SC



No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

| PAUL R. DULBERG, |) | |
|-------------------------------|----|--|
| · |) | Appeal from |
| Plaintiff-Appellant, |) | The Circuit Court of the 22nd Judicial Circuit |
| |) | McHenry County, Illinois |
| v. |) | Honorable Joel D. Berg, Judge Presiding |
| |) | Circuit Court No. 2017LA000377 |
| HANS MAST and THE LAW OFFICES |) | |
| OF THOMAS J. POPOVICH, P.C., |) | Notice of Appeal Filed: March 3, 2023 |
| |) | |
| Defendant-Appellees. | _) | |

DEFENDANTS/APPELLEES HANS MAST AND THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF/APPELLANT PAUL R. DULBERG'S EMERGENCY MOTION FOR 4TH EXTENSION TO FILE APPELLANT'S BRIEF, TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS, AND TO SUPPLEMENT THE RECORD ON APPEAL

Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C. (collectively "the Firm"), by and through their attorneys, pursuant to Illinois Supreme Court Rule 361(b)(3),(g), hereby respond to Plaintiff/Appellant Paul R. Dulberg's ("Dulberg's") motion that he has titled "Emergency Motion and Fourth Motion to Extend Time to File Appellant's Brief (Civil) Emergency Motion to Conduct an Audit of the Record on Appeal to Discover Changed or Missing Documents; Supplement the Record on Appeal and, if Granted, For 35 Days Extension of Time After the Trial Court Clerk Has Supplemented and/or Corrected the Record on Appeal to File Appellant's Brief" ("Motion" or "Mtn."). In response, the Firm states as follows:

INTRODUCTION

This is an appeal of a grant of a summary judgment motion in favor of the Firm in a legal malpractice action based on the statute of limitations. Ex. 1 hereto, Notice of Appeal (C2139-

C2144); Ex. 2 hereto, Feb. 1, 2023 Summary Judgment Order (C2138); Mtn. Ex. D, Feb. 1, 2023 Transcript (R493-R512). The former client Dulberg brought this action alleging that the Firm was negligent in recommending Dulberg accept an inadequate settlement in an underlying personal injury case arising out of a chain saw accident. Ex. 3 hereto, 2nd Amd. Legal Malpractice Compl. (C269-C293). The Circuit Court found that the instant legal malpractice case is time-barred by the two-year attorney statute of limitations of 735 ILCS 5/13-214.3(b). Ex. 2 hereto, Feb. 1, 2023 Order (C2138); Mtn. Ex. D, Feb. 1, 2023 Transcript (R493-R512).

Dulberg filed his notice of appeal back on March 3, 2023, and minimal activity has occurred in this appeal since that time. Ex. 1 hereto, Notice of Appeal (C2139-C2144). Dulberg has already been granted 155 days of extensions for his opening brief. Mtn. ¶3. On his final deadline for filing his opening brief, Friday, November 3, 2023 around 5pm, Dulberg served a motion that he titled as an "emergency" request for (i) leave to retain an auditor to conduct an audit and forensic investigation of the records of the Circuit Court and of this Court, (ii) to supplement the record on appeal, (iii) for leave to amend the docketing statement (which may be a typographical error, as such is only referenced in the "wherefore" clause), (iv) for leave to request the record on appeal for "related cases" (which might be another typographical error, as such is only referenced in the "wherefore" clause), and (v) for a further extension of time to file his appellant's brief. Similarly as with Dulberg's prior motion for miscellaneous relief that he filed on October 2, 2023, which was denied other than allowing a third and final extension, Dulberg's arguments are unsubstantiated and fail to comply with the Illinois Supreme Court Rules. Ex. 4 hereto, Dulberg Amd. Mtn. for 3rd Extension & Other Relief; Ex. 5 hereto, Oct. 10, 2023 Appellate Order. This Court should deny all relief requested in Dulberg's Motion.

ARGUMENT

I. This Court should deny Dulberg's Motion as it does not present an emergency.

Dulberg's Motion should be denied outright as it does not present a genuine emergency. See Ill. App. Court 2nd Dist. Rule Local Rule 109(a). The primary basis for Dulberg's various requests for relief is the alleged incompleteness of the record on appeal, but Dulberg has been on notice of such possible issues from at least the time that he filed his initial motion for extension back on May 24, 2023. Ex. 6, May 24, 2023 Dulberg's 1st Mtn. for Extension for Appellant's Brief. In this regard, Dulberg's May 24, 2023 motion for an initial extension of time for his opening brief stated the extension was sought due to, among other reasons, "various problems within the Record on Appeal" and "errors by the Clerk of the Circuit Court in preparation of the Record on Appeal," including "missing report of proceedings, mismatched sections, documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, [and] violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal." Id. at ¶1, 8.b. and Wherefore Clause. If there are any issues with the record on appeal, then Dulberg should have followed the procedures for supplementing the record in Ill. S. Ct. Rule 329. He failed to do so, as further discussed below. Dulberg's failure to timely arrange for any supplement to the record and delay in preparing his brief is not a basis for emergency relief. See In re Marriage of Larocque, 2018 IL App (2d) 160973, ¶94-95 (emergency motion was properly denied as "litigants do not have an absolute right to a continuance"). Ill. S. Ct Rule 361(g) states, "Except in the most extreme and compelling circumstances, a motion for an extension of time will not be considered an emergency." No extraordinary circumstances are present here, and there is no emergency.

II. The Court should deny Dulberg's request for leave to retain an auditor to audit the records of the Circuit Court and of this Court.

This Court should deny Dulberg's unprecedented request for leave to retain an auditor to

audit the records of the Circuit Court and of this Court. Dulberg cites no authority that would warrant such extraordinary relief. On the contrary, the requisite procedures for correcting any issues with the record on appeal are set forth in Ill. S. Ct. Rule 329, which do not allow retention of an auditor. As discussed below, Dulberg failed to follow those procedures. Dulberg's request to retain an auditor is misguided because he fails to understand that the purpose of arranging for any supplement to the record on appeal is to ensure the record is sufficient "to present fully and fairly the questions involved," not to incur extraordinary time and resources in scrutinizing every conceivable minutiae of detail in documents that are irrelevant to this appeal. See Ill. S. Ct. Rule 329. While Dulberg reaches far afield in requesting a forensic investigation of the court's records, it should be kept in mind that a request for a forensic investigation of a party's records is not even ordinarily permitted at the trial court level. Carlson v. Jerousek, 2016 IL App (2d) 151248, ¶69 (trial court abused its discretion in compelling the forensic imaging of the plaintiff's computers during the discovery process). Further, certain categories of electronically stored information, such as online access data, data in metadata fields that are frequently updated automatically, and forms of ESI that would require extraordinary efforts for production, are presumptively not discoverable even between parties. *Id.* at ¶¶48-49. Dulberg's request to audit the court's records has no support and is simply a delay tactic.

III. The Court should again deny Dulberg's request for leave to supplement the record on appeal due to Dulberg's delay and failure to follow proper procedures.

It is Dulberg's burden as the appellant to present a complete record on appeal, in order to support any arguments that he may raise as to why the trial court's ruling was in error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). If the record is incomplete, then Dulberg should have followed the procedures in Ill. S. Ct. Rule 329 for seeking leave to supplement the record. *McCarty v. Weatherford*, 362 Ill. App. 3d 308, 312 (4th Dist. 2005). Ill. S. Ct. Rule 329 states:

The record on appeal shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by this rule. Material omissions or inaccuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, or by the reviewing court or a judge thereof. Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth. If the record is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant. If necessary, a supplement to the record may be certified and transmitted. The clerk of the circuit court shall prepare a certified supplement to the record which shall be filed in the reviewing court upon order issued pursuant to motion.

Dulberg's various requests to supplement the record on appeal should be denied, as they do not comply with Ill. S. Ct. Rule 329.

A. Dulberg's renewed blanket request for this Court to order the Circuit Court to re-prepare the record on appeal should again be denied.

To the extent that Dulberg renews his request for this Court to order the Circuit Court to start over in preparing a new or substitute record on appeal, that request should again be denied. Mtn. pg. 6 "wherefore" clause. This Cout previously denied such a request that Dulberg made in a motion he filed on October 2, 2023. Ex. 4, Dulberg Amd. Mtn. for 3rd Extension & Other Relief pg. 8; Ex. 5, Oct. 10, 2023 Order. The clerk already prepared and filed the record on April 24, 2023, which consists of 2148 pages of the common law record and 512 pages of reports of proceedings. The clerk also already executed a Certification of Record in the form required by Ill. S. Ct. Rule 324 and the Article III Forms Appendix, which certificate appears at the front of the record. It is the burden of Dulberg, not the Court, to identify any documents that may be missing from the record and to arrange for any necessary supplement to the record. See *McCarty*, 362 Ill. App. 3d at 312-13 (while "the clerk of the circuit court failed to file many of the documents that were before the trial court[,]...the clerk's failure [did] not excuse the [plaintiffs], who, as appellants, clearly had the burden to present this court with a sufficiently complete record on appeal"); *Swift Agricultural Chemicals Corp. v. Marten*, 4 Ill. App. 3d 60, 61

(5th Dist. 1972) ("[w]hile...Supreme Court Rule 326 places the obligation of filing the record upon the clerk of the trial court[,] it is nevertheless incumbent upon the appellant to see to the preparation and forwarding of the record in the course of his appeal"). Dulberg's blanket request for a re-do of the record deviates from Ill. S. Ct. Rule 329, which specifies that only the "requisite portions" should be included in a supplemental record, not that the clerk should file the entire record all over again. It is not unduly burdensome to require the appellant to ensure the record is adequate in an appeal he chooses to pursue. *McCarty*, 362 Ill. App. 3d at 313-14; *Lorts v. Illinois T. Railroad*, 80 Ill. App. 3d 974, 977 (5th Dist. 1980).

B. This Court should deny Dulberg's request to supplement the record on appeal with a document from the unrelated *McDonald* case, which was not before the Circuit Court in this matter.

This Court should deny Dulberg's request to supplement the record on appeal to add an order from the unrelated case *Mark McDonald, Individually and as Special Administrator of the Estate of Julie McDonald, and as Father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children v. Law Offices of Thomas J. Popovich, P.C., James P. Tutaj, and Thomas J. Popovich, Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois no. 2012LA000326 (transferred from Circuit Court of Cook County no. 2012 L 000196) (the "McDonald Case"). Mtn. Ex. A, McDonald Case Order. It does not appear that the McDonald Case is referenced anywhere in the record, as a search on the record on the term "McDonald" does not return any results. Nor does Dulberg provide any explanation of the McDonald Case in his current Motion. It would be improper to supplement the record with a copy of an order from the McDonald Case, as such is from a different case and the document was never before the Circuit Court in this matter. Johnson v. Matviuw, 176 Ill. App. 3d 907, 912 (1st Dist. 1988).*

In any event, Dulberg cannot raise a new argument in this appeal about the order in the

McDonald Case. It appears that Dulberg may wish to make a new argument based on the apparent fact that Judge Thomas A. Meyer entered an order on October 19, 2012 in which he recused himself from the unrelated McDonald Case that had been filed against The Law Offices of Thomas J. Popovich, P.C. Mtn. Ex. A. But Dulberg has forfeited any issue with Judge Meyer having presided over part of the instant legal malpractice case because he never filed a motion for substitution of judge. People v. Cavin, 28 III. App. 3d 863, 868 (1st Dist. 1975); People v. Fitzgerald, 55 Ill. App. 3d 626, 632 (1st Dist. 1977). Judge Meyer disclosed in this case that he knew the parties and that he had presided over the underlying personal injury case, and Dulberg did not file a motion for substitution of judge. Mtn. Ex. B, Feb. 3, 2020 Transcript (R66:22-R67:7); Mtn. Ex. C, May 10, 2018 Transcript (R4:8-10). Dulberg as appellant cannot raise new issues for the first time on appeal. Cambridge Eng'g, Inc. v. Mercury Partners 90 BI, Inc., 378 Ill. App. 3d 437, 454, 456 (1st Dist. 2007). Since Dulberg never filed a motion for substitution of judge, the issue is forfeited. Cavin, 28 Ill. App. 3d at 868; Fitzgerald, 55 Ill. App. 3d at 632. Further, a party cannot seek relief on a question of whether a judge should have recused himself on his own initiative, but rather a party needs to file a motion for substitution of judge if he were to believe that a judge should not preside over a case, which Dulberg failed to do here. In re *Marriage of O'Brien*, 2011 IL 109039, ¶45.

C. This Court should deny Dulberg's request to supplement the record on appeal with an audio recording of the deposition of Hans Mast.

This Court should deny Dulberg's request to supplement the record on appeal with an audio recording of the deposition of appellee/defendant Hans Mast. The issue Dulberg references is that 2.5 years after his former counsel took the remote deposition of defendant Mast, Dulberg argued that there were technical issues with the deponent Mast's ability to view Dulberg's exhibits that Dulberg's counsel displayed at the deposition. Mtn. Ex. D, Dec. 21,

2022 Transcript (R476-R488); Ex. 7 hereto, Dec. 21, 2022 Order (C2056) (denying Dulberg's second amended motion to exclude the deposition of Hans Mast and to re-take the deposition of Hans Mast, and denying Dulberg's oral motion to supplement the record with an audio recording of the Mast deposition); see also Ex. 8 hereto, Dulberg's second amended motion to exclude the deposition of defendant Mast and to grant leave to re-depose Mast (C1770 - C1839); Ex. 9, the Firm's response thereto (C1968 - C2004), and Ex. 10, Dulberg's reply (C2033 - C2055). The court denied Dulberg's second amended motion to exclude the deposition of Mast and declined to allow Dulberg leave to re-take the deposition, and explained that since Dulberg's counsel conducted the deposition, controlled the exhibits, did not make any objections at the time, and did not raise any concerns with the deposition until 2.5 years later, the court would not strike the deposition of Mast and would not allow Dulberg leave to re-take the deposition. Mtn. Ex. D, Dec. 21, 2022 Transcript (R476-R488); Ex. 7 hereto, Dec. 21, 2022 Order (C2056). At that hearing, Dulberg offered to tender an audio recording of Mast's deposition to the Circuit Court, but the Circuit Court declined to accept or review such, finding it would be irrelevant to the court's ruling. Mtn Ex. D, Dec. 21, 2022 Transcript (R479:17 - R481:9); Ex. 7 hereto, Dec. 21, 2022 Order (C2056). Since the audio recording was never reviewed by the Circuit Court, it should not be included in the record on appeal. See Garvy v. Seyfarth Shaw LLP, 2012 IL App (1st)110115, ¶25-27 (finding that privilege logs that the defendant had tendered to the plaintiff in court, but which the trial court did not review, should not be included in the record on appeal).

D. This Court should deny Dulberg's request to supplement the record on appeal with other possible reports of proceedings.

This Court should deny Dulberg's request to supplement the record on appeal with any additional reports of proceedings at this point. Ill. S. Ct. Rule 323(a) puts the burden on the appellant to make a written request to court reporting personnel by the date his docketing

statement is due for preparation of any transcripts that the appellant wishes to include in the record. Thus, Dulberg was required to request court reporting personnel prepare any necessary transcripts by March 17, 2023 (the date his docketing statement was due, which was 14 days after the notice of appeal was filed on March 3, 2023). Ex. 1 hereto, Notice of Appeal (C2139-C2144); Ill. S. Ct. Rules 312 & 323(a). The court reporting personnel were then required to file any requested transcripts within 49 days of the date of the filing of the notice of appeal, meaning by April 21, 2023. Ex. 1 hereto, Notice of Appeal (C2139-C2144); Ill. S. Ct. Rule 323(b). Here, 512 pages of transcripts have been filed. R1-R512. If the court reporting personnel did not timely file some of the transcripts, then Dulberg should have followed the procedures in Ill. S. Ct. Rules 323(b),(e) and 329 for supplementing the record with any such missing transcripts. Dulberg was required to file any motion for extension of time to file any necessary transcripts by the expiration of the original due date or any extension thereto (meaning by April 21, 2023), or within 35 days after the due date, if he could provide a reasonable excuse for failure to file such a motion earlier. Ill. S. Ct. Rule 323(e). Far more than 35 days have now passed since the April 21, 2023 deadline for filing reports of proceedings, and thus it is too late for Dulberg to arrange for the filing of any additional reports of proceedings at this point. Ill. S. Ct. Rule 323(e); Hall v. Turney, 56 Ill. App. 3d 644, 648 (1st Dist. 1977) (rejecting appellant's untimely request for an extension of time to file reports of proceedings that was disguised as a request for an extension of time to file the entire record).

Accordingly, it is now too late for Dulberg to supplement the record with a different version of the September 16, 2022 transcript that was transcribed by a different court reporter. Mtn. Ex. E, ¶6-16. The only version of the September 16, 2022 transcript in the record is at R389-R401 (Ex. 11 hereto). This Court cannot make any ruling that would allow Dulberg to

substitute a different transcript instead, as III. S. Ct. Rule 329 states, "Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court." Thus, any question over the precise words that were spoken should have been timely addressed by the Circuit Court, not by this court on an emergency motion filed on the appellant's final deadline for his brief. Ill. S. Ct. Rule 329. In Lawrence, the appellate court denied such an appellant's motion to supplement the record on appeal where there was a controversy as to whether the supplemental material accurately disclosed what had occurred in the trial court. In re Marriage of Lawrence, 146 Ill. App. 3d 307, 310-11 (3rd Dist. 1986). The Lawrence court found the appellant had failed to follow the requirements of Ill. S. Ct. Rule 329 for supplementing the record on appeal and had displayed an "utter disregard of clearly define[d] rules [that] disrupt[ed] the orderly disposition of an appeal." Id. Likewise, here this Court should not "reward appellant's inattentiveness to supreme court rules." Id. Furthermore, this Court cannot consider Dulberg's auditor's affidavit since she fails to attach the documents referenced, such as the two different September 16, 2022 transcripts being compared and the court reporter's emails containing the transcripts. Mtn. Ex. E, Pasha Affidavit ¶¶4, 8; Ill. S. Ct. Rule 191(a); Robidoux v. Oliphant, 201 III. 2d 324, 343-44 (2002); Lucasey v. Plattner, 2015 IL App (4th) 140512, ¶19-20, 23. Thus, even if this issue could be considered, which it cannot per Ill. S. Ct. Rules 323 and 329, Dulberg fails to present adequate information for this Court to resolve any controversy over the transcript. Robidoux, 201 III. 2d at 343-44. Regardless, Dulberg fails to point to any inaccuracy in the record, as the version of the September 16, 2022 transcript that is in the record reflects that there had been no deadline for expert discovery, which is consistent with the fact that there is no order in the record suggesting that expert discovery had closed. Ex. 11, Sept. 16, 2022 Transcript at R393:12-15.

Dulberg also notes that the record does not contain any transcripts from the January 10, 2018 and February 27, 2018 court conferences, but such is another example of his failure to satisfy Ill. S. Ct. Rule 329, along with the specific requirements of Ill. S. Ct. Rule 323 for reports of proceedings. Mtn. pg. 5-6; Mtn. Ex. E, Pasha Affidavit ¶¶17-26. Dulberg and his auditor are uncertain as to whether a court reporter was even present at the January 10, 2018 and February 27, 2018 court conferences in the first place. Mtn. Ex. E, Pasha Affidavit ¶17-26. At the January 10, 2018 court conference, the court simply granted the Firm's motion to answer or otherwise plead through February 7, 2018 and set a further status conference for February 27, 2018. Ex. 12, Jan. 10, 2018 Order (C47). At the February 27, 2018 court conference, the court simply set an agreed briefing schedule on the Firm's motion to dismiss. Ex. 13, Feb. 27, 2018 Order (C93). Dulberg provides no explanation as to whether such two transcripts, if they even exist, could be material to this appeal. See Mtn. Ex. E, Pasha Affidavit ¶¶17-26. Nor did Dulberg make any effort to timely arrange for a bystander's report under Ill. S. Ct. Rule 323(c). Dulberg fails to understand that Ill. S. Ct. Rule 323 does not contemplate that the record on appeal will include every potentially available report of proceedings. Rather, Rule 323(a) provides that "the appellant shall make a written request to the court reporting personnel...to prepare a transcript of the proceedings that appellant wishes included in the report of proceedings," which "shall include all the evidence pertinent to the issues on appeal." The rule warns that a party who orders unnecessary transcripts may be assessed "[t]he entire expense of incorporating unnecessary and immaterial matter in the report of proceedings" as costs against that party. Ill. S. Ct. Rule 323(a). If Dulberg were to believe that the January 10, 2018 and February 27, 2018 proceedings were somehow "pertinent to the issues on appeal," he should have arranged for such reports of proceedings to be incorporated into the record prior to his

deadline. Ill. S. Ct. Rule 323(a),(e).

E. Dulberg's reference to metadata in the PDFs for the record on appeal is not a basis to supplement the record.

Without developing any argument on the point, Dulberg notes that common law volume 1 has a PDF creation date of April 24, 2023 at 9:31am and a filing date of April 24, 2023 at 10:00am, that common law volume 2 has a PDF creation date of April 24, 2023 at 9:28am and a filing date of April 24, 2023 at 10:03am, and that the reports of proceedings have a PDF creation date of April 25, 2023 at 8:06am and a filing date of April 24, 2023 at 10:03am. Mtn. pg. 2-3 & Mtn. Exs. G & H. This Court notified the parties on April 25, 2023 at 8:48am that the record had been filed. Mtn. Ex. F. Such does not show that anything unusual occurred, but rather simply suggests that sometimes the record is saved as a new PDF once it is received by the appellate court.

In sum, Dulberg has failed to follow the appropriate procedures under Rules 329 and 323 for arranging for any necessary supplement to the record. His vague and untimely requests for leave to supplement the record should be denied. *McCarty*, 362 Ill. App. 3d at 312-13.

IV. This Court should again deny Dulberg leave to amend his docketing statement.

To the extent the request is re-raised, this Court should again deny Dulberg's request for leave to amend his docketing statement to include "related cases." Mtn. pg. 6 "wherefore" clause. This Court previously denied Dulberg's request to amend his docketing statement in the motion he filed on October 2, 2023. Ex. 4, Dulberg Amd. Mtn. for 3rd Extension & Other Relief, pg. 6-7, 9; Ex. 5, Oct. 10, 2023 Order. As before, Dulberg has not identified any cases that would fall under the definition of "related cases" in Local Rule 113, and thus there are no other matters that should be referenced in the docketing statement. Local Rule 113 states:

Rule 113 Related-case statements

- (a) If an appeal is related to any case in the Court, or in any other court, the appellant shall file and serve, with his or her docketing statement, an additional statement that includes the name, docket number, and status of all such related cases....
- (b) For purposes of this Local Rule, a "related case" is (1) any prior or pending case involving substantially the same parties <u>and</u> the same or similar issues or (2) any prior or pending criminal case involving a codefendant of the defendant in the present appeal.
- (c) For purposes of this Local Rule, "any other court" means the Illinois Supreme Court, any other district of the Illinois Appellate Court, or any circuit court in the second appellate district.

[Emphasis added.]

