned who his lawyer was.

22 Q. Did he have any complaints about his current
23 lawyer at the time he met with you on February 26, 2015?

24 A. Well, just by the very fact he is meeting with me
25 indicates there is an issue. There would be no reason

1 for -- it's not like Mr. Dulberg was a friend and I was
2 giving him a second opinion. I -- I've only met him the
3 one time. And I still think he might have been referred
4 by my hardscaper. But he obviously had an issue with
5 his lawyer, or he wouldn't be in my office.

6 Q. Well, did he voice any complaints about that
7 lawyer?

8 A. I don't remember specifically. But he clearly
9 was shopping for another attorney.

10 Q. Okay. Would it be fair to say that you were
11 critical of the fact that he had settled against --
12 settled with the property owner defendants for \$5,000?

13 A. Yes.

14 Q. As you sit here, you don't know if that
15 settlement was for med pay or if it was just a blanket
16 settlement release?

17 A. He -- he told me he settled with the property
18 owners for 5,000. Again, I -- I -- I didn't -- the only
19 way I would have known that is from Mr. Dulberg. So
20 that concerned me, the fact that he -- a client who is
21 coming with a potential personal injury claim saying he
22 already settled with -- maybe it was one defendant and
23 there were other potential codefendants.

24 But the fact that there is a settlement would
25 have -- if a client uses that word, obviously, any

1 plaintiff's attorney would be greatly concerned with
2 that. If you settle, there's no case. It's over. You
3 settled.

4 Q. Okay. You didn't know what the status of any
5 ongoing case against remaining defendants was at that
6 time other than that there was a pretrial upcoming,
7 correct?

8 A. Right, exactly.

9 MR. FLYNN: No further questions.

10 MR. TALARICO: No questions.

11 MR. FLYNN: Signature?

12 THE WITNESS: Waive.

13 MR. TALARICO: Waive.

14 MR. FLYNN: Witness has waived signature.
15 Thank you for your time, Mr. Ferris.

16 MR. TALARICO: I sorry. Wait, Mr. Flynn. I
17 didn't mean to say -- that was me saying waived, not
18 Mr. Ferris. I don't want -- I don't want a mistake.
19 Mr. Ferris, the question is signature to you. I mumbled
20 waive, but that was me. Okay? Excuse me. Excuse me.

21 THE WITNESS: It's a knee-jerk reaction. I
22 get it.

23 MR. FLYNN: I thought I heard Mr. Ferris
24 also say that he was waiving signature.

25 THE WITNESS: I did say -- I did say waive.

1 MR. TALARICO: That's why I just want to
2 clarify I'm not waiving on your behalf. I'm sorry.

3 MR. FLYNN: Thank you. I'll take a copy,
4 ma'am. Mini-script with a word index.

5 MR. TALARICO: Same.

6 (Witness excused.)

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

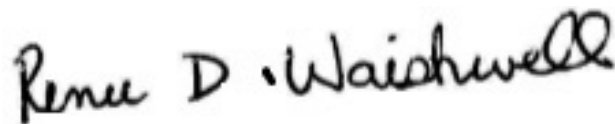
4 I, Renee D. Waishwell, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in the
7 foregoing proceedings was by me duly sworn to testify to
8 the truth, the whole truth, and nothing but the truth;

9 That said proceedings were taken remotely before
10 me at the time and places therein set forth and were
11 taken down by me in shorthand and thereafter transcribed
12 into typewriting under my direction and supervision;

13 I further certify that I am neither counsel for,
14 nor related to, any party to said proceedings, not in
15 anywise interested in the outcome thereof.

16 In witness whereof, I have hereunto subscribed my
17 name.

18
19
20 

21 _____
22 Renee D. Waishwell, C.S.R.
23 License No. 084-004451
24
25

\$	2	3	A
\$5,000 14:6 26:14, 21 27:1	2 9:5,6,9 19:13 26:20 27:14,16	30 17:21 30-day 18:6	absolutely 8:21 28:1
1	2011 20:1 24:14, 24	31 8:5,8,13	accept 13:3,20
1 6:21,23 7:2, 10 12:17 22:16,23 23:23 24:8, 12 25:9 26:11,20 28:20	2013 24:2,9	31st 8:17,23 9:2 15:3 25:2,4	accepted 26:21
103 5:2	2014 8:5,8,13,16, 22 9:2 25:2, 3	4	accident 12:18 19:25 23:23 24:1, 8,13,19,22
12 11:25	2015 5:15 6:2,7 7:2,7,20 9:10,11 10:20 11:4 13:16 16:15 17:22 18:25 19:13 21:6,9 22:24	4 6:7 7:2,7,20 13:16 16:15 17:22 22:24	accompany 20:7
13th 25:4	2021 4:2 18:20	4:00 9:21,24 10:2 11:8	accurate 13:7
14 4:2	24 24:9	4th 15:6,8 23:8 26:12 28:20	acre 10:11
15 6:1	24th 24:2	5	acted 17:13
178 11:25	26 11:4	50 4:25 5:1	address 15:18 17:6
1985 4:22	26th 8:2 9:16 15:7 19:17	6	advisable 15:10
1986 16:23	28th 20:1 24:24	6 24:23	afternoon 19:6,7
1989 6:13	2:00 8:2 9:21,25 10:1	6-28 24:14	agreed 11:1
1:30 4:2		6-28-11 10:4,17	agreement 4:14
			ahead 5:12
			Alphonse 19:8
			amount 26:22
			analyzing 26:16