Dulberg referenced the *McDonald* Case in his October 2, 2023 motion, and this Court rejected Dulberg's request to amend his docketing statement to refer to same. Ex. 4, Dulberg Amd. Mtn. for 3rd Extension & Other Relief, pg. 7; Ex. 5, Oct. 10, 2023 Order. Based on the caption, Dulberg was not a party to the *McDonald* Case, and thus it does not involve "substantially the same parties" as required by Local Rule 113(b)(1). Mtn. Ex. A, *McDonald* Order; *Northbrook Prop.* & Cas. Ins. Co. v. GEO Int'l. Corp., 317 Ill. App. 3d 78, 81 (2000) (finding the requirement of the parties being "sufficiently similar" for purposes of 735 ILCS 5/2-619(a)(3) was not satisfied when only one of the parties was the same in the two suits).¹

This Court likewise previously rejected Dulberg's request to amend his docketing statement to refer to the underlying personal injury suit in which the Firm represented Dulberg, which gave rise to this legal malpractice case, *Paul Dulberg v. David Gagnon, Bill McGuire, and Caroline McGuire*, Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois no. 2012LA000178. Ex. 4, Dulberg Amd. Mtn. for 3rd Extension & Other Relief, pg. 7; Ex. 5, Oct. 10, 2023 Order; Ex. 3 hereto, 2nd Amd. Compl. (C269-C293) at ¶32. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast were not parties to the underlying suit, and thus the parties are not "substantially the same." Ex. 3 hereto at C279-C285 (the underlying personal

¹ Furthermore, the fact that Local Rule 113(b)(2) contains a separate prong for "any prior or pending criminal case involving a codefendant of the defendant in the present appeal" shows that civil cases are not "related cases" for purposes of this rule when only one of the parties is the same.

injury complaint is Ex. B to the legal malpractice complaint); see *Northbrook*, 317 Ill. App. 3d at 81. Further, the issues are different, because any question of legal malpractice (and the statute of limitations for filing a claim for legal malpractice) cannot be resolved in the underlying case. See *Roberts v. Heilgeist*, 124 Ill. App. 3d 1082, 1087 (2nd Dist. 1984) (the injury alleged in a legal malpractice action is different from the injury alleged in an underlying tort claim).

In sum, Dulberg has not identified any case that constitutes a "related case" under the definition of Local Rule 113, and thus there is no reason for Dulberg to amend his docketing statement to refer to any other cases.

V. This Court should again deny Dulberg's request for leave to request the record on appeal for "related cases."

This Court previously denied Dulberg's vague request for this Court to order other courts to cooperate in submitting documents from other cases to supplement the record on appeal in this case. Ex. 4, Oct. 2, 2023 Amd. Mtn. for 3rd Extension & Other Relief pg. 9; Ex. 5, Oct. 10, 2023 Order. To the extent that Dulberg renews that request (Mtn. pg. 6 "wherefore" clause), it should again be denied. A party generally cannot supplement the record with documents that were not actually filed in the trial court or considered by the trial court. *Johnson v. Matviuw*, 176 Ill. App. 3d 907, 912 (1st Dist. 1988). And while Dulberg does not identify any "related cases" under Local Rule 113, even if he were to identify such a case, Local Rule 113 regardless does not provide a mechanism for supplementing the record on appeal.

VI. Dulberg should be denied an additional extension of time for the appellant's brief past his final deadline.

This Court should deny Dulberg's request for yet another extension of time, as lengthy extensions have already been granted and the Court previously set a final deadline. Mtn. pg. 2-3. The Firm did not object to Dulberg's initial requests for two extensions of time of 60 days each,

which Dulberg's counsel requested due to his workload on other matters, personal issues, and issues with the record. Mtn. pg. 3; Ex. 6 hereto, May 24, 2023 Dulberg's 1st Mtn. for Extension for Appellant's Brief ¶1a; Ex. 14 hereto, Jul. 24, 2023 Dulberg's 2nd Mtn. for Extension for Appellant's Brief ¶1-2. Dulberg thereafter requested a third extension of 90 days, to which the Firm did not oppose an additional 21-day final extension. Ex. 4, Oct. 2, 2023 Amd. Mtn. for 3rd Extension & Other Relief, ¶1. This Court, in ruling on Dulberg's third motion for an extension, allowed an additional 35 day extension to November 3, 2023, but warned Dulberg that "[a]bsent extraordinarily compelling circumstances, this date will not be further extended." Ex. 5, Oct. 10, 2023 Order. The November 3, 2023 final deadline has now passed, with no appellant's brief filed. Id. For Dulberg to now request an even longer open-ended extension of 35 days after any future unknown date that his auditor might complete work is excessive and could potentially delay this appeal indefinitely. York v. Mulryan, 2015 IL App (1st) 132830, ¶25 (denying motion for extension file appellee's brief where the party had "caused unnecessary delay in the disposition of this case on appeal"); Premier Elec. Constr. Co. v. Morse/Diesel, Inc., 257 Ill. App. 3d 445, 454-56 (1st Dist. 1993) (trial court properly acted within its discretion in denying a third motion for extension to file a brief, where two extensions had already been allowed). Dulberg's failure to understand the meaning of a final deadline and failure to prioritize this case amounts to a failure to prosecute. This Court has discretion to dismiss an appeal where the appellant fails to file an opening brief on time. Universal Underwriters Ins. Co. v. LKQ Smart Parts, Inc., 2011 IL App (1st) 101723, ¶10.

WHEREFORE, Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C. request that this Court deny the aforementioned motion of Plaintiff-Appellant Paul R. Dulberg and grant any other appropriate relief, including dismissal of this appeal.

Respectfully submitted,

By: /s/ George K. Flynn

One of the Attorneys for Defendants-Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C.

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No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

| PAUL R. DULBERG, |) |
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| , |) Appeal from |
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| 11 |) McHenry County, Illinois |
| V. |) Honorable Joel D. Berg, Judge Presiding |
| |) Circuit Court No. 2017LA000377 |
| HANS MAST and THE LAW OFFICES |) |
| OF THOMAS J. POPOVICH, P.C., | Notice of Appeal Filed: March 3, 2023 |
| , |) |
| Defendant-Appellees. | <u> </u> |

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on the 6th day of November, 2023, we filed with The Clerk of the Appellate Court of Illinois, Second District, Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C's Response to Plaintiff/Appellant Paul R. Dulberg's Emergency Motion for 4th Extension to File Appellant's Brief, to Conduct an Audit of the Record on Appeal to Discover Changed or Missing Documents, and to Supplement the Record on Appeal, a copy of which is attached hereto and served upon you.

/s/ George K. Flynn

One of the Attorneys for Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C.

George K. Flynn
Michelle M. Blum
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
200 S. Wacker Drive, Suite 2550
Chicago, IL 60606
Tel: (312) 431-3700
gflynn@karballaw.com
mblum@karballaw.com

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, certify that I filed the foregoing Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C's Response to Plaintiff/Appellant Paul R. Dulberg's Emergency Motion for 4th Extension to File Appellant's Brief, to Conduct an Audit of the Record on Appeal to Discover Changed or Missing Documents, and to Supplement the Record on Appeal and Notice of Filing through Odyssey eFileIL and served each party by emailing a copy to each party listed below on November 6, 2023.

Attorneys for Plaintiff/Appellant Paul R. Dulberg

Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd., Suite 600 Northbrook, IL 60062 Phone: (312) 808-1410 contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Michelle Blum
Michelle Blum

EXHIBITS TO

DEFENDANTS/APPELLEES HANS MAST AND THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF/APPELLANT PAUL R. DULBERG'S EMERGENCY MOTION FOR 4TH EXTENSION TO FILE APPELLANT'S BRIEF, TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS, AND TO SUPPLEMENT THE RECORD ON APPEAL

| Exhibit | Description | | |
|---------|---|--|--|
| 1 | Mar. 3, 2023 Notice of Appeal (C2139 - C2144) | | |
| 2 | Feb. 1, 2023 Summary Judgment Order (C2138) | | |
| 3 | Dec. 6, 2018 Second Amended Legal Malpractice Complaint (With Exhibits) | | |
| | (C269 - C293) | | |
| 4 | Oct. 2, 2023 Dulberg's Amended Motion for Third Extension of Time to File | | |
| | Appellant's Brief and for Other Relief | | |
| 5 | Oct. 10, 2023 Appellate Order | | |
| 6 | May 24, 2023 Dulberg's Motion for First Extension of Time to File Appellant's | | |
| | Brief | | |
| 7 | Dec. 21, 2022 Order (C2056) | | |
| 8 | Nov. 23, 2022 Dulberg's Second Amended Motion to Exclude the Deposition | | |
| | of Defendant Mast and to Grant Leave to Re-depose Mast (C1770 - C1839) | | |
| 9 | Nov. 30, 2022 The Firm's Response to Dulberg's Second Amended Motion to | | |
| | Exclude the Deposition of Defendant Mast and to Grant Leave to Re-depose | | |
| | Mast (C1968 - C2004) | | |
| 10 | Dec. 19, 2022 Dulberg's Reply in Support of Second Amended Motion to | | |
| | Exclude the Deposition of Defendant Mast and to Grant Leave to Re-depose | | |
| | Mast (C2033 – C2055) | | |
| 11 | Sept. 16, 2022 Transcript of Court Proceedings (R389 - R401) | | |
| 12 | Jan. 10, 2018 Order (C47) | | |
| 13 | Feb. 27, 2018 Order (C93) | | |
| 14 | Jul. 24, 2023 Dulberg's Motion for Second Extension of Time to File | | |
| | Appellant's Brief | | |

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate County, Illinois

2017LA000377

| Instructions ▼ | ☐ THIS APPEAL INVOLVES A MATTER SUBJECT TO | 2017LA00037 EXPEDITED DISPOSITIOPate: 3/3/2023 10:55 AM | |
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| Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child. | UNDER RULE 311(a). APPEAL TO THE APPELLATE COURT OF ILLINOIS SECOND District | | |
| Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that will hear the appeal and the county of the trial court. If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party is filing the appeal ("appellant") and which party is responding to the appeal ("appellee"). To the far right, enter the trial court case number, the trial judge's name, and the Supreme Court Rule that allows the appeal. | from the Circuit Court of | unty | |
| | NOTICE OF APPEAL (CIVIL) | | |
| In 1, check the type of appeal. For more information on choosing a type of appeal, see <i>How to File a Notice of Appeal</i> . | 1. Type of Appeal: | EXHIBIT 1 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION | |
| In 2, list the name of each person filing the appeal and check the proper box for each | 2. Name of Each Person Appealing: Name: Paul R. First Middle | Dulberg Last | |
| person. | Plaintiff-Appellant Petitioner- | Appellant | |
| | | nt-Appellant | |
| | Page 1 of 6 | | |

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In 3, identify every order or judgment you want to appeal by listing the date the trial court entered it.

State your relief:

In 4, state what you want the appellate court to do. You may check as many boxes as apply.

reverse the trial court's judgment (change the judgment in favor of the other party into a judgment in your favor and vesend the case back to the trial court for any hearings that are still required;

vacate the trial court's judgment (erase the judgment in favor of the other party) and \square send the case back to the trial court for a new hearing and a new judgment;

- change the trial court's judgment to say: Defendants' Motion for Summary Judgment is Denied
- Order the trial court to: transfer this case to the first district (Cook County Law Division) for reassignment; order Defendants to answer the Discovery filed and served by Plaintiff's attorney Thomas W. Gooch;

✓ other: Judge Thomas Meyer should have self-recused because he knows the parties, was the Judge in the underlying matter 12 LA 178 and is friends with one of the Defendants. Therefore all orders should be reviewed; have Case Management Conferences and Case Management Orders; reopen F(1) discovery; Plaintiff's privileged discussions with his attorney Thomas W. Gooch after retention regarding when he knew that Defendants actions were malpractice should be removed from the record; find that Plaintiff's objections of "undue burden" to Defendants" Supplemental Requests should be ruled/treated the same as Defendants' discovery objections of undue burden; determine whether a hearing on Plaintiff's objections made at Plaintiff's deposition were valid; have all Court orders redesignated to match the enter date to the file date and to the hearing date; strike all motions instigated by the Court; all stipulations must be signed by the party making the stipulation; proposed order not agreed to by the Plaintiff should not have been sent to this Honorable Court and should not have been entered; Plaintiff, a Party with a Pro Se appearance previously filed, should have been allowed to hear and speak at the Zoom proceedings when his attorney was hospitalized; oral motions not filed or noticed should not be allowed; the Judge should not be allowed to make an oral motion and grant his own oral motion; depositions that violate (multiple) Supreme Court rules should be stricken; Zoom depositions with missing exhibits should be stricken, Zoom depositions where the officer authorized to administer oaths was never given all exhibits used should be stricken; Defendants' ex parte communication on November 9, 2022 between non-attorney Ms. Wang and Plaintiff's former attorney Julie C. Williams (formerly Julia C. Floyd) and any other ex parte communication between: this Honorable Court; Plaintiff's former attorneys and Defendants' former offices should be revealed; the Order entered on December 6, 2022 should be stricken and a corrected Order should replace it because: there was no order entered on November 11, 2022 (VETERANS DAY); allow the contemporaneous audio recording of Defendant Hans Mast deposition made by the officer authorized to administered oaths be entered in to the record as evidence for the purpose of proof that the Deposition Of Defendant Hans Mast contained numerous major violation of Supreme Court Rules ;strike the Zoom Deposition of Defendant Hans Mast completed in violation of numerous Supreme Court Rules without the waiver of said violation by the Parties; grant Plaintiff's motion to Depose Defendant Hans Mast; deny Defendants' Motion for Summary Judgment based upon the Zoom deposition of Defendant Hans Mast and disregarding the Law of the State of Illinois regarding the Statute of Limitation for Legal Malpractice and the requirement of pecuniary loss as determined by the Illinois Supreme Court in 2022 IL 126935 SUBURBAN REAL ESTATE SERVICES, INC., et al., Appellees, v. WILLIAM ROGER CARLSON JR. et al., Appellants; upon remand to consider Plaintiff's additional vicarious pecuniary losses stemming from Defendants erroneous settlement advice in the underlying case to release the homeowners for \$5,000.00 (the McGuires in the underlying

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and grant any other relief that the court finds appropriate.

| If you are completing | /s/ Paul R Dulberg | 4606 Hayden Ct. | |
|--|--------------------------------|--------------------------|---------------------|
| this form on a computer, sign your | Your Signature | Street Address | |
| name by typing it. If you are completing it | Paul R Dulberg | McHenry, Illinois, 60051 | |
| by hand, sign by hand and print your | Your Name | City, State, ZIP | |
| name. Fill in your | pdulberg@icloud.com | (847) 497-4250 | |
| address, telephone number, and email address, if you have | Email | Telephone | Attorney # (if any) |
| one. | Additional Appellant Signature | | |
| All appellants must | /s/ | | |
| sign this form. Have each additional appellant sign the form here and enter their | Signature | Street Address | |
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| one. | Email | Telephone | Attorney # (if any) |

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

Page 4 of 6

PROOF OF SERVICE (You must serve the other party and complete this section) In 1a, enter the name, mailing address, and I sent this document: email address of the To: a. party or lawyer to whom you sent the Name: George Flvnn document. Middle First In 1b, check the box to 200 S. Wacker Drive #2550, Chicago, Illinois, 60606 Street, Apt # City State show how you sent the Address: document, and fill in any other information Email address: gflynn@karballaw.com required on the blank lines. By: In 1b, check the box to b. show how you are An approved electronic filing service provider (EFSP) sending the document. ☐ Email (not through an EFSP) CAUTION: If you and Only use one of the methods below if you do not have an email address, or the the person you are sending the document person you are sending the document to does not have an email address. to have an email address, you **must** use ☐ Personal hand delivery to: one of the first two options. Otherwise, The party you may use one of the The party's family member who is 13 or older, at the party's residence other options. The party's lawyer The party's lawyer's office Mail or third-party carrier On: March 3, 2023 In c, fill in the date and C. time that you sent the Date document. ☐ a.m. ____ p.m. At: Time 2. I sent this document: To: In 2, if you sent the a. document to more Name: than 1 party or lawyer, First Middle Last fill in a, b, and c. Otherwise leave 2 Address: ZIP Street, Apt # City State blank. Email address: b. By: An approved electronic filing service provider (EFSP) ☐ Email (not through an EFSP) Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address. Personal hand delivery to: ☐ The party The party's family member who is 13 or older, at the party's residence The party's lawyer The party's lawyer's office Mail or third-party carrier On: Date At:

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I sent this document: In 3, if you sent the document to more than To: 1 party or lawyer, fill Name: in a, b, and c. Middle First Last Otherwise leave 2 blank. Address: ZIP Street, Apt # City State Email address: b. By: An approved electronic filing service provider (EFSP) Email (not through an EFSP) Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address. Personal hand delivery to: ☐ The party ☐ The party's family member who is 13 or older, at the party's residence ☐ The party's lawyer The party's lawyer's office Mail or third-party carrier On: C. Date At: a.n p.m.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

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/s/ Alphonse A. Talarico
Your Signature

Alphonse A. Talarico
Print Your Name

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Attorney # (if any)

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| | CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT #// | |
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| | STATE OF ILLINOIS COUNTY OF MCHENRY SS STATE OF ILLINOIS FEB 1 - 2023 GEN. NO. 17 14 37 KATHERINE M. KEEFE Clark of the Circuit County Non-Jury | 7) |
| | Paul Dulberg | |
| | Popovich and Mast vs. | |
| | Date 2-1-23 Plaintiff's Attorney Alphanie Telacio Attorney George K. Flynn | |
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| | Prepared by: Le Good Response I DULBERG'S Attorney for: Defendants FIRM'S RESPONSE I DULBERG'S EMERGENCY MOTIO |)N |
| | Attorney Registration No.: 6239349 Judge | |
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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.

EXHIBIT 3 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

- 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 show 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.

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- 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;

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.

8

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

| (hereinafter persons or ea | I agree to employ if "my attorney") to representities responsible for call. | he LAW OFFICES ent me in the prosecuting me to suffer inj | OF THOMAS J. POF cution or settlement of muries and damages on the | POVICH, P.C. y claim against ê day of |
|--|--|---|--|--|
| in my claim. consent. | My attorney agrees to The approval of any set | make no charge for l | egal services unless a rec ot be made without my i | covery is made |
| including, but | I agree to pay my attor 1/3%) of my recovery f the event my claim resu y attorney may need to not limited to, expenses cords fees, and physician addition to my attorney | Its in more than one incur reasonable exposuch as accident represent it is a legal fee. | penses in properly handle ports, filing fees, court responses will be talk | l increase to al of a trial. I ling my claim eporters fees, ken out of my |
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| LAW OFFICE 3416 West Elm McHenry, Illing 815/344-3797 | CS OF THOMAS J. PO Street Dis 60050 | POVICH, P.C. | regis activity of the constraint improvement of the despite of the constraint in the | terrészékkenmegésékésék |

STATE OF ILLINOIS

COUNTY OF McHENRY

IN THE CIRCUIT COURT OF THE TWENTY-SECOND RIDIGIAL GIRCUIT MOHENRY COUNTY, ILLINOIS

PAUL DULBERG

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

- On June 28, 2011, the Plaintiff, PAUL DULBERG, Hyed in the City of McHenry, County of McHenry, Illinois.
- . 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 McHe oerault being entered. DISWISSED OR AN ORDER CHOUILL FLORITOM TO KIND

FAILURE TO APPEAR MAY RESULT IN THE CASE BEING BISMISSED ON AN ORDER

arad shit ni tjugga yam aashga ot saulias

CONFERENCE IN COURTROOM APPLIANCE SCHEDULING

OF & STOR TVOOT NOTICE

EXHIBIT

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 Page 11 of 25 Purchased from re:SearchIL

- On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying a his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Ellinois.
- 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.
- 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.
- 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 triniming 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 chalusaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG
- At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chalpsaw 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
 - 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 Rightiff,
 PAUL DULBERG, so as to cause injury;
 - o. 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 chainsay.
- 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 Loguitur.

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 McGuiro 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.
- 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, aut 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 MoCHIRE and BILL McGLIRE, 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.
- 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, PUAL, DULBERG.

- 21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:
 - a. Falled 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. Falled 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 DLILBERG, while operating the chainsaw;
 - e. Otherwise was negligent in operation and control of the chainsaw.
- 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 meney 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 I POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P. 3416 West Elm Street
Lake, Illipois 60050
(815) 344-3797
ARDC No. 65203684

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 pduberg@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 < pduiberg@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.papavichlaw.com

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

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

January 24, 2014

Paul Dulberg 4606 Hayden Court McHenry, IL 60051

> Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire RE:

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,

Enclosure



Page 20 of 25

WAUKEGAN OFFICE 210 NORTH MARTIN LITTIER KING IR. AVENUE WAUKEOAN, 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:

- That any subrogated claims or liens for medical expenses paid by or on a. behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. 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.
- That any outstanding medical expenses are PAUL DULBERG's b. 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

| Dated: | • |
|---|---|
| | PAUL DULBERG |
| STATE OF ILLINOIS |)) \$\$, |
| COUNTY OF MCHENRY PAUL DULBERG 105 |) amanalla |
| executed the foregoing Release and purposes set forth therein. | ersonally appeared before me this date and acknowledged that she e and Settlement Agreement as his own free act and deed for the uses |
| 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 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 cpdulberg@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



Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA00037 Purchased from re:SearchIL Page 23 of 25

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 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, It. 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: | % (If applicable) |
| Net Award: | \$ 561,000 |

| Comments/Explanation Medical | \$ 60,000. |
|------------------------------|-------------|
| future medical | \$ 200,000, |
| LOSP WAR | \$ 250,000, |
| P15 V | 75,000 |
| for N La | 71,000. |
| | , years |

The Honerable James P. Etchingham, (Ret.)

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C 293



E-FILED

Transaction ID: 2-23-0072 File Date: 10/2/2023 12:00 AM

Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

| PAUL R. DULBERG, | Appeal from the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois |
|----------------------------------|---|
| Plaintiff-Appellant |) Relief Sought: Appellant's Brief Due Date Extended |
| |) to December 29, 2023/Allow Appellant to Amend |
| |) his Docketing Statement to Include Related) Gazagi (Onder the Clark of the 22nd Individed Circuit to |
| |) Cases/Order the Clerk of the 22 nd Judicial Circuit to |
| |) Amend the Record on Appeal to Include All) Missing Documents and Hyperlinks at No |
| |) Additional Cost to Appellant and to Include an |
| |) Affidavit of Completeness & Certification /Allow |
| |) Appellant to Request the Record On Appeal for All |
| |) Related Cases /To File a Brief In Excess Of The |
| | Prescribed Page Limits |
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| |) |
| | |
| HANS MAST and the LAW OFFICES OF | |
| THOMAS J. POPOVICH, P.C. | |
| D C 1 4 A 11 |) |
| Defendants-Appellees |) Hanamble Isel D. Dens, Judge Breeiding |
| |) Honorable Joel D. Berg, Judge Presiding) Data of Nation of Armed Merch 2, 2022 |
| |) Date of Notice of Appeal March 3, 2023) Date of Judgment February 1, 2023, 2017 LA 000377 |
| |) Date of Post judgment Motion Order: None |
| |) Circuit Court 2017LA000377 |
| | Circuit Court 201/LA0003// |

AMENDED THIRD MOTION FOR EXTENSION OF TIME TO FILE APPELLANT"S BRIEF and MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT TO INCLUDE RELATED CASES / TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND HER REPORT ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION /ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES / TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS ALL PURSUANT TO SUPREME COURT RULES 323(b), 329, 341(b), 343(c), 361, 366(a)(3) and (a)(5), 608.