anytime 28:18	attorneys 20:18	C	change 15:5 24:21
apparently 24:18	authenticate 6:7	calendar 6:11,13,17 8:10,16,22 9:10 19:19 21:4,13	changed 18:15 23:8
appears 11:6 19:13	Avenue 5:3	call 11:17 13:6 20:20,25 21:1,5	charged 21:18
applicable 4:17	B	called 4:5 10:7 13:8 20:24	checked 25:5
applied 25:25	back 5:15 6:1 27:14,15 29:21,23	capsulizing 25:12	CHICAGO 4:1
appointment 10:20 20:21	bar 19:21 25:5	case 8:6 10:6,16 11:2,16 12:2,9,14 13:3 16:11 18:8 21:1,2 25:14 26:16, 17 27:9,19 28:22 29:10	choose 20:13
arbitration 12:12	barring 17:20	cases 4:24 10:5	Civil 4:16
ARDC 21:19	based 19:20 26:16	caused 5:14	civilian 6:12
argue 14:22	basically 28:4	cautious 21:15	clarify 20:4
arm 12:20	bear 20:15	certified 15:23 18:1	clarifying 19:11
aspects 26:17	bearing 7:3	chain 10:4,6,7,8, 10,12,13,15, 16 12:18 19:24	Class 16:1
association 19:21 25:5	behalf 7:18	chance 12:20	clear 28:16
assume 19:20 23:18	belief 11:14		client 5:23 6:14 9:25 10:7, 14,18,20,24 11:16 12:21 13:20 15:4,7 17:13 20:12, 13 21:3,16
assumption 23:17 28:18	bit 18:21		client's 21:17
attempt 28:22	brings 27:14		clients 8:25 9:14 16:24
attention 6:20 9:5 12:17 13:25 22:23 25:10	brought 14:20 27:20		closed 25:6
attorney 4:20 11:1 20:18 28:23 29:3,9	bumped 5:24 12:23		
	business 16:25		

Code 4:16	contact 16:9 21:10, 11 22:17	21:19	day 18:12 20:5, 8,20,24 22:25 25:6,7
comment 27:8	contacted 8:13 16:6 19:23	CROSS- EXAMINATION 19:4	Dayminder 19:13
common 26:22	contained 16:7	current 5:7 28:23 29:3,9	days 15:8 16:15 17:22 18:12, 14,15,21
communicate 16:3	conversation 25:12,16	cut 21:16	deadline 18:5
communicated 17:12	copy 6:15	cutting 14:15	dealings 28:6
comp 12:1	correct 5:4,17 6:17 7:21 9:12	<hr/> D <hr/>	December 8:5,8,13,17, 23 9:2 15:3 25:1,4
complete 12:4	11:4 13:3,4, 18,19,24 14:4 15:15, 16,23 16:7 17:8 19:14 20:1 22:13 23:22 24:9, 12,15,25 25:8,14 26:3,6,14 28:1,24	daily 19:21,22 21:6,10 23:24 24:13, 23 25:3	decided 13:2
concern 28:15	correspond 23:24	dangerous 28:18	decision 14:10 28:11
concerned 14:19 17:12 26:19,25 27:6	counsel 16:25 27:3	dash 10:3,4	declination 13:5,6,17 15:10,11 16:10 17:12 24:16
conference 28:23 29:2, 6,7	County 4:18 11:24 12:11,14	date 8:8,10,19 9:10 10:17, 19 15:3,4,5, 14 16:7 18:4 19:25 22:24 23:9,25 24:5,13,19, 22 25:2	declined 26:18
confidence 29:8	Court 4:16	date's 24:20	declining 18:8
confidential 9:15	cover 9:9	dated 6:7 7:20	defendant 27:19,21 28:7
confidentialit y 21:16	criminal 5:1	David 11:20,23 27:15,24 28:1,6	defense 5:1
connected 20:3	criminally		delivered 23:17
construed 27:1			delivering 17:4
consulted 8:5			
consulting 25:2			

delivery 18:10	dismiss 14:20 27:1	Dulberg's 11:15 26:16	equipment 28:18
deposition 4:13,15 6:4, 23 9:6 19:10	displayed 22:6	duly 4:5	essence 18:7
descriptive 13:7	distinguish 10:5	<hr/> E <hr/>	Eve 8:24 9:1 25:4,7
design 11:18	Division 12:11	earlier 27:17	event 13:16
designation 12:11	document 22:19	eliminate 23:14	evolves 22:20
details 14:23	documentation 6:8	emailed 6:21	EXAMINATION 4:7
diary 8:4	documents 6:3	employed 29:19	examined 4:6
dictated 23:6	draft 7:12,14,16	encounter 5:25 6:1	exceptions 26:9
dictation 23:4	drafted 14:25 15:1 23:1	encouraging 29:10	excerpts 19:16
direct 4:7 6:20 9:4 12:17 13:25	draw 22:23 25:10	end 18:4,9	excuse 21:12
disabled 5:13	drawer 8:17	engaged 13:14,15	Exhibit 6:20,23 7:2, 10 9:5,6,9 12:17 19:13 22:16,23 23:23 24:8, 12 25:9 26:11 27:14, 16 28:20
discharge 11:1	drew 10:1	engagement 13:12	exhibits 6:20
discovery 4:13 19:10 26:10	due 12:1 27:15	enlighten 29:1	existing 12:8 14:12
discrepancy 8:9	Dulberg 5:19 7:17 8:1,12 9:16 10:3 11:13 13:20 14:13 15:18 16:3, 14 20:5,7 21:11,13,22, 25 22:18 23:11 24:3, 23 25:11 26:1 27:18, 19 29:5	entire 21:6	expectation 18:10
discuss 11:2		entries 21:13,22	explain 8:9
discussion 22:20		entry 8:3 9:2,15 10:2 11:8 21:4,14,25 25:3	explanation
disengagement 13:6,9,12, 14,17 23:6 24:16 27:7			

11:20 24:2	21:12 27:1	give 8:20 22:18 23:3	health 5:14
F	filed 10:25 12:3, 5,9	Good 13:16 19:6,7	helpful 27:12
F-E-R-R-I-S 4:11	finalized 15:15	graphic 11:18	hold 21:20
fact 9:1	financial 26:17	great 27:11	honest 13:13 18:3
facts 23:15	firm 5:5,7,15 8:5	Greenleaf 5:2	horrifying 10:9
fading 29:22	firm's 7:6	guess 13:7 23:19	house 11:23
Fair 9:4 12:15	Flynn 4:8 7:1 9:8 19:1 22:5,7 25:16	guessing 28:4	I
faith 29:8	focus 4:23	Gurnee 5:3	idea 28:8
familiar 5:18 10:13	form 15:2 23:6 24:16,17,21	guy 27:11	identify 6:19
fast 18:12	front 7:2 11:23	H	Illinois 4:1,16,21 5:3 10:22 18:13 25:22, 24 26:6
fault 26:23	G	hand 23:7	in-person 6:1
favor 14:15	Gagoan 28:7 29:13	hands 16:20	incident 10:18,19
fearful 14:21	general 26:9	handwriting 9:13,18 11:8 29:16	included 27:4
February 8:14 9:11,16 11:4 15:7 19:17	generally 10:22	handy 8:18	incorrect 17:6
felt 18:9	generic 27:8	happened 10:18 24:15 25:23	independent 5:21 19:18
ferris 4:4,11,13 5:8,9,16 6:23 9:6 16:22	gentleman 5:18 11:22 27:11	happening 17:14	indicating 24:18
file 6:9 17:11	gentlemen 12:7 24:19	hardscaping 11:22	information 9:15