(Civil)

Plaintiff-Appellant Paul R Dulberg (Appellant) moves this Honorable Court for an EXTENSION OF TIME TO FILE APPELLANT"S BRIEF and MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT TO INCLUDE RELATED CASES / TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND THE RECORD ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION /ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES / TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS ALL PURSUANT TO SUPREME COURT RULES 323(b), 329, 341(b), 343(c), 361, 366(a)(3) and (a)(5) and 608. and in support of said motion states as

follows:

I. APPELLANT'S AMENDED MOTION FOR AN EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

- 1. On September 28, Plaintiff's Attorney spoke with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicated a need to contact his clients regarding any objection to the Motion. Appellees' Attorney stated that he would get back to me as soon as the Appellees decide, and Appellees Attorney's response is attached to this Amended Motion as Appellant's Exhibit A. Appellees object to all relief requested in this Amended Motion and counter with no objection to a 21-day extension to file Appellant's Brief. (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b). Please see Appellants Exhibit A attached)
- Appellant's Attorneys also e-mailed a copy of this Amended Motion to Appellees'
 Attorneys before filing it.
- 3. The number of days previously requested is 120, the number of days previously granted is 120, and the total number of days is 120. (Local rule 104 (a)(1))
- 4. The total number of days requested, and the total number of days granted to other parties

- are (0) none. (Local Rule 104(a)(2))
- 5. The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is three hundred forty-nine days.

 (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))
- 6. Appellant filed his Notice of Appeal on March 3, 2023.
- 7. The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023.
- 8. Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.
- Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.
- 10. Sixty days is insufficient to prepare and file Appellant's Brief for the following reasons:
- (a) The record on appeal consists of three volumes totaling 2,660 pages;
- (b) Appellant requested the entire record be prepared, but Appellant's attorney
 has discovered missing Report of Proceedings, mismatched sections,
 documents with only one of the Defendants' names where it should be all,
 Memorandums of Law where the body of the motions should be, violations of the
 Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record
 on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink
 ... and so on. (Investigation Continues.)
- (c) Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the September 29, 2023 considering the above listed problems and his Court hearing/filing schedule on April 25, 2023 case # 2021P008775 Public Administrator's

motion, May 4, 2023 case # 2022L010905 where he argued a "Motion for a Special Order" and additionally he had to brief two separate 735 ILCS 5/2-619.1 motions and a Separate 735 ILCS 5/2-615 motion for hearings on May 25, 2023 and July 31, 2023, resolve a dispute regarding an order to be entered on May 4, 2023 where the Honorable Judge declined to choose between proposed orders and there wasn't a Court Reporter present, drafting and filing/serving case # 2023CH04351 on May 2, 2023 a Complaint for Declaratory Judgment with an expiring Statute of Limitations against a municipal corporation and twenty-one additional defendants and two emergency personal problems as previously stated in support of Appellant's first Motion for Extension of Time. Subsequent to the filing of Appellant's initial Motion for Extension of Time the following court schedule required Appellant's Attorney's preparation and appearances: May 31, 2023 The Estate of Hutchinson, Deceased 19PR000098 continuing after remand from the Illinois Appellate Court, 2nd District for further proceedings; Dulberg v. Baudins et al 2022L010905 drafting and filing Response to Defendants' 735 ILCS 2-619.1 Motions to Dismiss; Dulberg v. Olsen Notice of Supreme Court rule 304(a) Appeal First District 1-23-1142 on June 26, 2023; (on June 28, 2023 a traumatic personal event that was experienced by Appellant Paul R. Dulberg" attorney that continues to the filing of this Second Motion for Extension of Time and onward (Please see below); preparation for a sur-response in Dulberg v. Baudins et al; preparation for an Amended Complaint and Response for a Motion for Summary Judgment due with an appearance July 31, 2023 in 2022L010905, Court Appearance on July 20, 2023 two separate Defendants' 735 ILCS 5/2-615 Motions to Dismiss Case 2023CH 04351, First District, Kost v. Village of Mt. Prospect et al; August 22, 2023 The Estate of Hutchinson,

Deceased 19PR000098 Hearing and Decision on Motion to Reconsider; August 29, 2023

Dulberg v. Baudins et al 2022L010905 Hearing on Defendants' 735 ILCS 2-619.1 Motions to

Dismiss; September 18, 2023 Dulberg v. Baudins et al 2022L010905 drafting, filing, and serving

Plaintiffs' 7 page 735 ILCS 5/2-1005(c) Counter-Affidavit; throughout the second 60 days

consulting and advising client regarding his allegations of custodial parent's child abuse based

upon 2015D007566; consulting and advising client regarding his allegations of wrongful taking

without personal jurisdiction based upon 2017M1108676; September 21, 2023 Hearing on

Motion for Summary Judgment, Dulberg v. Baudins et al 2022L010905; September 26, 2023

The Estate of Hutchinson, Deceased 19PR000098 Hearing Motion to Compel.

(d) Appellant's Attorney traumatic ongoing event that began on June 28, 2023 and continues. On June 28, 2023 Appellant's Attorney's Fiancée entered the airport in Manila, Philippines to take a flight to the United States to meet with future family, current friends, and Appellant's Attorney. The schedule flight was to stop in Tokyo, Japan for a short lay over then on to O'Hare International Airport (ORD) Illinois. June 28, 2023 in the Manilla, Philippines was the last time anyone has seen or heard from her. She did not arrive at O'Hare and a cooperative customs agent told Appellant's Attorney that she was not being detained by customs in the United States and upon further investigation stated she was not on the passenger manifest of the connecting flight in Tokyo, Japan. Subsequently, the Embassies in both countries were contacted, an international investigation firm was hired that did not produce any information and resigned after over a month of investigations and local government personnel began an independent investigation that was also fruitless.

It was thereafter discovered that the Japanese customs and criminal police had confiscated her ticket from Tokyo, Japan to the United States and then obtained an air ticket back to the

Philippines that she was forced to use.

The stress of an active practice coupled with the stress of a missing loved one for over 27 days, who was finally discovered to be detained in a Japanese jail, having been handcuffed and weighted leg chained, hair involuntarily cut, forced interrogations for 72 hours without the right to have legal counsel or contact with family or friends, put on trial and released as not guilty but with all personal property and money retained to be returned in the future, that Appellant's Attorney is still attempting to have returned, through first contacting the Japanese Embassy in Tokyo, Japan and thereafter the Philippine Embassy in Japan affected Appellant's Attorney in many negative ways.

11. Appellant is a sole practitioner and has no full-time staff to help in the preparation of Appellant's Brief.

II. APPELLANT'S AMENDED MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT BY INCLUDING A STATEMENT OF RELATED CASE

- 12. Appellant's Attorney used and filed the approved Illinois Supreme Court

 Docketing Statement (Civil) form DS-S 4603.2 but failed to add the required

 Related-case statement (RULES OF THE ILLINOIS APPELLATE COURT,

 SECOND DISTRICT October 4, 2022 Rule 113)
- 13. Appellant's Attorney believes that a full and complete understanding of the issues rulings and decisions cannot be properly presented to this Honorable Court without the underlying case and current pending related cases.
- 14. Appellant's Attorney affirmatively states that this error was inadvertent and that

 Appellant's case and this Honorable Courts complete understanding of this

 matter which began on June 28, 2011 and continues through the date of the filing

of this Motion requires the addition of documents from said related cases.

- 15. The related cases are as follows:
- a) 2012LA000326 MCDONALD JULIE ESTATE OF VS POPOVICH THOMAS
- J. LAW OFFICES, ET AL CLOSED
- b) 2012LA000178 DULBERG, PAUL VS GAGNON, DAVID, ET AL CLOSED
- c) 2022L010905 Dulberg ET AL VS BAUDIN, KELLY N., ET AL:
- c1) Defendant ADR Systems of America, L.L.C. dismissed;
- c2) the "Olsen Defendants" combined Motion to Dismiss pursuant to 735 ILCS 5/2-619.1 was granted on May 25, 2023 and a Rule 304(a) Appeal is pending 1-23-1142;
- C3) the "Baudin Defendants" Motion to Dismiss was granted on Statute of Limitations grounds only on August 29, 2023;
- c4) Defendant Allstate Property and Casualty Insurance Company Motion for Summary Judgment was granted on September 21, 2023;
- d) In re: DULBERG, PAUL R. Debtor, UNITED STATES BANKRUPTCY COURT,
 NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION Case 14-83578
 CLOSED
- e) NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION Paul Dulberg v. Carolyn Colvin, No. 15C50219
- III. APPELLANT'S AMENDED MOTION TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND THE RECORD ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION

- 16. As first stated in Appellant's Second Motion for Extension of Time to file Appellant's Brief, a major obstacle to preparing said Brief was the problems caused by the Record on Appeal being improperly prepared by the Clerk of the 22nd Judicial Circuit.
- 17. In Appellant's Second Motion for Extension of Time to file Appellant's Brief the discovered problems were exposed: Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings; mismatched sections; documents with only one of the Defendants' names where it should be all; Memorandums of Law where the body of the motions should be; violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink-... and so on. (Investigation Continues.) (Please see Appellant's Second Motion for Extension of Time to file Appellant's Brief Sections 9(a) and 9(b).
- 18. Appellant's attorney has diligently attempted to discover all the errors in the Record on Appeal but has concluded that he neither has the hours or resources to produce a complete rendering of said errors.
- 19. The Clerk of the 22 Judicial Circuit has the complete record at her disposal and the staff to properly prepare the requested complete Record on Appeal.
- 20. The Clerk of the 22 Judicial Circuit should be ordered to prepare the complete record with all Reports of Proceeding and all hyperlinks, all documents ... that equates a complete Record on Appeal and to certify not only the Records submitted but a certification that states affirmatively that the entire file is includer or to list what has been destroyed or lost.
- 21. This amended Record on Appeal should be done at the Clerk's expense as the preparation of the Record on Appeal is one of her tasks and Appellant has already paid an extensive amount for

what she has already submitted.

IV. ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES

22. Appellant believes that an ORDER from this Honorable Court would be viewed by other Clerks of Court in order to obtain their cooperation in submitting a Record on Appeal that would give this Honorable Court a complete picture of not only this case but all related cases also.

V. ALLOW APPELLANT TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS

23. Appellant reasonably believes that the current page limit will be inadequate to inform this Honorable Court of all the issues that support his position.

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the extended briefing schedules, the problems caused by the Record on Appeal based on its page size and the errors by the Clerk of the 22nd Judicial Circuit in preparation of the Record on Appeal, grant Appellant a 90-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases, order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and hyperlinks, at no additional cost to Appellant and to include an affidavit of completeness and the required certification, allow Appellant to Request the Record on Appeal for all related cases, file Appellant's Brief in excess of the prescribed page limits, and for any and all additional relief this Honorable Court deems equitable and just..

Dated: October 1, 2023 Respectfully submitted,

By: /s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 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 verily believes the

same to be true.

/s/ Alphonse A. Talarico

PROOF OF DELIVERY

I am sending this Amended Motion for Extension of Time to File Appellant's Brief, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum, Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on October 1, 2023 at 4:30 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: October 1, 2023

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com



Alphonse Talarico <alphonsetalarico@gmail.com>

EXHIBIT A

Dulberg v. Popovich

1 message

George K. Flynn <gflynn@karballaw.com>
To: Alphonse Talarico <alphonsetalarico@gmail.com>
Co: "Michelle M. Blum" <mblum@karballaw.com>

Fri, Sep 29, 2023 at 11:28 AM

Dear Mr. Talarico:

Please let this confirm that I received your voicemail message on September 28, 2023, requesting certain relief, followed by our brief telephone discussion of the same day. Please be advised that I am authorized to agree to a final 21 day extension for the filing of Dulberg's brief on appeal. However, we object to the additional relief outlined in your voicemail message.

Please feel free to contact me if you have any questions regarding this matter.

Best regards,

George K. Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC 200 S. Wacker Drive Suite 2550 Chicago, IL 60606

P: (312) 431-3622
F: (312) 431-3670

E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:

This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.





No. 2-23-0072

SC

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

| PAUL R. DULBERG, |) Appeal from the Circuit Court of the) 22 nd Judicial Circuit, McHenry County,) Illinois |
|----------------------------------|--|
| Plaintiff-Appellant |)) |
| HANS MAST and the LAW OFFICES OF |) |
| THOMAS J. POPOVICH, P.C. |) |
| Defendants-Appellees |))Honorable Joel D. Berg, Judge Presiding |
| |)Date of Notice of Appeal March 3, 2023)Date of Judgment February 1, 2023 |
| |)Date of Post judgment Motion Order: None |

NOTICE OF FILING THIRD AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

TO: George K. Flynn and Michelle M. Blum Karbal Cohen Economou Silk Dunne, LLC 200 S Wacker Drive, Suite 2550 Chicago, Illinois 60606

Tel: (312) 431-3700, Fax: (312) 431-3670

gflyn@karballaw.com mblum@karballaw.com

PLEASE TAKE NOTICE that on October 1, 2023, the undersigned filed the NOTICE OF FILING THIRD AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF of Plaintiff-Appellant Paul R. Dulberg with the Clerk of the Appellate Court Second District, Illinois, a copy is hereby served upon you.

CERTIFICATE OF SERVICE BY ELETRONIC DELIVERY

I, Alphonse Talarico, an attorney, on oath state that I served the foregoing:

NOTICE OF FILING AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF upon counsel listed above by an approved electronic filing service provider (EFSP) on October 1, 2023 at 4:30 p.m.

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 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 verily believes the same to be true.

/s/ Alphonse A. Talarico



ILLINOIS APPELLATE COURT SECOND DISTRICT

55 SYMPHONY WAY ELGIN, IL 60120 (847) 695-3750

October 10, 2023

Alphonse A. Talarico Law office of Alphonse Talarico 707 Skokie Blvd., #600 Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.

Appeal No.: 2-23-0072 County: McHenry County Trial Court No.: 17LA377

The court has this day, October 10, 2023, entered the following order in the above entitled case:

Appellant's motion for an extension of time to file the opening brief is granted in part, and the brief is due November 3, 2023. Absent extraordinarily compelling circumstances, this date will not be further extended. Appellees' response brief is due December 8, 2023. Appellant's reply brief is due December 22, 2023.

Appellant's other requests for relief are denied pursuant to appellees' response.

Jeffrey H. Kaplan Clerk of the Court

cc: George Kenneth Flynn Michelle Marie Blum

Grey H Kaplan

EXHIBIT 5 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION



E-FILED Transaction ID: 2-23-0072 File Date: 5/24/2023 1:01 PM

Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

| PAUL R. DULBERG, |) Appeal from the Circuit Court of the) 22 nd Judicial Circuit, McHenry County,) Illinois |
|---|--|
| Plaintiff-Appellant |) Relief Sought: Appellant's Brief Due Date)Extended to July 31, 2023 |
| |))) |
| HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C. |) |
| Defendants-Appellees |))))) Honorable Joel D. Berg, Judge Presiding |
| |)Date of Notice of Appeal March 3, 2023 |
| |)Date of Judgment February 1, 2023)Date of Post judgment Motion Order. None |
| | juace of a ost judgment Motion Order. None |

FIRST MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF (Civil)

Plaintiff-Appellant Paul R. Dulberg ("APPELLANT") moves this Honorable

Court for an extension of time to file Appellant's Brief to JULY 31, 2023 and in support of said motion states as follows:

1. On May 22, 2023 and before filing this motion, Plaintiff's attorney telephoned both attorneys representing the Defendants and left a voice mail message for each Indicating that I would be seeking an extension of time for filing the Appellant's brief for 60 days based upon various problems within the Record on Appeal and my other court hearings. I asked that if either had an objection, to please notify me so I could include the objection within this motion. (ISCR 361(a) and Local Rule Article 1

General Rules 102(b).

- 1a) I hereafter, Defendants' attorney left a voice and e-mail message indicating that they had no objection to the motion.
- 2. The number of days requested, the number of days granted and the total number of days is (0) none as this is Plaintiff's first request. (Local Rule 104 (a)(1))
- 3. The total number of days requested, and the total number of days granted to other parties are (0) none. (Local Rule 104(a)(2))
- 4.The number of days that will have elapsed from the date of filing of the notice of appeal to the date that the case will be ready for disposition is two hundred days.

(Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))

- 5. Appellant filed his Notice of Appeal on March 3, 2023.
- 6. The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023 (Please see attached as Appellant's Exhibit A the Circuit Court Clerk's Certification of Record and Appellant's Exhibit B the Appellate Court Clerk's notification of availability.)
- 7. Appellant's Brief is due for filing with the Clerk of the Appellate Court within 35 days from April 25, 2023 on May 30, 2023.
- 8. Thirty-five days is insufficient to prepare and file Appellant's Brief for the following reasons:
 - 8(a) The record on appeal consists of three volumes totaling 2,660 pages;
 - 8(b) Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing report of proceedings, mismatched sections, documents with only one of the Defendants' names where it should be all,

Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink-... and so on. (Investigation Continues.)

- 9. Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the May, 30, 2023 considering the above listed problems, his Court hearing schedule on April 25, 2023 case # 2021P008775 Public Administrator's motion, May 4, 2023 case # 2022L010905 where he argued a "Motion for a Special Order" and additionally he had to brief two separate 735 ILCS 5/2 619.1 motions and a separate 735 ILCS 5/2-615 motion for hearings on May 25, 2023 and July 31, 2023, resolve a dispute regarding an order to be entered on May 4, 2023 where the Honorable Judge declined to choose between proposed orders and there was no Court Reporter, drafting and filing/serving case # 2023CH04351 on May 2, 2023 a Complaint for Declaratory Judgment with an expiring Statute of Limitations against a municipal corporation and twenty-one additional defendants and two emergency personal problems.
- 10. Appellant is a sole practitioner and has no full-time staff to help in the preparation of Appellant's Brief.

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the initial briefing Schedule, the problems caused by the Report on Appeal based on its page size and the errors by the Clerk of the Circuit Court in preparation of the Record on Appeal (and as additional relief consider ordering the Clerk to prepare an amended Record on

Appeal) and grant Appellant a minimum of 60 days up to and including July 31, 2023 to flle hls Appellant's Brief and any and all additional relief this Honorable Court deems equitable and just.

Dated: May 24, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico
ARDC 6184530
/0/ Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 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 verily believes the same to be true.

/s/ Alphonse A. Talarico



E-FILED Transaction ID: 2-23-0072 File Date: 5/24/2023 1:01 PM

Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

PROOF OF DELIVERY

SC

I am sending this Motion for Extension of Time to File Appellant's Brief, Exhibits A and B, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum, Karbal Cohen Economou Silk Dunne, LLC, 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on May 24, 2023 at 4:30 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: May 24, 2023

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

APPEAL TO THE APPELLATE COURT OF ILLINOIS

SECOND JUDICIAL DISTRICT

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

DULBERG, PAUL

Plaintiff/Petitioner

Reviewing Court No: 2-23-0072 Circuit Court/Agency No: 2017LA000377 Trial Judge/Hearing Officer: JOEL D BERG

٧

MAST, HANS ET AL

Defendant/Respondent

E-FILED
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:00 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

- 2 Volume(s) of the Common Law Record, containing 2148 pages
- 1 Volume(s) of the Report of Proceedings, containing 512 pages
- O Volume(s) of the Exhibits, containing O pages

I hereby certify this record pursuant to Supreme Court Rule 324, this 21 DAY OF APRIL, 2023



Katherine M. Keefe

(Clerk of the Circuit Court or Administrative Agency)



ILLINOIS APPELLATE COURT SECOND DISTRICT

55 SYMPHONY WAY ELGIN, IL 60120 (847) 695-8750

April 25, 2023

Alphonse A. Talarico Law office of Alphonse Talarico 707 Skokie Boulevard, #600 Northbrook, IL 60062

RE: Dulberg, Paul R., v. Must, Hans, et al.

Appeal No.: 2-23-0072 County: McHenry County Trial Court No.: 17LA377

The electronic record on appeal in the above case has been filed. In most cases, you may access all sections of the electronic record at https://researchil.tylerhost.net. In any other case, a link to the appropriate section(s) of the electronic record will be e-mailed to you from no-reply@efilingmail.tylertech.cloud. (Please ensure that you are a service contact in Odyssey eFileIL.) The court hereby orders briefing due dates as follows:

Appellant's brief due:

05/30/2023

Appellee's brief due:

07/05/2023

Appellant's reply brief due: (Ill. S. Ct. Rs. 341, 342, 343)

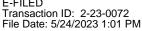
07/18/2023

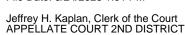
Jeffrey H. Kaplan Clerk of the Court

cc:

George Kenneth Flynn Michelle Marie Blum







SC



No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

| PAUL R. DULBERG, |) Appeal from the Circuit Court of the) 22 nd Judicial Circuit, McHenry County,) Illinois |
|---|---|
| Plaintiff-Appellant |))) |
| HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C. |))) |
| Defendants-Appellees |))Honorable Joel D. Berg, Judge Presiding)Date of Notice of Appeal March 3, 2023)Date of Judgment February 1, 2023)Date of Post judgment Motion Order: None |

NOTICE OF FILING MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

TO: George K. Flynn and Michelle M. Blum Karbal Cohen Economou Silk Dunne, LLC 200 S Wacker Drive, Suite 2550 Chicago, Illinois 60606 Tel: (312) 431-3700, Fax: (312) 431-3670 gflyn@karballaw.com mblum@karballaw.com

PLEASE TAKE NOTICE that on May 24, 2023, the undersigned filed the NOTICE OF FILING MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF of Plaintiff-Appellant Paul R. Dulberg with the Clerk of the Appellate Court Second District, Illinois, a copy is hereby served upon you.

CERTIFICATE OF SERVICE BY ELETRONIC DELIVERY

I, Alphonse Talarico, an attorney, on oath state that I served the foregoing.

NOTICE OF FILING MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIFF upon counsel listed above by an approved electronic filing service provider (EFSP) on May 24, 2023 at 4:30 p.m.

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 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 verily believes the same to be true.

/s/ Alphonse A. Talarico

| IN THE CIRC | UII COURT OF TH | E IMENIX-2 | ECOND JUDICIAL | CIRCUII |
|-----------------|-----------------|------------|----------------|--|
| | MCHENRY | COUNTY, IL | LINOIS | KATHERINE M. KEEFE Clerk of the Circuit Court |
| PAUL DULBERG, | |) | | |
| , | |) | | ***** FILED ***** |
| | Plaintiff, |) | | 12/21/2022 1:26 PM |
| vs. | |) | No. 17 LA 377 | McHenry County, Illinois 22nd Judicial Circuit |
| THE LAW OFFICE | ES OF THOMAS J. |) | | ******** |
| POPOVICH, P.C., | and HANS MAST, |) | | |
| | |) | | |
| | Defendants. | | | |
| | | ORDER | | |

This matter coming to be heard on Plaintiff's Second Amended Motion to Exclude the Deposition of Hans Mast and For Leave to Take the Discovery Deposition of Hans Mast, the court having read the Second Amended Motion, Defendants' Response and Plaintiff's Reply and having heard oral argument, it is hereby ordered:

- 1) Plaintiff's motion to exclude and to take the deposition of Hans Mast is denied in its entirety, including all relief sought in the Second Amended Motion and Reply, and Plaintiff's oral motion made during hearing to supplement the record with an audio recording of the Hans Mast deposition.
- 2) The October 17, 2022 briefing order on Defendants' Motion for Summary Judgment stands with hearing set for February 1, 2023 at 10:00 a.m.

Zoom information for Room 201:

Link: https://zoom.us/my/mchenrycourtroom201;

Meeting ID: 272-959-8070

Personal Link Name: mchenrycourtroom201;

Password: no password required

EXHIBIT 7 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

Prepared by: 12/21/2022

Atty. No. George K. Flynn/ARDC No. 6239349

Name: Karbal, Cohen, Economou,, 2022

Silk & Dunne, LLC ENTER:

Attorney for: Defendants

Address: 200 S. Wacker Drive, Suite 2550

City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gfynn@karballaw.com

Judge Judge's No.

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

** FILED ** Env: 20425983 McHenry County, Illinois 2017LA000377 Date: 11/23/2022 12:21 PM

Date: 11/23/2022 12:21 PM Katherine M. Keefe Clerk of the Circuit Court

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 MAS | , |
| Defendants. |) |

PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF
DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206
h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE
ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19
EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL
29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 and to GRANT LEAVE
TO TAKE THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A.

Talarico, and for his Motion To Exclude the Discovery Deposition of Defendant Hans

Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders

states as follows:

RELEVANT FACTS

1) On June 25, 2020 the Discovery Deposition of Defendant Hans Mast was taken pursuant to a non-filed notice (violation waived) but all 15 exhibits and the questioning

EXHIBIT 8 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

of deponent Hans Mast based upon all 15 exhibits violated the Rules and Orders of the Illinois Supreme Court.

- 2) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits from Defendants' Attorney's office and the exhibits 1-11 and 13-15 from the Plaintiff's current Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)
- 3) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)
- 4) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)
- 5) Thereafter this Honorable Court asked Defendants' Attorney whether he had exhibit 12. (Please see Report of Proceedings April 27, 2022 page 37 line 19-20 which is part of the Clerk's online file)
- 6) The Attorney for the Defendants responded "I may. I don't know. I haven't look for it." (Please see Report of Proceedings April 27, 2022 page 37 line 20-21 which is part of the Clerk's online file)

- 7) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)
- 8) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https://www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached)
- 9) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 seemed not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans Mist not Hans Mast).
- 10) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes."
- 11) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.
- 12) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or

submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached)

13) Thereafter, on June 21, 2022 Plaintiff's current Attorney sent Hans Mast's discovery deposition taken on June 25, 2020 with exhibits 1-11 and 13-15, that were located in Plaintiff's former Attorney Julia C. Williams' electronic file with exhibit 12 received from Defendants' Attorney's office on April 28, 2022 with Barbara G. Smith's flash drive to Plaintiff's S. Ct. Rule 213(f)(3) expert Robin D. Williams, MFS, MS, D-BFDE Board Certified, Omni Document Examinations for analysis.

14) On July 11, 2022 Plaintiff's current Attorney received Robin D. Williams's Report of Findings concluding that the label on exhibit 12 did not come from the same group or batch of labels identified as exhibits 1-11 and 13-15. (Please see Plaintiff's Exhibit #3 Robin D. Williams Report of Findings July 11, 2022 attached)

15) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans **MIST EMPHASIS ADDED** exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received separately from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached)

LAW AND ORDER(S)

Illinois Supreme Court Rule 206. Method of Taking Depositions on Oral Examination

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice **EMPHASIS ADDED** the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. (1) Reserved. (2) Any e hibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the e hibits in real time during the deposition. **EMPHASIS ADDED** (3) Reserved. (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties. (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for

the deposition set by Rule 206(d), by stipulation, or by court order. (6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

M.R.30370 CORRECTED ORDER APRIL 29, 2020

(Please see Plaintiff's Exhibit #5 attached)

M.R.30370 AMENDED ORDER JUNE 4, 2020

(Please see Plaintiff's Exhibit #6 attached)

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Sec. . Po er o co rts to a er les. a The S pre e

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So rce P.A. .

(735 ILCS 5/1-105) (from Ch. 110, par. 1-105)

Sec. 1-105. Enforcement of Act and rules. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorneys fees, which any violation causes another party to incur, or other action that may be appropriate. EMPHASIS ADDED

(Source: P.A. 82-280.)

Rule 211. Effect of Errors and Irregularities in Depositions;

Objections (a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. (b) As to Disqualification of Officer or Person. Objection to taking a deposition because of disqualification of the officer or person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification

becomes known or could have been discovered with reasonable diligence. (c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities. (1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of the deponent or admissibility of testimony may be made when the testimony is offered in evidence. (2) Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition. (3) Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding questions and, in the case of the last questions authorized, within 7 days after service thereof. (4) A motion to suppress is unnecessary to preserve an objection seasonably made. Any party may, but need not, on notice and motion obtain a ruling by the court on the objections in advance of the trial. (d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the

testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained. Committee Comments This rule is derived from former Rule 19-9. The language is unchanged except that the period for filing objections to the form of written questions has been extended to seven days in subparagraph (c)(3) in keeping with the committee's policy of measuring time periods in multiples of seven days.

VIOLATIONS

A) The exhibits that were decided upon to be used by former counsel Julia C. Williams, and specifically exhibit 12, were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. In fact, **e hibit**12 was never provided to the officer administering the oath. EMPHASIS ADDED

A1) On or about April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached.)

A2) On or about May 29th 2020 former attorney Julia C. Williams sent an email to Defendants' Counsel indicating an awareness of the current Supreme Court rules regarding depositions when she wrote "...and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option." (Please see Plaintiff's Exhibit #8 attached.)

A2.1) On or about June 19, 2020 Defendants' attorney emailed Plaintiff's former attorney Julia C. Williams stating "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?

My experience with receiving liens at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for the Mast's dep. (Please see Plaintiff's Exhibit 15 attached.)

A3) On or about June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **may emphasis added** use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **could be additions and there may be subtractions**. **emphasis added**Additionally she wrote "...and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached.)

A3.1) On or about June 24, 2020 at 10:49 AM (less than 24 hours before the start of the discovery deposition of Defendant Hans Mast) Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 1 more exhibit that she **may emphasis added** use. (Please see Plaintiff's Exhibit 9 attached.)

A3.2) On June 25, 2020 the discovery deposition of Hans Mast was called at 10:00 AM "pursuant to subpoen and pursuant to the Code of Civil Procedure of the State" of

Illinois and the RULES OF THE SUPREME COURT THEREOF, PERTAINING TO THE TAKING OF DEPOSITIONS, EMPHASIS ADDED. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. and Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 1 lines 15 to 17)

A3.3) On June 25, 2020 at 12:31 PM (approximately 15-30 minutes after the conclusion of the discovery deposition of Defendant Hans Mast, Defendant's attorney sends an email to Plaintiff's former attorney Julia C. Williams discussing what is "...fresh in his mind..." but any conversation regarding errors and irregularities in the just concluded deposition is notably absent. (Please see Plaintiff Exhibit 16 attached.)

A3.4) Shortly after the Deposition ended Barbara G. Smith emailed Julia C. Williams asking for Exhibit 12 and Julia C. Williams responded by sending a blank email.

Additionally, Barbara G. Smith called and left a message for Julia C. Williams on July 6, 2020 again requesting Exhibit 12. On July 7, 2020 Barbara G. Smith submitted the June 25, 2020 discovery deposition of Hans Mast to U.S. Legal Support without Exhibit 12. (Please see Plaintiff's Group Exhibit 2 attached).

A3.5) The Deposition of Defendant Hans Mast was received by Plaintiff's former attorney and Defendants' attorney from U.S. Legal Support without the Hans Mist E hibit 12 EMPHASIS ADDED on July 10, 2020.

A4) On or about July 13, 2020 Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support sends an email to Plaintiff's former attorney Julia C. Williams stating that "the court reporter indicated you would be sending us exhibit 12 from this deposition (discovery deposition of Defendant Hans Mast taken remotely on June 25,

- 2020) so that we can include it with the transcript. I don't believe we have received it can you send it tomorrow?" (Please see Plaintiff's Exhibit #10 attached)
- A5) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams emails to Noelle Kappes "Dear Noelle, I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here." (Please see Plaintiff's Exhibit #10 attached.)
- A6) On or about July 14, 2020 wtolliver2uslegalsupport.com emailed to Plaintiff's former attorney and Defendants' attorney that "Exhibit 12 is now available to download" (Please see Plaintiff's Exhibit #11 attached)
- A6.1) Exhibit 12 was never presented to the officer administering the oath Barbara G. Smith, CSR, RPR Notary Public but was sent after the deposition of Defendant Hans Mast was taken on June 25, 2020 but sent on July 14, 2020 to Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support who forwarded it to wtolliver2, another employee of U.S. Legal Support who created the misspelled, non-conforming HANS MIST [EMPHASIS ADDED label.
- A7) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams wrote to Plaintiff "Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was **blank**. [emphasis added] (Please see Plaintiff's Exhibit #12 attached)
- A8) On or about August 5, 2022 Plaintiff's former attorney inexplicitly emails to Mary Winch marywinch@clintonlaw.net,ed@clintonlaw.net the same email she sent to the same recipients on July 14, 2020. (Please see A5 above and Plaintiff's Exhibit #13 attached)

- B) The deposition participants were not able to view the exhibits in real time during the deposition.
- B1) The following clearly indicated a problem with viewing the exhibits submitted and the Defendant's internet equipment and internet connection and audio during the attempted remote discovery deposition of Defendant Hans Mast:
- B1.1) Q. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document?

A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not – that's what I'm looking at.; (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 17 lines 3 to 10 also found on 209 of 464 previously filed.)

B1.2) Q. Okay.

A. Oh, uh, I think—It just kicked me off.

Mr. Flynn: I got disconnected, too. It's the Wi-Fi.

By Ms. Williams:

Q. Okay, we'll just wait a minute here.

A. I can hear you. I just can't see you. Q. We'll wait a minute until you can get your video back on.

Mr. Flynn: Julia, we think the Wi-Fi may have dropped here in the office. emphasis added

Ms. Williams: Okay. Well, let's just give a minute and see.; (Please see Defendants'

The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 22 lines 1 to 10 also found on 211 of 464 previously filed.)

B1.3) Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter—it's "Letter Re Settlement," and that should be –still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recognize those documents?

A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try again? Do you have that, George?

Mr. Flynn: Yeah, here's the hard copy. emphasis added

The Witness: I'll look at the **hard copy emphasis added**, so what are you asking? (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 26 lines 5 to 17 also found on 212 of 464 previously filed.)

B1.4) Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom 000195.

A. Okay.

Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that?

A. It looks like there's a couple emails here. There's several pages. You just mean the first page?

Q. I think—It should only be, I believe it's only one page and it looks like—

- A. Oh, these aren't part of it? Just one page?
- Q. The document that I have is just one page. Are we looking at the same thing?
- A. Okay.
- Q. It's POP00195 on the bottom.
- A. Yeah, he had a couple other pages on it, but okay.
- Q. Okay. I just want to make sure that I didn't –okay. And on the bottom there of the first sheet, if you have several, I only published one sheet for the purposes of this deposition emphasis added, it states, "Friday, October 25, 2013," do you see that? (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 28 lines 16 to 24 and page 29 lines 1-14 also found on 212 of 464 previously filed.)
- B1.5) Q. Okay. So I'm going to upload another file here.
- A. Yeah, our internet is down. That's why I can't bring these up.
- Q. Okay.
- Mr. Flynn: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.
- MS. Williams: Okay, Okay, great.
- Mr. Flynn: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.
- MS. Williams: Okay. I think we'll be—For the most part, I think we'll be fine and we'll deal with it if and when we get to that point.

Q. Okay. So the document that I'm looking at now is another email on the –it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date is November 5, 2013 email chain and it's –at the bottom it's stamped Dulberg001531.

A. What exhibit is it?

Q. I think it might have been **5-A (emphasis added)** to George. It's now exhibit 6 for the purpose of this deposition. (Please note that there never was an exhibit marked 5-A)

A. Yeah, that wasn't part of the download then. Do you have—

Mr. Flynn: Yeah, I don't think that was included. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 31 lines 10 to 24 and page 32 lines 1 to 17 also found on 213 of 464 previously filed.)

B1.6) Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purpose of this deposition right now it's going to be 7 and it's an email chain dated—

A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.

Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182,and it's two pages of an email chain, it starts November 15th and

ends November 19, is that accurate?

A. Yes.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 35 lines 5 to 20 and also found on 214 of 464 previously filed.)

B2) From this point on the transcript indicated that the deponent could not view any exhibits uploaded so that Plaintiff's former attorney Julia C. Williams was asking questions based upon her attempted uploads but the deponent Defendant Hans Mast was looking at physical documents to respond based upon the following:

B2.1) Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for –it is a letter from Ronald Barch to you, Hans,

A. What date is it?

Q. I'm sorry, dated November 18, 2013,

and it's POP000667. Do you have emphasis added that?

A. Yeah, I have emphasis added that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 36 lines 6 to 13 and also found on 214 of 464 previously filed.)

B2.2) Q. Yep, it's POP000181.

A. What exhibit?

Q. It's Exhibit 7.

A. 7, that's the letter.

Q. If may be 6 for you. It may be 6 for you.

- A. Let's take a look. What page is the email?
- Q. The date at the top of the email chain is Tuesday, November 19, 2013.
- A. Yeah, I have emphasis added that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 38 lines 1 to 9 and also found on 215 of 464 previously filed.)

B2.3) Q. I'm going to add another exhibit here. Okay, for the purpose of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, "memorandum," and the date is November 20, 2013, and at the bottom it is identified as POP and then 3 – there's 000003, I believe. Do you have emphasis added that?

A. What exhibit is it?

Q. I think you're probably going to have it as Exhibit 8, but for the purpose of this deposition it's actually going to be Exhibit 9.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages page 40 lines 12 to 22 and also found on 214 of 464 previously filed.)

B2.4) Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. This is titled "Legal Research." And this is hard because there's – it's 27 pages. Some of them have Bates numbers, but some of them are black on the bottom, so I think the bates

Numbers didn't –didn't take, but it's roughly – looks like roughly 204, maybe 205,

Dulberg 204, 205 through roughly Dulberg00304 –Actually, I'm sorry, these aren't going to be continuous. But do you have the packet of legal research in front of you? It appears to be copies out of a – copies of case law out of the Northeastern

Digest.

A. I just have the one case here.

Q. Just one case? Which - What is the case title?

A. The first one, it's LAJATO. emphasis added

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 49 lines 20 to 24, page 50 lines 1 to 11 and also found on 217-218 of 464 previously filed.)

- C) The case of *Tilschner v. Spangler* No.2-10-0111, 949 N.E.2d 688, 350 III.Dec.896, 409 III.App.3d 98 (2011) which Plaintiff Paul Dulberg specifically instructed his former attorney Julia C. Williams to include as an exhibit to be the basis of questions to the deponent Defendant Hans Mast because: Mast had personally given a copy of the certified opinion to Dulberg on November 20, 2013; had personally appeared and argued the case along with Thomas J. Popovich, and Mark J. Vogg of Defendant the Law Offices of Thomas J. Popovich, P.C.; and had insisted that the decision in the case was the reason Plaintiff Paul Dulberg would not prevail in the underlying case against the Defendants Carolyn and William (Bill) McGuire. (This is based upon information and belief pending this Honorable Court's ruling upon Plaintiff's previously filed Motion To Compel concerning his former attorney Julia C. Williams' claims of Attorney-Client Privilege and Work Product.) (Please see Plaintiff's Exhibit 14 *Tilschner v. Spangler* No.2-10-0111 attached)
- C1) <u>Tilschner v. Spangler</u> No.2-10-0111 was not included in exhibit 12 as constituted, when sent 19 days after the deposition had concluded, in response to the inquires of

Noelle Kappes Scheduling and Client Solutions Manager| U.S. Legal Support (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G found on pages 264 - 290 of 464 previously filed.)

- C2) <u>Tilschner v. Spangler</u> No.2-10-0111 was inexplicitly replaced with an exact duplicate of the <u>Lejato v. AT&T, INC.</u>, No. 1-95-0447 669 N.E.2d 645 283 III. App. 3d 126 (1996) (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages 264-285 of 464 previously filed.)
- D1) On November 4, 2022 Defendants' attorney was allowed to raise the issue of "waiver" alleging that both Defendant Hans Mast's attorney and Plaintiff Paul Dulberg waived any and all objections by stating "all objections to that manner were waived by both parties." (Please see Report of Proceeding November 4, 2022 page 14 line 14-15 which is contained in the Clerk of Court's electronic file for this matter.
- D2) The Illinois General Assembly empowered the Illinois Supreme Court to make and enforce rules for the Circuit, Appellate and Supreme Court. (Please see above ILCS / ro Ch. , par. and (735 ILCS 5/1-105) (from Ch. 110, par. 1-105).
- D3) Illinois Supreme Court Rule 211 does not allow opposing attorneys to waive the rules and orders powers granted to the Illinois Supreme Court by the Illinois General Assembly.
- D4) It should be noted that:1) there were multiple emails between the Plaintiff and

Defendants' attorneys as close in time as less than 24 hours before and at most 30 minutes after the deposition and the subject of "waiver" was not discussed. (Please see Exhibits 9, 15 and 16 attached.); 2) On July 30, 2020 Julia C. Williams, in response to Plaintiff's question about the Deposition of Hans Mast did not respond with anything about "waiver" of issues and cavalierly stated "Your future counsel will need to bring that before the Judge at some point" Please see Plaintiff Exhibit 17 attached): 3) Julia C. Williams filed her Motion to Withdraw on behalf of herself and the Clinton Law Firm on August 18, 2020 (Please see the Clerk of McHenry County Circuit Court's electric file for this case.)

Wherefore, Plaintiff Paul Dulberg prays that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff request to take the deposition of Defendant Hans Mast is granted, but if Defendants' verbal request to file a sur-response is allowed then the Plaintiff be granted a reasonable time to file a sur-reply after considering what's left of Plaintiff's time to respond to Defendant's Motion for Summary Judgment and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

| /s/ , | Alp | honse | A. 7 | 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

RE: Dulberg v. Mast and Popovich

Linda Walters < lwalters@karballaw.com>

Thu 4/28/2022 4:00 PM

To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please use the below link to access Mast Dep Ex. 12.

https://www.dropbox.com/s/b2lmm0a6s3oex3d/Mast%20Dep%20Ex.%2012.PDF?dl=0

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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Dear Noelle.

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

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

put this X in folder on destroy

of renand bad fill 12-A-this This message may be privileged and confidential. If you are not the intended recipient, please delete

the email and notify the sender immediately.

Click to Download

Dulberg Mast Dep Exh 12 Legal Research .pdf

is the new 12

still wildn't send 1-22 - I'Mere was a problem reading On Jul 13, 2020, at 8:37 PM, Noelle Kappes <<u>nkappes@uslegalsupport.com</u>> wrote called Apollo - 10:30 - 7-14- The will william bothat it or email williams

Hi there.

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you. Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.

Witness: Hans Mast

Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.

Date: 06/25/2020

Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)

Location:

Reporter and all Parties will appear via Video Conference.

Thank you for choosing U.S. Legal Support.

Court Reporting | Record Retrieval | Trial Services

Please note: To ensure your safety and the safety of others, when visiting a U.S. Legal Support office, please practice responsible social distancing measures. We ask that you provide and wear your own mask in common areas (halls, restrooms, break areas, cube areas, conference rooms, etc.). Thank you for your understanding and cooperation.

<CFM923267.PDF>

Hi Ms. Williams – This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

Thank you.

Barb

Williams responded 7-2-20

But the text space was

Bland.

culled 1-6-20 Left Measure

7-7 animited jet and amicel

Moelle about it

Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks.

Barb

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

| PAUL | DULBERG, |) | |
|--------|------------------------------|-------|---------------|
| | PLAINTIFF, |) | |
| | |) | |
| | v. |) | No. 17 LA 377 |
| | |) | |
| THE L | AW OFFICES OF THOMAS POPOVIO | CH,) | |
| and HA | ANS MAST, |) | |
| | DEFENDANTS. |) | |

AMENDED NOTICE OF DEPOSITION

TO: All Attorneys of Record (See Attached Service List)

YOU ARE HEREBY NOTIFIED, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

| Deponent | Location | Date | Time |
|-----------|---|---------------|-----------|
| Hans Mast | Compton Law Group 85 Market St. Elgin, IL 60123 (remote electronic deposition) | June 25, 2020 | 10:00a.m. |

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773

Julia C. Williams, ARDC No. 6296386

The Clinton Law Firm

11 W. Washington, Ste. 1437

Chicago II 60602

Chicago, IL 60602 312.357.1515

ed@clintonlaw.net

juliawilliams@clintonlaw.net

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

SERVICE LIST:

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

ref deft

Carpine Runch

Carpine Runch

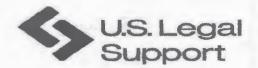
BXUM 5 500 16

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

16 60 64

Choi-B- Commandealth Edison is the only coal & Lanein \$17 Sownloads

<u>/s/ Julia C. Williams</u>



U.S. Legal Support - Chicago 200 West Jackson Suite 600 Chicago, IL 60606 Telephone: 312-236-8352 Fax: 312-236-3344

| Support JOB WORKSHEET | | | | | |
|-----------------------|---|---|--|--|--|
| Resource | Barbara G. Smith | | | | |
| Job No. | 923267 | Job Type | Deposition | | |
| Job Date | 06/25/2020 | Job Time | 10:00 AM (GMT-06:00) . Central Time (US & Canada) | | |
| Due Date | 07/10/2020 | Notation | R/VC | | |
| Witness | Hans Mast | | | | |
| Case Name | Paul Dulberg v, Law Offices of Thomas Popovich, et al. | | | | |
| Case No. | 17LA377 | | | | |
| Location | | c Remote Video Cont es will appear via Video | 40 1100 | | |
| | | eo Conference, a websi Iness day prior to the se | ite link will be provided by U.S. | | |
| Remarks | Court Reporter & RemoteDepo *everyone appearing remotely except attorney George Flynn who will be with the deponent REPORTER MUST READ THE ATTACHED READ ON | | | | |

| Client | Clinton Law Firm 111 West Washington Street Suite 1437 Chicago, IL 60602 Phone: 312-357-1515 Fax: 210-2010 | up | 31 Patro |
|----------------------|--|----------------------|-----------------|
| Contact | Julia Williams | W U | 1 |
| Ordered By | Julia Williams via email | | |
| Requested Service | Service Item RemoteDepo w/InstantExhibit - Videoconferencing | <u>Units</u> 1.00 | Where Religions |

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above. Exhibits to be delivered to production within 3 days after deposition.



Document Examinations

Robin D. Williams, MFS, MS, D-BFDE Board Certified Bonnie L. Schwid, B.S., D-BFDE Board Certified

July 11, 2022

Attorney Alphonse A. Talarico Law Office of Alphonse Talarico 707 Skokie Blvd. Suite 600 Northbrook, Illinois 60062

REPORT OF FINDINGS

RE: Dulberg v Popovich et al LA 377

Dear Attorney Talarico,

Pursuant to your request, I examined the following documents:

Document containing a disputed Exhibit Label

(machine copy)

Q-1 The first page of a 27-page document containing machine copies of pages from a book or books. The first line on the yellow label reads "Exhibit 12".