initially 6:13 8:12		23:1,3,7 24:11,16,17, 21 25:9 26:11 28:20 29:12	
injured 10:8,15 14:15	K		M
injury 4:24,25 8:6 12:19 13:1 19:24 25:14, 21 26:2,6, 17,24 27:10	kind 10:16 28:10	letterhead 7:6	made 19:10 23:7 24:18
inquire 16:10	knew 10:23	letters 12:1 16:24 17:4 18:17 23:5 27:7	mail 15:22,23 16:1,19 18:2,11,21 23:9,11,13
interchangeabl e 13:8	knowledge 15:20 16:1 17:9 28:6	liability 26:20 28:15 29:11	mailed 15:17
interested 10:14	L	licensed 4:21	mailing 18:4
intimately 10:13	LA 11:25 12:1, 11	limitations 10:21 12:5 15:9 17:16 25:18,20	make 23:15
introduced 6:24 9:7	language 11:11 27:3	Limited 5:16	makes 12:13 15:6
invited 14:20	late 25:5	Linda 6:22	malpractice 13:11
issue 8:15 15:9 17:16 18:24	law 4:23 5:5,7, 16 12:11 16:21	listed 15:18	March 6:7 7:2,7,20 8:2,14,19 13:16 15:6,8 16:15 17:22 22:24 23:8 26:11 28:20
issues 5:14 17:3	lawsuit 14:12	lived 11:23	marked 19:12,18
	lawyer 22:22	local 4:17	material 6:16
	legal 7:17 13:11	Locally 18:12	matter 6:5 14:22 19:24 26:2 28:7
J	letter 6:6,7 7:3,5, 14,16,20,23 8:4,7 13:5, 6,7,9,17,23 14:25 15:3, 6,10,11,14, 17,19,23,25 16:4,14 17:5,7,16 18:8,11,20	long 8:11 16:21 17:25 26:23	Mchenry 4:17 11:24 12:10,14 25:23
January 24:2,9		longer 18:21	
job 29:8		lot 10:11 16:24 20:11 29:23	
jotted 11:15 12:7			
June 20:1 24:23			

meaning 6:12	mistakes 17:20	number 10:20 11:11, 14,15	originally 9:23
means 11:12	moment 18:24	numbers 9:21	owners 14:6,16,17, 21 26:13,21, 25 28:16
med 14:17 26:22 27:4,5	moments 8:4	<hr/>	<hr/>
meet 8:14,25 11:1,3 20:5 21:3	month 10:12 18:1	O <hr/>	P <hr/>
meeting 7:16 8:19 9:19,20,23 12:21 15:14 20:9 25:7	motion 14:20 27:1	occasions 21:9	P.M. 4:2
memorable 10:9 12:19	mouth 20:17,19	occupation 4:19 11:19	pages 6:15
memory 20:10 29:22	move 22:15	occurred 26:24	paid 26:23
mentioned 28:14	moved 9:25	OCTOBER 4:2	paper 7:10
met 7:23 8:1	mystery 11:25	offer 29:13	paragraph 14:1,3 16:7 28:21
military 6:12	<hr/>	office 5:2 8:13 17:21	part 12:19
minder 21:7,10	N <hr/>	Offices 5:16	parties 4:14 14:12
mindful 17:15	Nationally 18:14	oftentimes 10:5	partner 5:11
minimum 10:22	nature 10:6	open-ended 28:10	pass 22:11
minute 8:20	negligent 28:17	opinion 15:3 24:15 29:11	past 10:20
minutes 6:1	newspapers 18:23	opportunity 22:6	Paul 5:19,22 9:16 10:3 11:10, 15,19,25 24:3
mistake 24:18	nightmare 10:15	opposing 16:25	pay 14:17 26:22
	note 11:7 20:25 21:25 27:16	opposite 21:24	paycheck 27:4,5
	noted 12:18 19:23	order 16:6	
	notice 4:14		

pending 12:14	post 17:20 22:1	provided 6:6,15 21:14	recall 12:19 14:23 17:14 18:6 27:18,21 28:12
percent 4:25 5:1	postal 15:22 16:17 17:3,24 18:18	proving 26:19	received 16:14 17:20, 21
period 17:1 18:6	potential 5:23 7:17 9:25 15:7,9 17:13 18:8 21:2 28:17	public 21:18	recently 18:16
personal 4:24,25 6:16 8:6 19:24 25:14,21 26:2,5,17 28:6	practice 4:23	pull 8:17	recipient 18:22
phone 11:10,14	practicing 16:21	purged 6:9	recognize 5:24 12:24
photocopied 11:7	preparation 6:4	pursuant 4:14,15	recollection 5:22 6:5 11:21 12:22 14:14 16:5 20:9,23 22:17 23:25 24:25
photocopies 6:16	pretrial 28:23 29:2, 5,7,13	<hr/> Q <hr/>	recommend 28:21
photocopy 9:9	principal 5:5	question 10:24 16:16 22:11 23:20	record 4:9,12 14:2 21:18
PI 10:4	Printer 11:18	questionable 29:11	refer 24:14
piece 7:9	prior 20:16	questions 19:2 25:17	references 8:7
place 20:1 24:1	Procedure 4:17	<hr/> R <hr/>	referral 11:21 28:3
plaintiff 4:25 19:9	processing 17:23	read 14:1	referred 11:25 23:24 27:11,18
plaintiffs 4:24	properly 23:17	reason 10:9 15:5 16:13 17:7 27:25 29:8	referring 26:5
point 13:16	property 11:22 14:6, 16,17,21 26:13,21,24, 25 28:16	reasons 14:9,10 16:10 27:10 28:11,12	refers 24:14
political 18:24	prove 28:15		
pond 11:23			
possibly 27:12			