The label is in the bottom center of a machine copy of 2 pages. The page number in the upper left corner is 502. The center heading reads: "218 Illinois Decisions".

Dated 6-25-2020.

Some of the pages in the 27-page document are duplications of previous pages. The page sequencing in the 27-page document is as follows: 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 854, 855, 856, 857, 858.

Document(s) submitted as containing genuine Exhibit Labels (machine copies):

- K-1 The yellow label at the bottom right of the document reads "Exhibit 1".
- K-2 The yellow label at the top center of the document reads "Exhibit 2".
- K-3 The yellow label at the bottom right of the document reads "Exhibit 3".
- K-4 The yellow label at the bottom right of the document reads "Exhibit 4".
- K-5 The yellow label at the bottom right of the document reads "Exhibit 5".
- K-6 The yellow label at the bottom right of the document reads "Exhibit 6".
- K-7 The yellow label at the bottom right of the document reads "Exhibit 7".
- K-8 The yellow label at the bottom right of the document reads "Exhibit 8".
- K-9 The yellow label at the bottom right of the document reads "Exhibit 9".



Mailing Address:

1253 Scheuring Road

Clark Street

Quita 1600

Suite A

1001 W. Glen Oaks Ln.

161 N.

Suite 21 9

RE: Dulberg v Popovich et al LA 377 Page 2

July 11, 2022

- K-10 The yellow label at the bottom right of the document reads "Exhibit 10".
- K-11 The yellow label at the bottom right of the document reads "Exhibit 11".
- K-13 The yellow label at the bottom right of the document reads "Exhibit 13".
- K-14 The yellow label at the top center of the document reads "Exhibit 14".
- K-15 The yellow label at the bottom right of the document reads "Exhibit 15".

Assignment

The purpose of the examination was to determine whether the yellow label that is in question on Item Q-1, also identified as Exhibit Label #12 and the labels submitted as genuine on Items K-1 through K-11 and K-13 through K-15 all originated from the same group or batch of labels.

Procedure

The examination consisted of visual and microscopic study of the font styles, the discriminating variations of letter formations, letter designs, beginnings and endings of letters, t-crossings, spelling of words and exterior and interior shapes of the labels.

Opinion

It is the opinion of this examiner that the label in question identified as Q-1, Questioned Label #12, did not come from the same group or batch of labels identified as Items K-1 through K-11 and K-13 through K-15.

Discussion

Item Q-1, Exhibit Label #12 contained a different font in all of the words on the label (except in the word "Date") and in numerals 1 and 2 as illustrated in the attached charts.

It is important to note that the name of Hans <u>Mast</u> was misspelled on Item Q-1, Exhibit Label #12, as "Hans Mist".

It is noteworthy that in an enlargement of the label identified as Q-1, Exhibit Label #12, is the appearance of a squared outer edge in the upper left corner of the label that can be seen. This differs from the rounded outer edges of the known labels that were used for comparison.

RE: Dulberg v Popovich et al LA 377

Page 3

July 11, 2022

This examination was conducted from machine copies of the document in question and the exemplars used for comparison. I assume that they are accurate reproductions of the originals. If the original documents become available, I am requesting the opportunity to examine the original documents containing the original labels and revisit my opinion. However, I do not believe my opinion will change.

Please allow four weeks in the event that testimony will be required.

Respectfully submitted, Omni Document Examinations

Robin D. Williams, MFS, MS, D-BFDE

Diplomate-Board of Forensic Document Examiners

olin D. Williams

Dulberg v. Popovich

George Flynn < gflynn@karballaw.com>

Mon 7/11/2022 10:25 AM

To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Cc: Linda Walters < lwalters@karballaw.com>

1 attachments (26 MB)

EX 0012 Hans Mast 062520.pdf;

Mr. Talarico:

Below is a copy the transmittal email with exhibit 12 received by my office on July 14, 2020. A previous email from July 10, 2020 from US legal contained the other deposition exhibits. The link contained in the July 14 email produced the attached PDF of exhibit 12.

Regards,

From: "wtolliver@uslegalsupport.com" < wtolliver@uslegalsupport.com>

Date: July 14, 2020 at 11:13:35 AM CDT **To:** George Flynn <<u>gflynn@karballaw.com</u>>

Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast,

6/25/2020

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

U.S. Legal Support has switched to paperless production. Your litigation support package contains digital files of your transcript and exhibits. These files are also readily available 24/7 via our secure Client Online Portal. The certified original will be printed to facilitate lodging with the Court. Should you require a hard certified copy of the transcript or a CD of your files, please contact your local U.S. Legal Support office.

Thank you for choosing U.S. Legal Support.

We have uploaded the following file(s). To open or download, please click on the link(s) below.

File Information

Case Name Paul Dulberg v. Law Offices of Thomas Popovich, et al.

Case No. 17LA377

Job No. 923267 Job Date 6/25/2020

Witness H. Mast Exhibits

EXHIBIT 4

If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser: https://share.uslegalsupport.com/docs/download?tk=86791893-4ae0-47ae-884c-52dfe3f186c0

Available File(s)

File Type File Name Description Size(KB)

Exhibit EX 0012 Hans Mast 062520.pdf 26741

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George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC Please note our new address below effective May 27, 2022 200 S. Wacker Drive Suite 2550 Chicago, IL 60606

P: (312) 431-3622 F: (312) 431-3670

E: gflynn@karballaw.com

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IN THE SUPREME COURT OF ILLINOIS

| In re: | Illinois Courts Response to COVID-19 Emergency/Impact On Discovery |) | M.R.30370 |
|--------|--|---|-----------|

Corrected Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (III. Const. 1970, art. VI, sec. 16); and in view of the actions that have been taken by the Governor of the State of Illinois in response to the outbreak of the novel coronavirus (COVID-19); and consistent with the order issued by this Court on March 17, 2020,

IT IS HEREBY ORDERED:

Effective immediately and until further order of the Court, paragraph (h) of Illinois Supreme Court Rule 206 is temporarily amended as follows:

- (h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.
 - (1) <u>Reserved.</u> The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.
 - (2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.
 - (3) <u>Reserved.</u> Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.
 - (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.
 - (5) Time spent at a remote electronic means deposition in addressing necessary



technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments (April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Order entered by the Court.



IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 29th day of April, 2020.

Supreme Court of the State of Illinois

IN THE SUPREME COURT OF ILLINOIS

| In re: | Illinois Courts Response to COVID-19 Emergency/Impact On Discovery |)))) | M.R. 30370 |
|--------|--|------------------|------------|

Effective immediately, the Court's corrected order of April 29, 2020 regarding Illinois Courts Response to COVID-19 Emergency/Impact On Discovery is amended to add a committee comment concerning the temporary amendment of paragraph (h)(3) of Illinois Supreme Court Rule 206 as follows:

- (h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.
 - (1) <u>Reserved.</u> The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.
 - (2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.
 - (3) Reserved. Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.
 - (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.
 - (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.
 - (6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

C 1808 V2

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments (April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Committee Comments (June 4, 2020)

Paragraph (h)(3)

Subparagraph (h)(3) has been deleted to avoid discovery disputes over physical presence by a party or a party's attorney at a remote deposition. Deletion of the subparagraph does not mean that personal presence by a party or a party's attorney is absolutely prohibited. During the pandemic not all depositions are required to proceed remotely, nor is a continuance automatically required if counsel cannot agree on a remote method. Absent agreement, the circumstances of a remote deposition are within the discretion of the trial court.

Order entered by the Court.



IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 4th day of June, 2020.

Carolyn Taff Gosboll Clerk,

Supreme Court of the State of Illinois

Good Morning, George,

I hope you are doing well. I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don't want to hold this up indefinitely.

Let's plan for the end of June. If the "stay at home" orders get extended again, we will reconsider the "in person" v "remote" deposition.

I hope you and your family are well.

I am working remotely. If you need to call—the best remote number is 312.508.3376.

Thanks,

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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On Apr 30, 2020, at 11:12 AM, George Flynn sgflynn@karballaw.com> wrote:

Julia:

I hope you and your family are staying safe, healthy, and busy during these uncharted times.

The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would



suggest the 2nd half of June.

Let me know what you think

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-af64a2c20113037b.png> E: gflynn@karballaw.com
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Hi Julia. I think June 17 will work. Just let me know the details. For the time being, I will plan on being at Hans' office for the deposition.

I am still not sure about June 5. I may attend live, but I should be able to make a decision by Tuesday.

How about touching base on Monday regarding the deposition logistics?

If you need to call, my cell is 773-341-8114.

So far so good here. I hope you and your family are doing well. Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC 150 S. Wacker Drive Suite 1700 Chicago, IL 60606

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From: Julia WIlliams < juliawilliams@clintonlaw.net >

Sent: Friday, May 29, 2020 4:37 PM

To: George Flynn <gflynn@karballaw.com>

Subject: Re: Dulberg v. Popovich

Hi George,

How is the June 16,17, or 18? If not, we should also be open the week after on Wednesday or Thursday—June 24, 25.

I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. We can work that out and a time once we get the date nailed down.

I believe we have a June 5 status date. I believe we are encouraged to either use CourtCall or get an agreed order. I am happy to draft an agreed order setting out a date for close of oral fact discovery (f(1), f(2)) and setting the matter for further status, so we can submit it to the Judge prior to June 5 to avoid the date. Alternatively, I am also happy to appear via CourtCall if you intend to appear.

I hope you and your family are 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

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On May 4, 2020, at 11:43 AM, George Flynn sgflynn@karballaw.com> wrote:

Thanks Julia. So far so good here.

Sounds like a plan. If you have a date in mind for late June, I have a feeling it will work for me. I can pass it along to Hans, so he can hold the date. Please also advise where you want to conduct the deposition.

Take care

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-af64a2c20113037b.png> E: gflynn@karballaw.com
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From: Julia WIlliams < juliawilliams@clintonlaw.net>

Sent: Monday, May 4, 2020 11:37 AM **To:** George Flynn qflynn@karballaw.com

Subject: Re: Dulberg v. Popovich



From: Julia Williams juliawilliams@clintonlaw.net

Subject: Re: Dulberg v Popovich Firm et al; Mast Deposition Exhibits

Date: June 24, 2020 at 10:49 AM

To: George Flynn gflynn@karballaw.com



Dear George,

Here is one more exhibit that I may use. We are still waiting on the instructions from US Legal which I expect by COB today.

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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On Jun 24, 2020, at 9:31 AM, George Flynn <gflynn@karballaw.com> wrote:

Thanks Julia. I will see you virtually, tomorrow.

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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From: Julia WIlliams < juliawilliams@clintonlaw.net>

Sent: Tuesday, June 23, 2020 4:26 PM **To:** George Flynn <gflynn@karballaw.com>

Cc: Mary Winch <marywinch@clintonlaw.net>; Ed Clinton <ed@clintonlaw.net>

Subject: Dulberg v Popovich Firm et al; Mast Deposition Exhibits

Dear George,

Attachments available until Jul 23, 2020

I am attaching the deposition exhibits that I *may* use on Thursday. I don't believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.

I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and



include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.

I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well.

If you have questions/concerns, please let me know. Otherwise, I will see you remotely on Thursday and we'll hope that everything goes smoothly.

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
iuliawilliams@clintonlaw.net

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Dulberg Mast Dep Ex...v 4.pdf Dulberg Clinton Subponea000576

From: Noelle Kappes nkappes@uslegalsupport.com &

Subject: RE: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267

Date: July 14, 2020 at 11:27 AM

To: Julia Williams juliawilliams@clintonlaw.net

Cc: Smith Family barbnwally@att.net, Mary Winch marywinch@clintonlaw.net, Ed Clinton ed@clintonlaw.net



Received, thank you.

Noelle Kappes Scheduling and Client Solutions Manager I U.S. Legal Support 200 West Jackson Boulevard, Suite 600 Chicago, IL 60606

Direct 312.854.1422 | Main 312.957.4546 <u>nkappes@uslegalsupport.com</u> www.uslegalsupport.com



From: Julia WIlliams <juliawilliams@clintonlaw.net>

Sent: Tuesday, July 14, 2020 9:41 AM

To: Noelle Kappes <nkappes@uslegalsupport.com>

Cc: Smith Family <barbnwally@att.net>; Mary Winch <marywinch@clintonlaw.net>; Ed

Clinton <ed@clintonlaw.net>

Subject: Re: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267

Importance: High

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Dear Noelle,

Attachment available until Aug 13, 2020

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

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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Dulberg Mast Dep Exh 12 Legal Research .pdf 35 1 MB

On Jul 13, 2020, at 8:37 PM, Noelle Kappes nkappes@uslegalsupport.com> wrote:

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you, Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.

Witness: Hans Mast

Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.

Date: 06/25/2020

Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)

Location:

Reporter and all Parties will appear via Video Conference.

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From: wtolliver@uslegalsupport.com

Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

Date: July 14, 2020 at 11:13 AM

To: juliawilliams@clintonlaw.net



(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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|--------------------------|--|----------|-----------|
| Case No. 17LA377 | | | |
| Job No. | 923267 | Job Date | 6/25/2020 |
| Witness H. Mast Exhibits | | | |

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| Exhibit | EX 0012 Hans Mast 062520 pdf | | 26741 | - |

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From: Julia Williams juliawilliams@clintonlaw.net

Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

Date: July 14, 2020 at 11:17 AM

To: Paul Dulberg pdulberg@comcast.net

Cc: marywinch@clintonlaw.net, ed@clintonlaw.net

Dear Paul.

Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was blank.

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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Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

Date: July 14, 2020 at 11:13:26 AM CDT **To:** <<u>juliawilliams@clintonlaw.net</u>>

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| Case No. | 17LA377 | | |
| Job No. | 923267 | Job Date | 6/25/2020 |
| Witness | /itness H. Mast Exhibits | | |
| | | | |

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From: Julia Williams juliawilliams@clintonlaw.net

Subject: Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

Date: August 5, 2022 at 10:21 AM

To: Mary Winch marywinch@clintonlaw.net, ed@clintonlaw.net



Julia Williams Of Counsel The Clinton Law Firm 111 W. Washington, Ste. 1437 Chicago, IL 60602 P:312.357.1515 F: 312.201.0737 <u>juliawilliams@clintonlaw.net</u>

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Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

Date: July 14, 2020 at 11:13:26 AM CDT

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|---|--|--|-----------|
| Case No. | 17LA377 | | |
| Job No. 923267 Job Date 6/25/2020 | | | 6/25/2020 |
| Witness H. Mast Exhibits | | | |

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he text of this opinion may be changed The text of this opinion may be changed of or corrected prior to Renearing or the disposition

of the same.

No. 2---0111 Opinion filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

| PATRICIA TILSCHNER, Plaintiff-Appellant, |) Appeal from the Circuit Court) of McHenry County.) |
|---|--|
| v. |) No. 08—LA—383 |
| LOWELL SPANGLER and RALPH M. RUPPEL, |)) Honorable) Maureen P. McIntyre, |
| Defendants-Appellees. |) Judge, Presiding. |

JUSTICE McLAREN delivered the judgment of the court, with opinion. Justice Hutchinson concurred in the judgment and opinion. Justice Hudson specially concurred in the judgment, with opinion.

OPINION

Plaintiff, Patricia Tilschner, appeals from the trial court's orders dismissing count II of her third-amended complaint and denying her motion to reconsider. Patricia claims on appeal that the trial court erred in concluding that this State has not adopted section 318 of the Restatement (Second) of Torts (1965).1 We affirm.

Patricia was injured during a party at the home of defendant Lowell Spangler when defendant Ralph Ruppel ignited fireworks. Patricia's third amended complaint contained three counts. Count

¹Patricia raised a similar claim regarding an undifferentiated duty independent of section 318 but abandoned that argument during oral argument.

I alleged common-law negligence against Spangler. Count II alleged negligence against Spangler pursuant to section 318 of the Restatement (Second) of Torts. Count III alleged common-law negligence against Ruppel. Spangler moved to dismiss count II, pursuant to section 2—615 of the Code of Civil Procedure (735 ILCS 5/2—615 (West 2008)). The trial court granted the motion to dismiss with prejudice and denied Patricia's subsequent motion to reconsider. Patricia filed an application for leave to appeal to this court pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), which was denied. Patricia was also denied leave to file a fourth amended complaint. She then voluntarily dismissed count I of the third amended complaint, and the trial court found no just reason to delay enforcement or appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

Patricia now contends that the trial court erred in dismissing count II of her third amended complaint. When a defendant challenges the legal sufficiency of a complaint with a section 2—615 motion to dismiss, all well-pleaded facts alleged in the complaint are taken as true. *King v. Senior Services Associates, Inc.*, 341 III. App. 3d 264, 266 (2003). On review of a dismissal pursuant to section 2—615, this court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. *King*, 341 III. App. 3d at 266. The motion should be granted only if the plaintiff can prove no set of facts to support her cause of action. *King*, 341 III. App. 3d at 266. As this process does not require the trial court to weigh findings of fact or determine credibility, this court is not required to defer to the trial court's judgment, and we will review the matter *de novo*. *King*, 341 III. App. 3d at 266.

No. 2-10-0111

To state a cause of action in negligence, a plaintiff must allege facts that establish a duty, a breach of that duty, and proximate causation. *Ryan v. Yarbrough*, 355 Ill. App. 3d 342, 345 (2005). Patricia alleged that Spangler:

"[o]wed a duty to the Plaintiff and his other invited guests to keep control and care over his property and to protect them against any unreasonable risks of harm known due to acts of a third person under his control, including the Defendant, RALPH RUPPEL, pursuant to the Restatement (Second) of Torts, §318."

Section 318 of the Restatement (Second) of Torts provides:

"If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor

- (a) knows or has reason to know that he has the ability to control the third person, and,
- (b) knows or should know of the necessity and opportunity for exercising such control." Restatement (Second) of Torts §318 (1965).

A restatement is not binding on Illinois courts unless it is adopted by our supreme court. Eckburg v. Presbytery of Blackhawk of the Presbyterian Church (USA), 396 Ill. App. 3d 164, 169 (2009); In re Estate of Lieberman, 391 Ill. App. 3d 882, 890 (2009). Thus, we must determine whether our supreme court has adopted section 318 of the Restatement (Second) of Torts; if it has not, Spangler owed no duty to Patricia.

Citing a line of both supreme court and appellate court cases, Patricia argues that section 318 has "unquestionably" been adopted in Illinois. However, this is not the first time that this court has

examined this question and concluded to the contrary. In Zimring v. Wendrow, 137 Ill. App. 3d 847, 850 (1985), this court specifically found that "[n]o Illinois case has adopted section 318 of the Restatement (Second) of Torts, upon which plaintiff relies." Ultimately, we concluded that we "need not consider" the sufficiency of the complaint in relation to section 318. Zimring, 137 Ill. App. 3d at 853. In Elizondo v. Ramirez, 324 Ill. App. 3d 67, 73 (2001), the plaintiff asserted that section 318 "has been adopted in Illinois and cite[d] two cases in support." After analyzing those cases—Cravens v. Imman, 223 Ill. App. 3d 1059 (1991), and Teter v. Clemens, 112 Ill. 2d 252 (1986)—we concluded that "it is unclear whether these cases represent the law in Illinois" (Elizondo, 324 Ill. App. 3d at 73-74), and we declined to "express an opinion on whether section 318 represents the law in Illinois" (Elizondo, 324 Ill. App. 3d at 74). We note with interest that Patricia cites to Elizondo but fails to mention, let alone address, this court's refusal to find that section 318 had, indeed, been adopted in this state. Patricia now argues, despite our analysis in Elizondo, that our supreme court adopted section 318 in Teter. We disagree, and we will not revisit our prior analysis and determination in Elizondo that there was no clear adoption of section 318 by our supreme court in Teter.

While Patricia does not cite to *Cravens*, its ultimate disposition is instructive. In *Cravens*, the First District of the Illinois Appellate Court found a duty and, thus, a claim for negligence, pursuant to section 318 and to *Teter*, in the factual scenario of adults providing alcohol to minor guests who subsequently left in an automobile and were involved in a fatal accident. However, our supreme court in *Charles v. Seigfried*, 165 Ill. 2d 482, 501-02 (1995), concluded that it did "not agree that the views set forth in *Cravens* should be adopted through judicial decision." This court noted the supreme court's refusal, in an admittedly different context, to impose liability pursuant to section 318. See *Elizondo*, 324 Ill. App. 3d at 74.

Patricia argues that the supreme court "implicitly" adopted section 318 in Estate of Johnson v. Condell Memorial Hospital, 119 Ill. 2d 496, 503-04 (1988), in which the court stated:

"In general, one has no duty to control the conduct of another to prevent him from causing harm to a third party (Restatement (Second) of Torts §315 (1965)), but there are exceptions to this, based on 'special relationships.' Sections 315 through 319 of the Restatement (Second) of Torts (1965) describe these relationships. The 'special relationship' that the plaintiff alleges existed here that would give rise to a duty to protect another from harm is found in section 319 ***."

The court ultimately concluded, "It cannot be reasonably said, based on the complaint's allegations against Condell, that the hospital assumed a duty of care to Holt under section 319 of the Restatement (Second) of Torts (1965)." *Estate of Johnson*, 119 Ill. 2d at 506-07. Patricia argues that the "clear import" of the decision "is that sections 315-319 have been adopted in Illinois." She then cites to a similar statement in *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 530 (1987) ("There are types of relationships that give rise to a duty to control a third party's conduct set out in sections 316 to 319 of the Restatement (Second) of Torts (1965) ****"), to support her conclusion that the supreme court "cited with approval all of the exceptions/duties established in sections 316 through 319." Patricia is not alone in this argument. The First District of the Illinois Appellate Court has boldly stated that the supreme court has adopted sections 315 through 319. See *Brewster v. Rush-Presbyterian-St. Luke 's Medical Center*, 361 Ill. App. 3d 32, 36-37 (2005) (citing Estate of Johnson, 119 Ill. 2d at 503-04); *Iseberg v. Gross*, 366 Ill. App. 3d 857, 862 (2006) (citing only *Brewster*, which expressly mentions sections 315 through 319, but then mysteriously increasing the number of sections adopted, to include sections 314 through 320).

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However, we first note that neither *Estate of Johnson* nor *Kirk* (nor, for that matter, *Brewster* nor *Iseberg*) involved a claimed application of section 318. Both *Estate of Johnson* and *Kirk* involved claims arising from alleged improper medical treatment of third parties who subsequently injured the plaintiffs; these claims were analyzed under section 319, which speaks to a duty of those in charge of someone having dangerous propensities. See *Estate of Johnson*, 119 Ill. 2d at 503-04; *Kirk*, 117 Ill. 2d at 530-31. The "most relevant" section in *Brewster* was section 317, which addresses the duty of a master to control the conduct of his servants. *Brewster*, 361 Ill. App. 3d at 37; Restatement (Second) of Torts §317 (1965). In *Iseberg*, the plaintiff did not even allege that any of the Restatement sections applied and imposed a duty on the defendants. *Iseberg*, 366 Ill. App. 3d at 862.

Patricia has failed to cite, and our research has not revealed, a single case since *Teter* in which our supreme court has specifically addressed, or even quoted, section 318 of the Restatement (Second) of Torts. We cannot conclude that our supreme court has adopted—explicitly, implicitly, implicitly, or otherwise—a Restatement section that it has not been called upon to analyze, apply, or adopt. Even the cases upon which Patricia relies do little more than acknowledge the existence of section 318. *Estate of Johnson* says that sections 315 through 319 describe "'special relationships'" that form the bases for exceptions to the general rule of section 315. *Estate of Johnson*, 119 Ill. 2d at 503. *Kirk* merely notes that certain types of relationships set out in sections 316 through 319 give rise to a duty to control a third party's conduct, although none of the types applied there. *Kirk*, 117 Ill. 2d at 530. The mere citation to a cluster of sections, or even the analysis some of the nearby sections, is insufficient to establish the adoption of a restatement section.

The supreme court has addressed more thoroughly and deeply other restatement sections and specifically did *not* adopt them. For example, in a case examining the difference between void and

reached if the criteria of section 12 of the Restatement (Second) of Judgments were applied to the facts of the case. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 176 (1998). The court noted that the result in the case was "consistent with the trend of modern authority" as exemplified by the Restatement (Second) of Judgments. *Mitchell*, 181 Ill. 2d at 175. The court then quoted section 12 of the Restatement (Second) of Judgments and applied the criteria of that section to the facts of the case. *Mitchell*, 181 Ill. 2d at 176. After determining that adopting the view expressed in the Restatement would require a re-examination of existing case-law analysis, the court casually noted that "[t]he parties [did] not ask us to adopt the rule expressed in the Restatement, however, and therefore we need not decide in this case whether to take that step." *Mitchell*, 181 Ill. 2d at 177. In *Mitchell*, the court explicitly declined to adopt a restatement section that it specifically quoted, applied to the facts of the case, analyzed, and compared to existing case law, because the parties did not ask for it. Here, Patricia cannot cite to a case wherein the court even cited to section 318, let alone provided the type of analysis that it did in *dictum* in *Mitchell*. With such meager authority, we cannot find the adoption of a restatement section.

Patricia similarly attempts to find adoption of section 318 in this court's decision in *Duncan* v. *Rzonca*, 133 Ill. App. 3d 184 (1985). Patricia's specific claim is that the *Duncan* court adopted section 316 of the Restatement and that, since sections 316 through 319 are "uniformly discussed together," there is "simply no logical explanation for why section 316 but not section 318 would be adopted in Illinois." We first note that this court does not have the authority to adopt a restatement section; as we have already stated, a restatement is binding on Illinois courts *only if it is adopted by our supreme court*. See *Eckburg*, 396 Ill. App. 3d at 169; *Lieberman*, 391 Ill. App. 3d at 890. In the absence of Illinois law, we often deem secondary sources, such as the Restatement (Second) of

No. 2-10-0111

Torts, to be persuasive. ² Eckburg, 396 Ill. App. 3d at 169. A restatement is a policy statement; this court does not adopt policy, it applies present law to the facts of the case before it. Further, this argument relies on the same fallacy as her prior argument: the "adoption" of a section includes the adoption of other sections "uniformly discussed together." This argument is not only a non sequitur, it is irrational as well. Duncan does not support Patricia's cause.

The restatement that we adopt today is that our supreme court has not adopted section 318 of the Restatement (Second) of Torts. Therefore, count II of Patricia's third-amended complaint, interpreted in the light most favorable to her, fails to allege a duty recognized by our supreme court and fails to set forth a cause of action on which relief may be granted. The trial court did not err in granting Spangler's section 2—615 motion to dismiss with prejudice.

²"A secondary source is not the law. It's a commentary on the law. A secondary source can be used for three different purposes: it might educate you about the law, it might direct you to the primary law, or it might serve as persuasive authority. Few sources do all three jobs well. The important classes of legal secondary sources include: treatises, periodical articles, legal encyclopedias, ALR Annotations, *Restatements*, and Looseleaf services. ***

* * *

Restatements

The restatements were developed by legal scholars initially to restate the law, and currently to describe what the law should be. In either case, Restatements are very persuasive although they are not very good at describing the law. They can serve as adequate law finders." (Emphasis added.) Secondary Sources, Yale Law School, Lillian Goldman Law Library, http://m-library.law.yale.edu/content/secondary-sources.

No. 2-10-0111

For these reasons, the judgment of the circuit court of McHenry County is affirmed.

Affirmed.

JUSTICE HUDSON, specially concurring:

I agree with much of the majority's analysis in this case as well as the result at which it arrives. However, I would prefer to refrain from making sweeping and unnecessary statements about the authority of this court. It is well established that a court should avoid constitutional questions when a case can be decided on other grounds. *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004); *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003). The scope of the authority of this court is a constitutional matter. See *Belleville Toyota*, *Inc. v. Toyota Motor Sales*, *U.S.A.*, *Inc.*, 199 Ill. 2d 325, 334 (2002).

In this case, the majority rejects plaintiff's contention that this court has adopted section 318 of the Restatement (Second) of Torts, finding plaintiff's argument "irrational." Slip op. at 8. This finding should resolve this question. The majority, nevertheless, goes on to hold that this court does not have the authority to adopt a section of a restatement. It is unnecessary to consider whether this court has such authority in light of the majority's holding that nothing this court previously did would constitute an adoption of section 318. As I believe it improper to address the issue of the authority of this court, I do not join this portion of the majority's opinion.

United States of America

2-10-0111

PATRICIA TILSCHNER,

State of Illinois.

Appellate Court,

Second District,

LOWELL SPANGLER and RALPH M. RUPPEL,

I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

Defendants-Appellees.

seal of the said Appellate Court, in Elgin, in said State, this

6th day of May, A.D. 20 2011

IN TESTIMONY WHEREOF, I have set my hand and affixed the

(RO-2131 -- 5M -- 3/02)

From: George Flynn gflynn@karballaw.com &

Subject: Re: Dulberg

Date: June 19, 2020 at 2:56 PM

To: Julia Williams juliawilliams@clintonlaw.net

Ok glad to hear. Thanks Julia.



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:

This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

On Jun 19, 2020, at 2:54 PM, Julia WIlliams < juliawilliams@elintonlaw.net> wrote:

Thanks George. We are still on. This will be the first remote deposition that I have taken so I am still working on figuring out the exhibits. I believe that I can upload them to the US Legal system and then share them during the deposition. But, if not, I will be sure to have them to you no later than Tuesday by 5pm.

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 Jun 19, 2020, at 2:34 PM, George Flynn < gflynn@karballaw.com > wrote:

Julia: I just received your notice of attorney lien. Will you still be taking the depinest week?

My experience with receiving lieus at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep.

Thanks

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC

150 S. Wacker Drive

Suite 1700

Chicago, IL 60606

<phone_3aef1e25-ed01-4e36-9c05-55877d93199b.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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From: George Flynn gflynn@karballaw.com &

Subject: RE: Dulberg

Date: June 26, 2020 at 1:13 PM

To: Julia WIlliams juliawilliams@clintonlaw.net

Sure, feel free to give me a call.

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

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From: Julia WIlliams < juliawilliams@clintonlaw.net >

Sent: Friday, June 26, 2020 12:13 PM

To: George Flynn <gflynn@karballaw.com>

Subject: Re: Dulberg

Dear George,

Thank you for the follow up. I am working on the production today. Are you around on Monday—can we chat then?

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 Jun 25, 2020, at 12:31 PM, George Flynn <gflynn@karballaw.com> wrote:

T...1! ..

Juna:

Just wanted to write while it is fresh in my mind, but I'd like to close the dangling issues from your client's deposition, including the production of communications with Mr. Gooch in view of the "discovery rule" issues.

Please advise

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
CONFIDENTIALITY NOTE:

This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Julia WIlliams juliawilliams@clintonlaw.net

Subject: Re: Need clarification on outstanding issues before your departure

Date: July 30, 2020 at 10:05 AM

To: Paul Dulberg Paul_Dulberg@comcast.net

Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net



Dear Paul,

Please see my responses below.

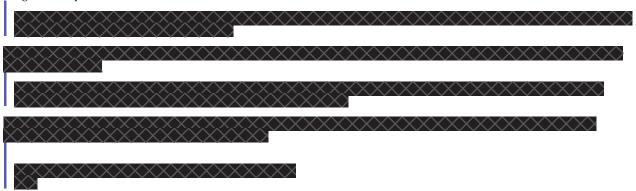
Best Regards,

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



3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer?

There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point.



** FILED ** Env: 20490429
McHenry County, Illinois
2017LA000377
Date: 11/30/2022 2:51 PM
Katherine M. Keefe
Clerk of the Circuit Court

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. |) |

<u>DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2nd AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST</u>

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 Response to Plaintiff's 2nd Amended Motion to Exclude the deposition of Hans Mast, state as follows:

- 1) Plaintiff Paul Dulberg ("Dulberg") is improperly requesting a drastic remedy that amounts to the equivalent of a severe discovery sanction against defendants due to Dulberg's perceived irregularity regarding an exhibit sticker in connection with a party deposition he caused to be taken, and by a court reporter he retained. Defendants had nothing to do with the "irregularity" and should not be further prejudiced by issues. Simply put, he seeks relief for his own alleged violation of the rules.
- 2) The court heard argument on this matter on November 4, 2022. Defendants had not filed any written response at that time, and Dulberg late file his 2nd Amended Motion to Exclude Mast's deposition. Defendants hereby adopt their arguments contained in the transcript

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EXHIBIT 9 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

from the 11-4-22 hearing (Exhibit A) and submit this additional response in opposition to Plaintiff's motion.

- The instant motion is the latest costly litigated matter made necessary by Dulberg's multiple substitutions of counsel. His current (now third) attorney entered his appearance on October 23, 2020. The deposition at issue was taken by Dulberg's second attorney on June 25, 2020. Dulberg's original Motion to Exclude the Hans Mast deposition was filed by his third attorney on October 12, 2022, just 11 (eleven) days shy of the second anniversary of his appearance in the case.
- 4) Dulberg improperly seeks to exclude a discovery deposition apparently because he does not like the result—he apparently does not like the testimony that was elicited or the performance of his counsel. In this and related proceedings, he has caused communications between himself and his prior counsel to be produced. These documents include deposition questions he proposed to his then counsel in advance of the Mast deposition. Dulberg is now asking for a "do-over" because Mast's testimony was apparently not satisfactory to him. Whatever disputes Dulberg may have with his prior counsel in this instant case, he should not be allowed a second bite at the apple as a result of those disputes. He attempts to mischaracterize a minor discrepancy with one exhibit to the deposition, and difficulties with defendant's wi-fi connection during the zoom deposition (which were overcome), as warranting the exclusion of the deposition. This is absurd.
- 5) As an initial matter, Dulberg asserts that Mast's deposition was taken in violation of Illinois Supreme Court Rule 206 h (2), and other orders entered in response to the COVID-19 pandemic. But he should be required to take a position as to who committed the alleged violation(s). In his 2nd Amended Motion, he vaguely asserts "violations."

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6) Paul Dulberg personally observed the discovery deposition of Hans Mast taken

remotely (by Zoom) on June 25, 2020. If he had an objections to alleged irregularities with the

deposition, he had ample time to bring such issues to the attention of his counsel, Julia Williams,

and to his current counsel who appeared on his behalf on October 23, 2020.

7) Illinois Supreme Court Rule 211 governs this issue. Rule 211 (c) (2) reads as

follows: "Objections to the form of a question or answer, errors and irregularities occurring at

the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in

the conduct of any person, and errors and irregularities of any kind which might be corrected if

promptly presented, are waived unless seasonable objection thereto is made at the taking of the

deposition."

8) Rule 211 (D) provides: "Errors and irregularities in the manner in which the

testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed,

transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress

the deposition or some part thereof is made with reasonable promptness after the defect is, or

with due diligence might have been, ascertained.

9) Dulberg did not object or raise his objections with reasonable promptness, under

any analysis. He was present for Mast's deposition 2.5 years ago, and his counsel had years to

bring a motion. Instead, he seeks to prejudice defendants by waiting until fact discovery is

closed and he faces summary disposition. Defendant's submit that even if the court found his

objections to be timely, that the court find that any irregularities ("violations") were 1) caused

solely by Dulberg or his agents, 2) that any irregularities were harmless, 3) that any alleged

irregularity simply be given its weight by the finder of fact (if as to any fact issue), 4) that no

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remedy be ordered in Dulberg's favor, and 5) the court weigh any remedy in favor of defendants it sees fit to order under Rule 201 (c)(1)(2) and (3).

10) In response to Dulberg's argument at paragraph A3.3 of his 2nd Amended Motion to Exclude relating to his exhibit 16 (Email from defendant's counsel George K. Flynn) Dulberg takes the position that there was no discussion of any errors or irregularities in the "just concluded deposition." That is exactly right. Dulberg's counsel did not raise any issues or objections in response to the email. She was apparently satisfied with the outcome, despite some minor technical difficulties during the deposition. She never voiced any suggestion that an additional session of Hans Mast's deposition was necessary or requested. Flynn didn't make any mention of it because any technical difficulties seemed inconsequential.

- Dulberg's motion at page 11 begins to purportedly outline violations of the rules, but again without explicitly identifying who violated any such rule. Nor is there any analysis or conclusion reached--only a litany of facts, chronology, and innuendos. No basis for any remedy is discussed or analyzed.
- 12) Of concern is a statement on page 19 of Dulberg's motion in which he argues that Mast had insisted that the decision in the *Tilschner v. Spangler* case was the reason Dulberg would not prevail in the underlying case against the McGuire's. The statement is inexplicably made "on information and belief." This is unacceptable. Dulberg has made no such disclosure in fact discovery (now closed) about this very specific discussion between Mast and himself regarding the Tilschner case. If Dulberg believes he has disclosed it, he should be required to identify where in his answers and amended answers to discovery or his deposition he has identified such discussion with this amount of specificity. Defendants submit that no such disclosure exists.

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WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court enter an Order denying Plaintiff's 2nd Amended Motion to Exclude Mast's deposition, and for any further relief this court deems fair and proper.

Respectfully submitted,

/s/ George K. Flynn

GEORGE K. FLYNN Karbal Cohen Economou Silk Dunne, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

3216414 Page **5** of **5**

2017LA000377
Date: 11/17/2022 3:00 PM
Katherine M. Keefe
Clerk of the Circuit Court

| STATE 0 | F ILLINOIS) | Katherine Clerk of the Circ |
|---------|---|---|
| COUNTY | OF McHENRY | |
| | IN THE TWENTY-SECOND JUDICIAL CIRCUIT | |
| | McHENRY COUNTY, | ILLINOIS |
| PAUL DU | JLBERG, | } |
| vs. | Plaintiff, | No. 17 LA 377 |
| | OFFICES OF THOMAS CH, et al., | } |
| | Defendants. | } |
| the Hon | ELECTRONICALLY RECORD DINGS had in the above-e norable THOMAS A. MEYER, enry County, Illinois, o er, 2022, at the McHenry Woodstock, Illinois. | entitled cause before Judge of said Court on the 4th day of |
| APP | PEARANCES: | |
| | LAW OFFICE OF ALPHONS MR. ALPHONSE A. TALAR | SE A. TALARICO, by RICO (via Zoom), |
| | On behalf of the | Plaintiff, |
| | KARBAL COHEN ECONOMOU MR. GEORGE K. FLYNN (| SILK DUNNE, LLC, by via Zoom), |
| | On behalf of the | Defendants. |
| ALS | O PRESENT: | |
| | MR. EDWARD CLINTON (v MS. JULIA C. WILLIAMS | via Zoom) G (via Zoom) |
| | | EXHIBIT A |

1

| 1 | THE COURT: All right. If everybody could |
|----|--|
| 2 | identify themselves, starting with plaintiff's |
| 3 | counsel, then defendant. |
| 4 | MR. TALARICO: Good morning, your Honor. Good |
| 5 | morning, Counsel. I am Alphonse Talarico for the |
| 6 | plaintiff, Paul Dulberg. |
| 7 | THE COURT: Okay. Defense. |
| 8 | MR. FLYNN: Good morning, your Honor. George |
| 9 | Flynn on behalf of the defendants, the Popovich firm |
| 10 | and Hans Mast. |
| 11 | THE COURT: Okay. Mr. Clinton. |
| 12 | MR. CLINTON: Good morning, your Honor. |
| 13 | Ed Clinton, former counsel to Mr. Dulberg. |
| 14 | THE COURT: All right. And |
| 15 | MS. WILLIAMS: Good morning, your Honor. |
| 16 | Julia Julia Williams on behalf of former |
| 17 | counsel to Mr. Dulberg. |
| 18 | THE COURT: Okay. And for the record, we have |
| 19 | Mr. Dulberg on screen. |
| 20 | In any event, plaintiff's counsel, where do |
| 21 | you want to start? |
| 22 | MR. TALARICO: Judge, I would guess that |
| 23 | Mr. Clinton and Ms. Williams' motion to vacate would |
| 24 | be the beginning. I filed a rule pursuant to |
| | |

1 your last -- the transcript -- your last order said 2 if there's something else that comes up. 3 I did file a rule after I read their motion 4 to vacate. Historically, or chronologically, I 5 think maybe that's the starting point. (Indiscernible) you held them in contempt and --6 7 I did? THE COURT: 8 MR. TALARICO: -- here we are. You did. THE COURT: When did I hold them in contempt? 9 10 I'm looking at --11 MR. TALARICO: I think so. The last order. 12 THE COURT: Okav. I'm looking at October 17th. 13 He must appear. Yeah, I don't see an explicit 14 finding of contempt, at least in the October 17th 15 order. Was --16 MR. TALARICO: I thought -- with all due 17 respect, Judge, if I can find the order, I think the 18 first sentence says you grant my motion. 19 THE COURT: Plaintiff's motion to compel is 20 granted as --21 MR. TALARICO: Oh, I'm sorry. Compel. Forgive 22 me. 23 THE COURT: All right. 24 MR. TALARICO: My mistake.

Page 8 of 37

1 THE COURT: In any event, I read the motion to 2 vacate and I -- are you -- and this is directed at 3 Mr. Clinton -- are you concerned about the order to 4 produce, or something else? MS. WILLIAMS: Would you like me to --5 6 MR. CLINTON: Yeah, go ahead. 7 MS. WILLIAMS: Your Honor, we're not concerned about producing. We're -- Mr. Dulberg is entitled 8 9 to these documents, even without a subpoena. 10 THE COURT: Yeah. 11 MS. WILLIAMS: So the production is not our 12 concern. It's the portion of the order that insinuates that we weren't try -- not complying with 13 14 the subpoena when we were rightfully doing so. 15 So we are (indiscernible) --16 THE COURT: Thank you. MS. WILLIAMS: So that's what we're concerned 17 18 about. THE COURT: All right. I'll vacate that 19 20 because -- yeah, I don't see that as critical. 21 So to the extent that you're concerned, any 22 suggestion in the order of October 17th suggesting 23 or implying that you had failed to cooperate, I will 24 vacate. I saw from your motion to vacate you were

Purchased from re:SearchIL

contesting that issue, and I'm not going to go down that path to find out who's right, ultimately, because it doesn't make any difference, at least to me.

So all I care about is the production of the documents. And am I correct that -- my reading of your response indicated that you've produced the documents. Is that -- was that accurate?

MS. WILLIAMS: Yes, your Honor. So we have produced nonconfidential documents to both -- at this point, we've now produced to both counsels of record in this case, plaintiff's counsel and defendant's counsel. The only thing that has not been produced to defendant's counsel is the communication between our firm and Mr. Dulberg, which was produced to plaintiff's counsel. And then there are, I want to say, about 13 pages of e-mails that were internal work product communications within our office that have not been produced to any -- anyone.

THE COURT: Um, why would you -- and here's, I guess, my confusion. Why would you withhold those from Mr. Dulberg? And I --

MS. WILLIAMS: The work product -- product

```
privilege -- I mean, we can --
   1
  2
           MR. CLINTON: We can give them.
           MS. WILLIAMS: We can give that.
   3
   4
           MR. CLINTON: We're not going to give you a hard
  5
        time about that.
  6
           MS. WILLIAMS: We'll waive that and give those
  7
        to Mr. Dulberg.
           THE COURT: Because I'm --
  8
  9
           MS. WILLIAMS: (Indiscernible.)
           THE COURT: -- starting from the premise, at
 10
       least based on the order, that Mr. Dulberg is.
11
 12
       through counsel, waiving any attorney/client
 13
       privilege. And, yeah, if we get into the issue --
 14
       my problem is if it's work product, arguably,
       Mr. Dulberg is entitled to those documents, and if
 15
       he chooses to disclose them, that's up to him.
 16
       I'm not -- unless there's something else I'm
17
 18
       missing, if Mr. Clinton or -- is it Ms. Williams?
 19
           MR. CLINTON: (Indiscernible.)
           THE COURT: Is it Ms. Williams?
 20
 21
           MS. WILLIAMS: Yes.
22
           MR. CLINTON: And we'll turn them over today.
 23
           MS. WILLIAMS: We'll turn them over today.
 24
           THE COURT: Okay. Mr. Talarico.
```

MR. TALARICO: Judge, your last order included a 1 2 limited waiver. It's not waiver for all things. 3 It's waiver -- waiver for the responses to the 4 subpoena. THE COURT: Yeah. Okay. But are you saying 5 that that should or should not include work product? 6 7 I don't have a problem either way, but, really, it's 8 your call. 9 MR. TALARICO: Judge, I believe work product 10 and -- and attorney/client privilege, yes. He's 11 including all of that --12 THE COURT: All right. So --13 MR. TALARICO: -- in response to the subpoena. 14 THE COURT: -- you want -- and I'm not trying to 15 box you in, but I just want to understand. 16 You want them to produce the entire file, 17 including their work product, and you are waiving 18 any claim of privilege related to work -- to 19 attorney/client insofar as those records are 20 concerned. Is that accurate, or did I miss 21 something? 22 MR. TALARICO: Again, your Honor, Mr. Dulberg is 23 specifically waiving the attorney/client -- client 24 privilege for documents that are in response to the

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subpoena served upon Mr. Clinton and Ms. Williams. 1 2 THE COURT: Okay. And that includes work 3 product? MR. TALARICO: Yes, it does. 4 THE COURT: All right. Problem -- I think, 5 problem solved. 6 Mr. Clinton or Ms. Williams, comment? 7 8 MR. CLINTON: We have no problem with that at 9 a11. 10 MS. WILLIAMS: I think we're (indiscernible). 11 THE COURT: Okay. So how quickly can you turn 12 those over? 13 MS. WILLIAMS: We've already produced them to your Honor, so we have them. So I will -- I can 14 e-mail them to both counsel --15 16 THE COURT: Yeah, you did. 17 MS. WILLIAMS: -- today. 18 THE COURT: All right. I do have that. 19 MS. WILLIAMS: (Indiscernible). 20 THE COURT: But I didn't really make a point of 21 looking through them too much, so -- because I'm not 22 ruling on privilege, so it was not necessary for me 23 to see the internal workings of the file. 24 That being said, Mr. Talarico, does that

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1 satisfy your concerns or interest? 2 MR. TALARICO: It does. 3 THE COURT: All right. And now -- so are you -do you have any objection to my vacating any orders 4 5 to compel or orders of compliance against Mr. Clinton and Ms. Williams? 6 7 MR. TALARICO: No, your Honor. That's the 8 appropriate move. 9 THE COURT: I'm going to ask that Mr. Clinton 10 and Ms. Williams send in the order memorializing 11 the -- that. If you can send it in to this 12 e-mail -- you can take --13 MS. WILLIAMS: Yes. MR. CLINTON: Thank you. We will do that. 14 15 MS. WILLIAMS: (Indiscernible.) THE COURT: And be sure to copy Mr. Talarico and 16 17 Mr. Flynn, if you have both of their e-mail 18 addresses. 19 MR. CLINTON: Of course. 20 THE COURT: Do you have Mr. Flynn's? 21 MR. CLINTON: We do. 22 MS. WILLIAMS: We do. 23 THE COURT: All right. I see Mr. Flynn raising 24 his pen. Yes.