reflect 4:12	respect 27:15	send 13:5 18:11, 20	slowing 18:19
refresh 6:4	responding 25:17	sense 12:13 15:6	sooner 15:12
regard 21:16 26:23	retain 21:6	sentence 14:1,3,7 25:11 26:12 28:9,21	sounds 13:7 21:1
regular 15:22 23:11, 13	retire 5:14	sentences 14:8	source 11:21 28:3
relating 15:4	returned 17:5,7 23:16,20	service 16:17 17:4, 24	South 5:2
relative 9:16	reviewed 6:3	set 20:20	speak 17:23 25:11
release 14:23 27:3,5	risk 28:18	settle 28:22	speaking 10:22
remember 10:10 13:1 20:12,14 25:22 29:6, 24	rule 18:4 26:10	settled 14:5,16,22 26:13 29:10	specifics 27:9
remind 10:16	rules 4:15,17	settlement 27:2	speculate 12:16
reminder 19:21,22 23:25 24:13, 23 25:3	run 10:24	show 11:17	spell 4:10
remotely 4:1 6:24 9:7	<hr/> S <hr/>	showed 22:10,12	started 6:11
reported 4:1 24:22	Saul 4:4,11,13	signature 7:3,9	state 4:9,21 18:13 25:21 26:6 28:21
represent 19:8	saws 10:13	signed 14:23 23:8, 14 29:15,16	stated 25:13 27:10
representation 7:18	scheduled 9:24 29:7	signifies 9:23	statement 28:10
representing 4:24	screen 21:1	sir 4:9,19 19:6 21:23 22:2 23:23 24:12 25:9 27:15	statements 19:9
reschedule 11:16	search 21:12		states 16:16 25:13
	secretary 6:21 23:5,7 29:18,21		statewide 18:14
	seminars 13:11		statute 10:21,23

12:5 15:9 17:15 25:18, 20,24 26:5,6 sticky 11:6 22:12, 13 27:16 stole 15:11 stood 7:6 stories 18:18 street 5:24 12:23 submitted 19:12 subpoena 22:19 sued 14:16 suggests 13:14 suit 10:25 12:4 14:20 Suite 5:3 summarize 10:6 Supreme 4:16 surprised 27:23 sworn 4:3,6 sympathetic 27:10 system	18:19 <hr/> T <hr/> takes 18:21 Talarico 19:5,8 22:5, 8,9 talk 8:3 talked 26:2 talking 25:17,19 telephone 11:15 20:25 telephonic 5:25 telling 29:5,6 terms 15:6 testified 4:6 19:14,25 20:16 22:25 23:10,16 25:1 27:17 testify 12:16 thing 22:22 things 26:19 Thompson 5:8,9,16 thought 17:25	Thursday 4:2 9:16 11:4 19:17, 18,19 time 7:7 12:4 17:1,23 18:7,10 28:5 29:12 timely 18:9 times 10:12 today 6:3,4 27:17 told 12:3 13:22 19:25 23:25 24:24 26:20, 24 top 15:18 trees 14:15 true 24:22 turns 22:16 two-and-a-half 10:11 two-year 25:24 type 23:2,4 types 23:5 typo 9:3 25:2	<hr/> U <hr/> U.S. 15:22 16:1 17:3 18:11, 20 ultimately 13:2 unclear 20:4 understand 23:19 understanding 14:11 25:20 United 16:16 unstated 28:12 unusual 27:8 upcoming 28:22 29:5 <hr/> V <hr/> vague 11:20 12:22 20:9 verify 11:13 Versus 28:3 vexing 6:12 viable 21:2
---	--	--	---

W	Y	
Walters	Year's	
6:22	8:24 9:1	
wanted	25:4,7	
11:1 17:16	years	
waste	6:10 10:22	
12:4	25:21	
WC		
12:2	Z	
week	Zoom	
18:8	22:1	
weekend	Zweig	
15:13	5:10,13,16	
wooded		
10:11		
word		
13:9,15		
15:11		
words		
20:17,19		
work		
27:11		
workmen's		
12:1		
worried		
21:19		
worst		
10:15		
worth		
12:16		
write		
7:23 21:2		
wrong		
24:20		
wrote		
21:10 27:25		
29:12		