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(Indiscernible) next question, 1 MR. FLYNN: 2 Judge. 3 THE COURT: Yeah. What is your question? 4 MR. FLYNN: Okay. My understanding, then, is 5 that these documents that are being produced that 6 were previously withheld are being produced to all 7 parties in this case. 8 THE COURT: I'm going to shift that to 9 Mr. Talarico. Is that your understanding? 10 MR. TALARICO: That is my understanding. 11 THE COURT: Okay. Does that satisfy your 12 concerns, Mr. Clinton and Ms. Williams? 13 MR. CLINTON: Yes, your Honor. 14 MS. WILLIAMS: Yes, your Honor. If the client is waiving --15 MR. TALARICO: We waived privilege. 16 MS. WILLIAMS: -- (indiscernible) to produce 17 18 to -- we will produce in compliance with the 19 subpoena, and we will submit those both to 20 Mr. Talarico and Mr. Flynn at the same time. 21 THE COURT: All right. For purposes of clarity, 22 what I am understanding just transpired is that 23 plaintiff's current attorney, Mr. Talarico, has 24 waived the attorney/client privilege and any claim

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of work product with respect to your file, and
  1
  2
       further, granted you permission to issue copies of
  3
       that subpoena response to defense counsel,
  4
       Mr. Flynn, at the same time.
                Any -- if there's anything incorrect with
  5
       what I said, tell me.
  6
           MR. TALARICO: If you're saying that I'm --
  7
       that Mr. Dulberg is waiving all attorney/client --
  8
           THE COURT: No.
  9
           MR. TALARICO: -- privilege -- just -- just in
 10
       response to the subpoena, that's all.
11
 12
           THE COURT: Exactly.
 13
           MR. TALARICO: Yes.
           THE COURT: Okay. Does that cover --
 14
           MR. FLYNN: Thank you, Judge.
 15
           THE COURT: All right. So send in your order
 16
 17
       and I -- I will vacate any order directed against
       you, because we're resolved, and as soon as I see it
 18
       I will sign the order.
 19
           MS. WILLIAMS: Thank you very much, your Honor.
 20
 21
           MR. CLINTON: Thank you, Judge.
         THE COURT: Okay. And you know what? Are you
22
 23
       in our e-mail system? Did they have to sign up --
           MS. WILLIAMS: I believe we are, your Honor,
 24
```

because we were parties to the -- we were counsel in 1 2 the case, so we should be. 3 THE COURT: Yeah. Forgive me. Okay. Then no 4 problem. I'll sign it whenever it shows up. 5 MR. CLINTON: Thank you, Judge. 6 MS. WILLIAMS: Thank you very much. 7 (WHEREUPON, Mr. Clinton and Ms. Williams disconnect.) 8 All right. Moving on. 9 THE COURT: 10 Mr. Flynn, we have your motion for summary judgment; am I correct? 11 12 MR. FLYNN: That's already been --THE COURT: Yeah, I do see that. 13 MR. FLYNN: Yeah. The briefing schedules are 14 15 set on that. There, actually, was another motion that relates to Ms. Williams and this Exhibit 12 16 17 from the Hans Mast deposition. I was kind of hoping 18 that she might stay on the line there. 19 I apologize. THE COURT: 20 MR. FLYNN: That's okay. THE COURT: I -- you know, Mr. Talarico, can you 21 22 call them back? If you have their number. 23 MR. TALARICO: I don't. 24 THE COURT: Or, Mr. Flynn, if you've got their

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```
number, one of you. Because, yeah, I screwed up
   1
  2
        there.
                       I'll see if I can. I think I've got
   3
           MR. FLYNN:
        a number here.
  4
           THE COURT: All right. Thank you.
   5
          MR. FLYNN: Judge, I was able to reach
   6
        Mr. Clinton and Ms. Williams. I think they're going
  7
  8
        to log back on.
           THE COURT: All right. As soon as I see them,
  9
        I'll let them in.
 10
           MR. FLYNN: Thank you.
 11
                           (WHEREUPON, Mr. Clinton and
 12
                           Ms. Williams reconnect.)
 13
                       There he is. All right. I
 14
           THE COURT:
        apologize. Mr. Flynn pointed out that I was dumb,
15
        and I let you go before we resolved one other
 16
17
        question.
                Mr. Flynn, I'll let you speak.
18
            MR. FLYNN: And for the record, I did --
 19
           THE COURT: And for the record --
 20
 21
            MR. FLYNN: -- not say that.
 22
         THE COURT: -- he implied.
                 So, Mr. Clinton -- Mr. Flynn, you had a
23
 24
        question for Mr. Clinton.
```

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MR. FLYNN: Well, for Ms. Williams. It's not necessarily a question, but I think that this next motion -- there's a motion to exclude the Hans Mast deposition. Ms. Williams was involved in that, noticed the deposition, took the deposition, was involved in the communications with the court reporter.

So I thought that if she could and would be willing to explain what happened. And, you know, it's my position that there's nothing nefarious about this deposition. It was taken at the beginning of the pandemic when lawyers were still trying to figure out how to use the Zoom deposition method. All objections to that manner were waived by both parties. The deposition was, again, noticed by the plaintiff, Mr. Dulberg's agents. The court reporter was hired by the plaintiff, his agents.

THE COURT: But your question for Ms. Williams is?

MR. FLYNN: If she could explain what happened with Exhibit 12. I think I know what -- and, again, there's been a 213(f)(3) opinion that was just disclosed a day or two ago. I think it's improper because --

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1 THE COURT: In this case? (Indiscernible). In this case. 2 MR. FLYNN: THE COURT: Oh, I don't (indiscernible). 4 MR. FLYNN: It was a document examiner who was 5 identified by the plaintiff. THE COURT: But that's a different issue, so I'm 6 7 going to cut you off. MR. FLYNN: No, it's not a different issue. 8 9 THE COURT: I want to cut -- I want to cut to 10 what my one question is. 11 Ms. Williams, what can you tell us about Exhibit 12? 12 13 MS. WILLIAMS: So -- so my understanding -- as I 14 recall, yes, it was the beginning of the pandemic. 15 We had Mr. Mast's deposition, I believe, scheduled, 16 I want to say, for March, and we canceled it because 17 it was March 2020, right when everything was -- was 18 starting, and it was canceled due to COVID concerns. 19 And -- and so we -- we opted to utilize the -- the 20 court's -- I think it was the Illinois Supreme Court that came out with the rules as to -- and I could be 21 22 incorrect, it could be each county court, but that 23 said you could do Zoom depositions. 24 So we noticed it up for a remote

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deposition, and we utilized a court reporter. I can't remember the court reporter's name. There are several e-mails about this with Mr. -- Mr. Flynn that -- that have been produced pursuant to the subpoena that we received. And my recollection is is that we took that deposition, and there were several difficulties with Mr. Mast's internet connection, and so we had come on and off, but we did get through the deposition.

Mr. Flynn had -- I had produced to

Mr. Flynn had -- I had produced to
Mr. Flynn, prior to the deposition, all of the
exhibits that I believed we would use. And then I
also, during the deposition, uploaded them into the
court reporting system so that the court reporter
would have them and mark them.

As to Exhibit 12, we had uploaded it into the system. I don't know that Mr. Mast could actually see those, so he may have used the paper copies that Mr. Flynn had.

And then after the deposition, the court reporter notified me that Exhibit 12, specifically, was -- they couldn't read it, and we needed to get them a copy. I believe there's e-mails to that effect, as well. If I'm recalling correctly, a

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1 number of the pages were blank. It was a larger 2 exhibit. I want to say it was around 27 pages, I 3 think, or 25 pages. So sometime after the deposition, we -- we 4 5 did provide the exhibit that was utilized in the 6 deposition to the court reporter, and at that time 7 they marked it and sent it back to everyone. 8 THE COURT: Okay, What was Exhibit 12 again? 9 MS. WILLIAMS: It was a series of cases. I 10 don't know that -- I just can't recall what all was asked about it, but I know there were -- it was --11 12 it was --13 THE COURT: All right. These would have --14 MS. WILLIAMS: -- copies of case law. 15 THE COURT: All right. 16 They were photocopies of the old MR. FLYNN: books, Judge, cases that were contained in Mast's 17 18 file. 19 THE COURT: Okay. 20 MR. FLYNN: And he was -- you know, they 21 have -- they're, obviously, not complete because 22 they -- placed on a printer, appeared like we used 23 to do in the old days. 24 THE COURT: Yes.

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1 MR. FLYNN: So the issue now, though, is that 2 the plaintiff knew --3 THE COURT: Hang on. Before -- before we get into argument, Mr. Talarico, is there anything --4 any questions you have, since we have Ms. Williams 5 here? 6 7 MR. TALARICO: Yes. Was the Tilsner case 8 included in -- in the blank Exhibit 12 you sent to 9 U.S. Legal, Barbara Schmidt? And was -- when you discussed with Mr. Flynn the failure of his -- or 10 Mr. Mast's internet, didn't he say, I can't see 11 12 these, I can only see their first one 13 (indiscernible), which was the Lagano (phonetic) 14 case? And wasn't there continued discussion by 15 Mr. Flynn that he didn't -- he didn't produce all of 16 the documents you sent on -- in hardcopy because he 17 wanted to save paper? 18 MS. WILLIAMS: So that's -- I guess that's a lot 19 of questions. So what --20 MR. TALARICO: It is. 21 MS. WILLIAMS: What -- what -- I cannot recall 22 what cases were included and weren't included at 23 this point. There -- there was an e-mail to 24 Mr. Flynn with the exhibit that is attached that I

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1 believe was produced in the subpoena. 2 So whatever that exhibit was is -- is what 3 I would have used. So I know there was, like, a 4 Laravo case or -- I remember the first case was like 5 Laravo or Lavajo, L-A-V-A-J-O, or something like that. 6 7 But right now, off the top of my head, I 8 don't remember what other cases were included. 9 MR. TALARICO: I'm talking about -- Judge, if I might, please? Excuse me. I'm sorry, 10 11 Ms. Williams. 12 There was -- what the reporter had was 13 What Mr. Flynn's client said was, I see the 14 Lagano (phonetic) one. So the Exhibit 12 that was 15 sent, like, a week or two after the deposition had Lagano, Troy, and the same exact Lagano case, and it 16 17 did not have the Tilsner case involved, and the 18 Tilsner case was very important. So it was an exact 19 duplication of one case and a second case. But this is -- Judge, it's not just the 20 21 Exhibit 12. The entire deposition --22 THE COURT: Well, are you asking a question 23 about Exhibit 12? Because if we're done asking 24 questions, I'm gonna let her go.

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MR. TALARICO: Okay. Yep. I'm done. 1 THE COURT: Okay. Mr. Flynn, anything? 2 3 MR. FLYNN: Yes, Judge. So, again, this -- this 4 213(f)(3) report that was just produced --5 THE COURT: Well, do we need the Clinton --Mr. Clinton and Ms. Williams for this? 6 7 MR. FLYNN: Yes. I'm getting there. 8 THE COURT: Okay. Sorry. MR. FLYNN: So if you can just indulge me for a 9 10 moment. 11 So the expert document reviewer is of the 12 opinion that the exhibit sticker on Exhibit 12 did 13 not come from the same batch as the other exhibit 14 stickers. The defense's position is, so what? You 15 know, these kind of things happen, I'm sure, with 16 17 the court reporter, and if it was marked later 18 because it was not sent in until later, that makes 19 perfect sense. 20 But this is -- this is -- the argument 21 that's being made is that -- and there's no other 22 conclusion, it's just that it didn't come from the 23 same batch. So, again, it's the so-what position on 24 our part.

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1 But because it's being used to exclude the 2 deposition, it's our position that the deposition 3 was fine -- finally concluded to the satisfaction of plaintiff's counsel, that there was never any 4 5 indication that they needed a follow-up deposition 6 or a supplemental deposition or a Session 2. 7 So in our view, any objection to that 8 deposition has been waived. And, again, there was nothing nefarious. Ms. Williams was nothing but 9 10 professional and courteous during her tenure in this 11 case. This motion -- this conspiracy that's been 12 13 presented and caused the defendant to be caught in 14 the crossfire between the plaintiff and his former 15 attorney is through no fault of theirs, and should 16 not continue. THE COURT: All right. Mr. Talarico, you can 17 18 respond. 19 MR. TALARICO: Two points, Judge. First of all, 20 what's very obvious -- the label on Exhibit 12 21 doesn't even have the deponent's name spelled right. 22 THE COURT: Okay. But what does -- what impact 23 does that have? MR. TALARICO: What impact is that it was not 24

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1 done at the same time by the same people. It was 2 never produced in time. Secondarily, about Mr. Flynn's allegation 3 4 of some type of conspiracy, if he wants to push 5 that, I think I have evidence that, if necessary, 6 that -- that Mr. Flynn and Ms. Williams have 7 consulted at times. THE COURT: I'm sorry? Have what? 8 9 MR. TALARICO: Consulted. THE COURT: Okay. Frankly, Counsel, if you're 10 11 suggesting that either one of them has engaged in unethical behavior, I'm sure you're aware of the 12 13 Himmel decision, and --14 MR. TALARICO: I am. 15 THE COURT: -- it's not something you can threaten; you have to do. 16 17 MR. TALARICO: And I will. THE COURT: Don't make that threat and not 18 19 follow through with it if, in fact, there's anything 20 to it. You don't -- you don't have an option. And 21 you put a burden on me, as well, when you start 22 going down this road. 23 So you've got to make a decision, and --24 MR. TALARICO: (Indiscernible.)

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1 THE COURT: -- I'm not going to hear -- I'm not going to hear suggestions of unethical behavior. 2 3 I mean, you're either going to pursue it or 4 we're not even going to entertain that, so 5 please continue. MR. TALARICO: Well, Judge, I will -- I will not 6 7 pursue it if Mr. Flynn (indiscernible) --THE COURT: It's not an issue. You don't get to 8 9 choose. 10 MR. TALARICO: I'm aware. THE COURT: I'm not -- I'm not telling you that 11 12 you have to do one thing or the other. But the 13 Himmel decision removes discretion from the 14 equation. You have to act, if you are aware. 15 So I'm not telling you that -- that you've got to file. You know what you have. But what I'm 16 17 saying is, if you're going to make an argument 18 suggesting that other attorneys engaged in unethical 19 behavior, I'm not going to listen to it unless 20 you're also making a -- making a complaint with the 21 ARDC. 22 So I'm not interested in attorneys casting 23 aspersions on each other and then not following 24 through, if that makes sense. Following through

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1 with the ARDC. 2 That being said, what -- what is your 3 response on the -- do we have to keep Ms. Williams 4 and Mr. Clinton here? Does anybody else need them? 5 MR. TALARICO: I have no need for them. MR. FLYNN: I don't. Just in closing, with 6 7 respect to Ms. Williams, again, I was just provided 8 these documents by Ms. Williams and/or her court 9 reporter and then passed them along. I had nothing 10 to do with -- with anything other than I did print 11 out certain of the exhibits for ease of use at the 12 deposition when I went to Hans Mast's office. And 13 because I was working from home at the time, I 14 printed a few of them out, not all of them, due to a limited amount of printer paper. And that is my 15 16 total involvement in Exhibit 12. 17 THE COURT: Okay, Ms. Williams and Mr. Clinton, 18 do you want to stay? You can, until we resolve the 19 issue, since we're addressing you guys. What do you 20 want to do? 21 MS. WILLIAMS: Your Honor, if you wish for us to 22 stay, we're happy to stay. 23 MR. CLINTON: I think we can stay. 24 THE COURT: All right. I was giving you the

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1 option to leave, if you wanted. 2 All right. So, Mr. Talarico, we're moving 3 on to your motion to -- to bar; am I correct? 4 MR. TALARICO: Yes, your Honor. Within the 5 motion, I asked to amend the motion after I get the 6 responses from Clinton and Williams. They may be 7 appropriate to put into the motion. I filed a 8 motion. The motion can be -- actually, Mr. Flynn 9 just responded to the motion without responding --10 without responding. I don't know how you want to look at it. 11 12 If that was his response, I'll file a reply to what he said. But I still -- I have asked, from the 13 14 beginning, to be allowed to amend that motion once I 15 find out what Mr. Clinton and Ms. Flynn have -- I'm sorry, Ms. Williams. Forgive me. 16 17 THE COURT: All right. Can you -- are you 18 asking me for leave to supplement your motion? 19 MR. TALARICO: Not -- Judge -- yes. If you want 20 me to make a determination now, yes. 21 THE COURT: All right. And we haven't proceeded to hearing. 22 23 Mr. Flynn, have you filed a response to the 24 motion? I'm not seeing it.

1 Judge, I have not. And my -- my MR. FLYNN: 2 point is that there hasn't even been a prima facie 3 showing of any prejudice to the plaintiff with 4 respect to his deposition. For my client to again 5 have to file a written response to a brief of this 6 nature --7 THE COURT: You don't really have -- I don't know that -- I mean, it's up to you as to whether or 8 9 not you want to file a written response. I've heard 10 your argument. Plaintiff -- more importantly, 11 plaintiff's counsel has heard your argument, so 12 there's -- there's not going to be any prejudice if 13 he simply files his reply or if I allow amendment 14 and then we proceed to hearing. I don't think it's 15 that complicated an issue. I don't either. 16 MR. FLYNN: THE COURT: So I don't know that we need further 17 18 briefing. 19 What do you want to do, Mr. Flynn, because 20 the ball will be in your court once he files his 21 amendment. 22 MR. FLYNN: I'd like to examine whatever the

amendment is and then, if necessary, request, I

guess, what will be called a surreply. However, I'm

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23

24

| 1 | doubtful that I would need to file it. |
|----|--|
| 2 | THE COURT: Mr. Talarico, when can you file |
| 3 | your your brief? |
| 4 | MR. TALARICO: Well, after I get and review the |
| 5 | response from Ms. Williams and Mr. Clinton, two |
| 6 | weeks. |
| 7 | THE COURT: Mr. Clinton, how quickly can you get |
| 8 | him the documents? I know you said it earlier. |
| 9 | You're on mute. |
| 10 | MR. CLINTON: My apology, again. We can get |
| 11 | them to him today. |
| 12 | THE COURT: Okay. So I think two weeks from |
| 13 | today, ultimately, is plenty of time. That would |
| 14 | give plaintiff until |
| 15 | MR. TALARICO: (Indiscernible.) |
| 16 | THE COURT: November 18th to file his amended |
| 17 | response or amended motion. And then why don't |
| 18 | we and then I'm out. |
| 19 | So I'll give plaintiff until the 21st and |
| 20 | then we'll come back on November 28th, and then, |
| 21 | Mr. Flynn, at that point, you can tell me what you |
| 22 | want to do. |
| 23 | MR. FLYNN: Thank you, your Honor. And, again, |
| 24 | I know I understand this is not on the table but |

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1 it's a housekeeping issue with respect to this f(3) 2 opinion. This (f)3 opinion, the document examiner 3 was disclosed as a trial witness relative to this 4 Exhibit 12. I don't think that's proper --5 THE COURT: Yeah, I -- you know --MR. FLYNN: And then he called it a mini trial 6 7 but not trial. THE COURT: The -- I -- I haven't seen the 8 report, but if the expert is going to render 9 10 opinions on case law, copies of case law that were 11 allegedly tendered by former counsel to Mr. Dulberg, 12 I don't see how that comes up in the trial of the 13 matter. He's really only opining on the 14 MR. FLYNN: 15 authenticity of the exhibit sticker and whether it 16 came from the same batch as the other stickers in 17 that deposition. So it has nothing to do with the standard 18 19 of care in this case or any --20 THE COURT: I don't know. I'll let Mr. Talarico 21 tell me otherwise. Not now, but I -- there's a 22 couple of thresholds. I don't know. I haven't seen 23 exactly what he says, and I -- I suspect we could 24 even stipulate that the sticker is different without

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1 a whole lot of -- a whole lot of effort or prejudice 2 to anybody. Because based on what you've told me, 3 it likely is a different sticker because of the way 4 the documents were transferred back and forth and 5 the problem at the deposition. That all being said, I'm -- I'm going to 6 be -- frankly, Mr. Talarico, I'm going to be 7 8 hard-pressed, but I need to see the report before I 9 can say anything further, so I'll quit speculating. 10 Anything else that we've got to deal with 11 today? No? 12 MR. TALARICO: No. THE COURT: All right. Mr. Talarico or 13 14 Mr. Flynn, can you send in the order memorializing 15 what we're doing on your case? And then, of course, 16 Mr. Clinton and Ms. Williams will send in the order 17 that is vacating any -- any order compelling them to 18 do anything. 19 MR. FLYNN: Judge, I actually have a meeting 20 with a client in about ten minutes. If Mr. Talarico 21 wouldn't mind preparing the order this time, I'd 22 appreciate it. 23 MR. TALARICO: I will. 24 THE COURT: Okay. All right. Then we'll see

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| 1 | you on the 28th. |
|----|---|
| 2 | THE CLERK: What time? |
| 3 | MR. FLYNN: Thank you Mr. Clinton and |
| 4 | Ms. Williams for your time. |
| 5 | MR. TALARICO: Thank you, your Honor. |
| 6 | THE CLERK: What time on the |
| 7 | THE COURT: You know what? Hang on. Hang on. |
| 8 | Make it 9:15, not 8:45. At 9:15. |
| 9 | MR. FLYNN: I'm sorry. On what date again? |
| 10 | THE COURT: On November 28th at 9:15. |
| 11 | MR. TALARICO: Thank you, Judge. |
| 12 | MR. FLYNN: You know, Judge, we talked last time |
| 13 | about my knee replacement. Is there any way we |
| 14 | could bump that back one more week? |
| 15 | THE COURT: Wait. Yeah, I can do it the |
| 16 | MR. FLYNN: Although, I hope for a speedy |
| 17 | recovery. The surgery is on the 17th and |
| 18 | THE COURT: Sure. Sure. If you want to come |
| 19 | what's the next week? December 5th? |
| 20 | MR. FLYNN: I'm very hopeful that that will |
| 21 | work. |
| 22 | THE COURT: All right. Good luck. |
| 23 | MR. FLYNN: Thank you. |
| 24 | THE COURT: All right. December 5th at 9:15. |
| | |

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| 1 | MR. TALARICO: Your Honor, what |
|-------|--------------------------------------|
| 2 | THE COURT: Yes? |
| 2 3 4 | MR. TALARICO: December 5th? |
| 4 | THE COURT: Yeah. |
| 5 | MR. TALARICO: Thank you, your Honor. |
| 6 | THE COURT: All right. Thank you. |
| 6 | Disconnecting. |
| 8 | (Which were all the proceedings |
| 9 | had in the above-entitled cause |
| 0 | this date.) |
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| JNTY OF McHENRY) |
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| I, KATHLEEN STROMBACH, an official |
| urt Reporter for the Circuit Court of McHenry |
| unty, Twenty-Second Judicial Circuit of Illinois, |
| anscribed the electronic recording of the |
| oceeding in the above-entitled cause to the best |
| my ability and based on the quality of the |
| cording, and I hereby certify the foregoing to be |
| rue and accurate transcript of said electronic |
| ording. |
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| Kathleen Strombach Kathleen Strombach |
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** FILED ** Env: 20734110 McHenry County, Illinois 2017LA000377 Date: 12/19/2022 3:04 PM Katherine M. Keefe

Clerk of the Circuit Court

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. |) |

PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J.

POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED

MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST TO PLAINTIFF'S

MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN

VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS

DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS

COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY

M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED

ORDER JUNE 4, 2020 and to GRANT LEAVE TO TAKE THE DISCOVERY

DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A.

Talarico, and for his REPLY to Defendants' RESPONSE to Plaintiff's Motion To Exclude the Discovery Deposition of Defendant Hans Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders states as follows:

EXHIBIT 10 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

- 1) Defendants misstate, mischaracterize, misread, or do not understand Plaintiff's Motion to Exclude the Deposition of Hans Mast taken in violation of Supreme Court Rules and Supreme Court Orders.
- 1a) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits [emphasis added] from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)
- 1b) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)
- 1c) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)
- 1d) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)
- 1e)) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https://www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached to Plaintiff's 2nd Amended Motion To Exclude)

- 1f) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 did not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans **Mist** not Hans Mast).
- 1g) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes."
- 1h) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.
- 1i) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached to Plaintiff's 2nd Amended Motion To Exclude)
- 1j) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans Mist exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received apart from U.S. Legal Support by both his

office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached to Plaintiff's 2nd Amended Motion To Exclude)

Therefore the first violation was of Illinois Supreme Court Rule 206(h)(2) because Exhibit 12 that was to be presented to the deponent by any party at the deposition was not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, nor were the deposition participants able to view the exhibits in real time during the deposition.

- 1k) Contrary to Defendants inaccurate allegation they contributed mightily to the problems experienced in this remote deposition because in no way was the failure of Defendants' electric equipment (internet?) during the deposition or Defendants' attorney's failure to print the few exhibits he had received before the deposition (to save paper?) Plaintiff's fault. (emphasis added)
- 1I) The Deposition of Hans Mast was done remotely at the suggestion of Defendants' Attorney because on April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached to

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Plaintiff's 2nd Amended Motion To Exclude)

1m) On June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **may** [emphasis added] use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **could be additions** [emphasis added] and there **may be subtractions** [emphasis added]. Additionally she wrote "...and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached to Plaintiff's 2nd Amended Motion To Exclude)

1n) At the time the Deposition of Hans Mast was taken Illinois Supreme Court Rule

206(h)(2) was amended by **SUPREME COURT ORDER M.R.30370** titled In re: Illinois

Courts Response to Covid-19 Emergency/Impact On Discovery as follows:

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, <u>unless the deposition participants are able to view the exhibits in real time during the deposition.</u>

(Please note that the underline emphasis was so written by the Illinois Supreme Court)

(Please see Plaintiff's Exhibit #5 and exhibit #6 attached to Plaintiff's 2nd Amended Motion To Exclude)

1o) The Committee Comments to Illinois Supreme Court Rule Paragraph (h) (Revised October 22, 1999) state "The parties may agree pursuant to Rule 201(i) to amend or waive any conditions of paragraph (h)."

1p) Defendants have not provided any proof, whether written or oral, of any waiver or amendment.

Therefore the second violation was of Illinois Supreme Court Rule 206(h)(2) and Illinois Supreme Court **Order** was because the 15 Exhibits that were to be presented to the deponent by any party at the deposition were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, nor were the deposition participants able to view many of the exhibits in real time during the deposition.

- 2. Plaintiff's "late filing" of his 2nd Amended Motion to Exclude is a typical diversion of Defendants' and best described by quoting the play "Macbeth' Act 5, scene 5, lines 26-28 by Shakespeare "...It is a tale told..., full of sound and fury, signifying nothing." because the facts are as follows:
- 2a) Plaintiff, by Court Order of November 4, 2022 was granted up to and including November 21, 2022 to file and serve his Amended Motion to Exclude the Discovery Deposition of Defendant Hans Mast.
- 2b) Plaintiff filed and served his Amended Motion to Exclude the Discovery Deposition of Defendant Hans Mast on Defendants' Counsel on November 21, 2022 with all 17 Exhibits individually sent and titled Exhibits 1 through Exhibit 17. The same Amended Motion to exclude the Deposition of Defendant Hans Mast was filed, served, and accepted by the Circuit Clerk of McHenry County also on November 21, 2021. Therefore Plaintiff had complied with the November 4, 2022 order.
- 2c) Upon review of the Circuit Clerks filing Plaintiff's Attorney noticed that the last page of the filing (Exhibit 17) did not reflect the Exhibit Stamp and number(although the email sent to Defendants' Counsel was titled Exhibit 17).

2d) Rather than waste this Courts' valuable time in motion practice Plaintiff refiled the motion with the only difference being the Exhibit 17 label was visible. Plaintiff titled it Plaintiff 2nd Amended Motion to Exclude the Deposition of Defendant Hans Mast. The Circuit Court Clerk accepted said filing on November 23, 2022.

2e) Defendants' counsel was made aware of the missing Exhibit 17 label on the last page of the initial timey filing but was out of his office at the time on personal business.

2d) In Defendants' Response to Plaintiff's 2nd Amended Motion to Exclude the Deposition of Defendant Hans Mast page 1 last sentence through page 2 first paragraph Defendants' Counsel states "Defendants hereby adopt their (oral) arguments contained in the transcript from the 11-4-22 hearing (Exhibit A) and submit this additional [emphasis added] response in opposition to Plaintiff's motion"

Therefore both Plaintiff and Defendants had "two bites of the apple", the Plaintiff's was a technical correction while Defendants was substantive.

3) Defendants complain that Plaintiff filed the Motion on October 23, 2022 but

Defendants fail to state that what triggered this motion was an appropriate investigation into the facts based upon multiple subpoenas served upon persons involved after

Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition

without any exhibits [emphasis added] from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

3a) Plaintiffs rely not only upon his investigation triggered by Defendants attempting to use the Deposition without the 15 exhibits in April 2022 but also based upon Statute, Rules of Evidence, and case law.

3b) Plaintiff, pursuant to Illinois Rules of Evidence, Rule 201. **JUDICIAL NOTICE OF ADJUDICATIVE FACTS:**

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

Plaintiff requests that this Honorable Court take JUDICIAL NOTICE of the adjudicative fact that Discovery Depositions when attached to a motion for summary judgment are evidence.

3c) Plaintiff advances two Appellate Court Cases, one civil and one criminal to show that depositions attached to motions, and in fact attached to a motion for summary judgement are evidence.

"Initially, we note trial courts may entertain motions by defendants for summary judgment where the only evidence considered is plaintiff's own deposition testimony. (See e.g. Ralston v. Casanova (1984), 129 Ill.App.3d 1050, 85 Ill.Dec. 76, 473 N.E.2d 444.)"

Page 935

Austin v. St. Joseph Hosp., 187 Ill.App.3d 891, 543 N.E.2d 932, 135 Ill. Dec. 364 (Ill. App.

1989)

Page 649
[143 Ill.Dec. 714] The record contains only one item of testimonial evidence, a deposition of defendant Donald Gaydosh submitted to the court by the plaintiff in connection with its motion to reconsider the granting of the motion to dismiss.

Townsend v. Gaydosh, 554 N.E.2d 648, 197 Ill.App.3d 339, 143 Ill.Dec. 713 (Ill. App. 1990)

- 3d) Plaintiff relies upon Illinois Supreme Court Rule 211(c)(1) to timely challenge the admissibility of the testimonial evidence of the Discovery Deposition of Defendant Hans Mast as Defendants are now trying to get this evidence admitted as an exhibit offered in evidence as an exhibit attached to their Motion for Summary Judgment.
- 3e) Dulberg properly seeks to exclude the discovery Deposition of Defendant Hans

 Mast based upon the Illinois Constitution, Illinois Statutes, Illinois Supreme Court Rules,
 and the Orders of the Illinois Supreme Court which the Defendants have decided do not
 apply to them based upon absurd theories.
- 4) What is truly "absurd" is Defendants attempt to characterize the combined violations of Illinois Supreme Court Rules and Orders of all parties as nothing more than a series of inconsequential de minimis actions.
- 5) Defendants' fail to realize that they are not the Judge herein nor do they cite any rules, orders, cases etc. when they state "But he should be required to take a position as to who committed the alleged violation(s).

(Please see Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 2 number 5)

- 5a) Further replying, Plaintiff has continuously stated, and herein states again that the violations of Illinois Supreme Court Rules and Orders were committed by all parties involved.
- 6) Defendants' again fail to realize that they are not the Judge herein nor do they cite any rules, orders, cases etc. when they state "Paul Dulberg personally observed the discovery deposition of Hans Mast taken remotely (by Zoom) on June 25, 2020. If he had an objections to alleged irregularities with the deposition, **he had ample time to** [emphasis added] bring such issues to the attention of his counsel, Julia Williams, and to his current counsel who appeared on his behalf on October 23, 2020.

(Please see Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 number 6)

- 6a) First, Defendants fail to acknowledge that what triggered this motion was an appropriate investigation into the facts based upon multiple subpoenas served upon persons involved after Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition of Hans Mast without any exhibits [emphasis added] from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)
- 6b) Next, Plaintiff Motion to Exclude rests upon the laws of the State of Illinois as follows:

(735 ILCS 5/1-104) (from Ch. 110, par. 1-104)

Sec. 1-104. Power of courts to make rules. (a) The Supreme Court of this State has

power to make rules of pleading, practice and procedure for the circuit, Appellate and Supreme Courts supplementary to, but not inconsistent with the provisions of this Act, and to amend the same, for the purpose of making this Act effective for the convenient administration of justice, and otherwise simplifying judicial procedure, and power to make rules governing pleading, practice and procedure in small claims actions, including service of process in connection therewith. Unless otherwise indicated by the text, references in this Act to rules are to rules of the Supreme Court.

(735 ILCS 5/2-1003) (from Ch. 110, par. 2-1003)

Sec. 2-1003. Discovery and depositions.

- (a) Discovery, such as admissions of fact and of genuineness of documents, physical and mental examinations of parties and other persons, the taking of any depositions, and interrogatories, shall be in accordance with rules.

 [emphasis added]
- 6c) Additionally, in relation to when an objection to (testimonial) evidence can be made Plaintiff relies on Illinois Supreme Court Rule 211(c)(1) which states:
- (c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities.
- (1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of

the deponent or admissibility of testimony may be made when the testimony is offered in evidence. [emphasis added]

- 6d) Defendants are currently attempting to have the discovery deposition of Hans Mast admitted into evidence as an exhibit to Defendants' Motion for Summary Judgement and therefore the time for objecting is now.
- 7) Defendants again fail to realize that they are not the Judge herein when they state "Illinois Supreme Court Rule 211 governs this issue"

(Please see Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 number 7)

- 7a) Plaintiff does not deny that Illinois Supreme Court Rule 211 applies generally but Plaintiff states that the Illinois Constitution, other Illinois Statutes and Illinois Supreme Court Rules and their committee comments, Illinois Rules of Evidence Illinois case law and Illinois Supreme Court Orders apply specifically. Since Defendants have no relevant response to all the other, they want this Honorable Court to see only what they believe best supports their position while ignoring the other. Defendants' position can best be expressed as "Pay no attention to that man behind the curtain!" From: The Wizard of Oz.
- 8) Plaintiff does not deny that Illinois Supreme Court Rule 211(c)(2) applies generally requiring affirmative action or waiver without said affirmative action but it is "trumped" by Illinois Supreme Court Rule 206(h) Remote Electronic Means Depositions and specifically by Illinois Supreme Court Rule 206(h)(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time

prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

8a) The Committee Comments make it clear that waiver of those violations may be done by affirmative action. "Paragraph (h) ... The Parties may agree pursuant to rule 201(i) to amend or waive any conditions of paragraph (h)."

The following is Illinois Supreme Court Rule 201 (i) **Stipulations.** If the parties so stipulate, discovery may take place before any person, for any purpose, at any time or place, and in any manner.

- 8b) Defendants have not provided evidence of any affirmative action (stipulation) although they have had ample time to do so.
- 8c) Additionally, if this Honorable Court decides that Illinois Supreme Court Rules generally can be waived by inaction or positive action Plaintiff advances that Illinois Supreme Court Order M.R.30370 and Illinois Supreme Court Corrected Order M.R.30370 are both the "mirror image" of Illinois Supreme Court Rule 206(h)(2). (Please see Plaintiff's Exhibit 5 and Exhibit 6 attached to Plaintiff's Motion To Exclude)
- 8d) Although there are occasions where Illinois Supreme Court Rules may be waived, Defendants have not produced evidence that parties can waive ILLINOIS SUPREME COURT ORDERS.
- 9) Defendant again raises the issue of timeliness to which Plaintiff has already replied herein in great detail.
- 9a) Defendant then somewhat withdraws from the issue of timeliness, which the Plaintiff herein previously replied to, in order to again advance the position that Defendants did nothing wrong and all violations were caused "solely by Dulberg or his agents" to which Plaintiff has already replied to herein that Defendants' attorney was an integral part of the problems as it was his suggestion to do a remote deposition and Defendants equipment

and internet failures and Defendants' counsel's "saving paper" that caused the "lion's share" of the problems.

- 9b) Defendants thereafter launch into an axiomatic litany that is common when there are no true valid defenses, and without any proof, that "2) ...any irregularities were harmless, 3)...any alleged irregularities simply be given its weight by the finder of fact (if as to any fact issue), 4)...no remedy be ordered in Dulberg's favor, and 5) the court weigh any remedy in favor of defendants it sees fit to order under Rule 201 © (1)(2) and (3). (Please see DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF HANS MAST page 3 last sentence to page 4 first paragraph.
- 9c) Defendants confuse what is "a prayer for relief" with what is required to be "Responses" to Plaintiff's Motion To Exclude and as such Defendants' axiomatic litany should be stricken as nonresponsive.
- 10) In Defendants' Response #10 Defendants admit the violation of Illinois Supreme Court Rule(s), Order(s) and defendants to follow Committee Comments as stated in Plaintiff's Reply 8), 8a), 8b, 8c and 8d) herein above.
- 10a) Defendants Response is as follows: 10) In response to Dulberg's argument at paragraph A3.3 of his 2nd Amended Motion to Exclude relating to his exhibit 16 (Email from defendant's counsel George K. Flynn) Dulberg takes the position that there was no discussion of any errors or irregularities in the "just concluded deposition." **That is exactly right.** [emphasis added] Dulberg's counsel did not raise any issues or objections in response to the email. She was apparently satisfied with the outcome, despite some minor technical difficulties during the deposition. She never voiced any

suggestion that an additional session of Hans Mast's deposition was necessary or requested. Flynn didn't make any mention of it because any technical difficulties seemed inconsequential.

- 11) Defendants misstate the facts as Plaintiff has in hearings and status calls before this Honorable Court, in written Motions to Exclude and in this REPLY stated that the problems he complains of were caused by all parties.
- 11a) Contrary to Defendants allegation Plaintiff, from the time he was made aware of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits [emphasis added] from Defendants' Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file) the many problems in the Deposition of Hans Mast has stated the relief he seeks in the exclusion of Hans Mast discovery Deposition and the granting of his request to take the discovery deposition within a reasonable time.
- 12) The <u>Tilschner vs Spangler</u> Appellate Court certified slip ruling Dulberg provided as an exhibit in the Motion to Exclude the deposition of Hans Mast is a case that the Popovich Firm and Hans Mast personally appeared in, argued, and received a copy of from the Appellate Court.
- 12a) The <u>Tilschner vs Spangler</u> Appellate court certified slip ruling is file stamped May 6, 2011 and was finalized/re-certified in November 2011, 6 months after the certified slip ruling was made and became superseded by the finalized/re-certified ruling within the Appellate clerks file.
- 12b) The Tilschner vs Spangler Appellate Court slip ruling is a document that existed in

the public realm on file at the Clerk of the Appellate Court and does not need to be disclosed during discovery in any cause of action.

- 12c) The <u>Tilschner vs Spangler</u> certified slip ruling was superseded by the finalized/recertified ruling before Dulberg hired Mast on 12/1/2011.
- 12d) On November 20, 2013 at 7:26 AM Plaintiff emails Defendant Hans Mast the following message which has been given to Defendants in response to discovery requests "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..." (Please see Plaintiff's exhibit A attached)
- 12e) On November 20, 2013 Defendant Hans Mast admits to the above referenced meeting by (internal) Memorandum that was given to Plaintiff in response to discovery requests. (Please see Plaintiff's Exhibit B attached)
- 12f) On November 20, 2013, Plaintiff, and his friend (brother) Tom Kost met with Defendant Hans Mast to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case.
- 12g) Tom Kost kept a rough set of handwritten notes of the November 20, 2013 meeting with Defendant Hans Mast. The handwritten notes were given to Defendants in response to discovery requests. (Please see Plaintiff's exhibit C attached)
- 12h) Tom Kost's handwritten notes are as follows:

statement of torts sect 318 not applicable in Illinois agent vs. contractor

12i) Plaintiff requests that pursuant to Illinois Rules of Evidence, Rule 201. **JUDICIAL**NOTICE OF ADJUDICATIVE FACTS:

That any reference made by Plaintiff Paul Dulberg, by Tom Kost or Defendant Hans Mast to Restatement (Second) of Torts Section 318 impliedly references <u>Tilschner v. Spangler</u> because up to and including the day of filing this Reply the major search engines available for the legal profession searching within Illinois outcomes reflect <u>Tilschner v. Spangler</u> as the number one result.

- 12j) Plaintiff requests that this Honorable Court take JUDICIAL NOTICE of the adjudicative fact that the references to Restatement (Second) of Torts Section 318 impliedly references <u>Tilschner v. Spangler</u>.
- 12k) Plaintiff could not obtain the <u>Tilschner v. Spangler</u> slip opinion dated May 6, 2011 on November 20, 2013 without the aid of Defendant Hans Mast who appeared in the matter.
- 12I) Plaintiff was questioned in his deposition about the "friend" at the November 20,
 2013 meeting with Mast. Plaintiff Identified the "Friend" as his brother Tom Kost.
 12m) Dulberg did turn over the handwritten notes taken during the November 20, 2013 meeting with Tom Kost and Defendant Hans Mast. (Please see Plaintiff's exhibit C attached)
- 12n) Dulberg did not answer discovery questions about <u>Tilschner vs Spangler</u> because Dulberg was not asked about <u>Tilschner vs Spangler</u>.
- 12o) It was Mast's equipment problems and Defendants' Counsel saving of paper and ink that was the cause of the breakdown during the discovery deposition of Hans Mast and why Mast only had the "Lajato" case when questioned regarding exhibit 12.

Wherefore, Plaintiff Paul Dulberg prays that this Honorable Court finds for Plaintiff and orders that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff's request to take the deposition of Defendant Hans Mast is granted and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

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Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

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 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.

Dulberg 001515

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

Dulberg 001516

MEMORANDUM

TO:

File

FROM:

Hans

DATE:November 20, 2013

SUBJECT: PAUL DULBERG

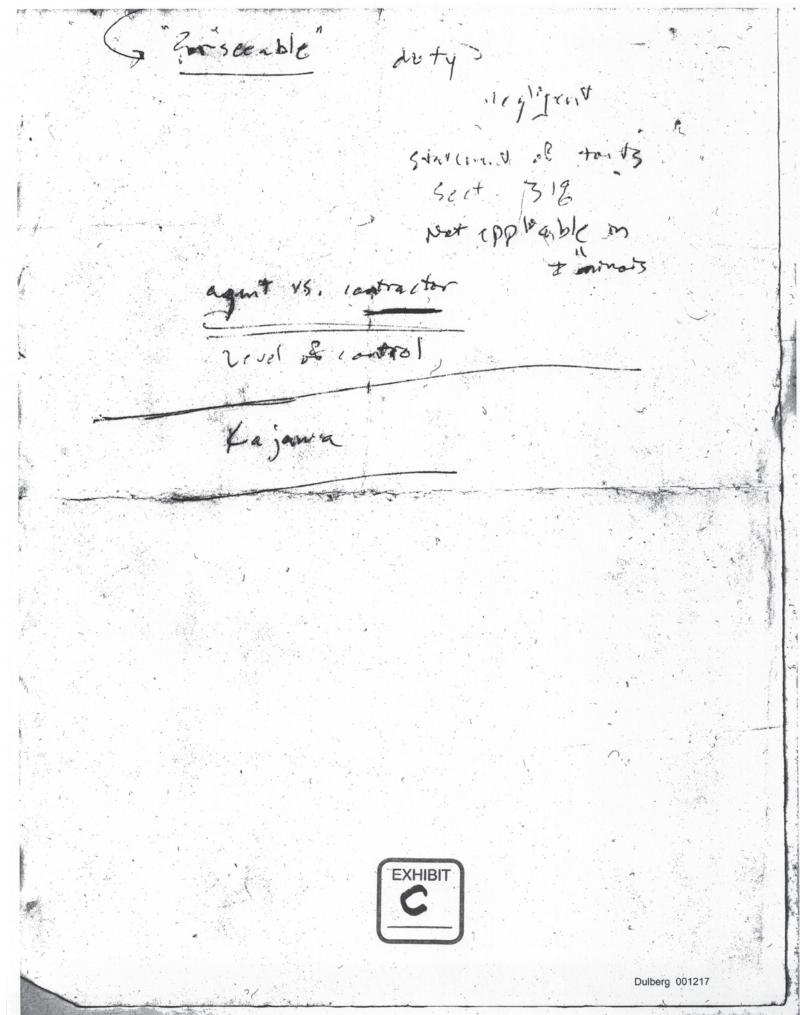
On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's 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





Date: 9/27/2022 3:18 PM Katherine M. Keefe Clerk of the Circuit Court

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1
      STATE OF ILLINOIS
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 3
      COUNTY OF McHENRY
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              IN THE TWENTY-SECOND JUDICIAL CIRCUIT
                     McHENRY COUNTY, ILLINOIS
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 6
      PAUL DULBERG.
 7
                     Plaintiff,
 8
                                            No. 17 LA 377
          VS.
      THE LAW OFFICES OF THOMAS J.
 9
10
      POPOVICH, P.C., and HANS MAST,
11
                     Defendants.
12
               ELECTRONICALLY RECORDED REPORT OF
13
      PROCEEDINGS had in the above-entitled cause before
14
      The Honorable THOMAS A. MEYER, Judge of said Court
      of McHenry County, Illinois, on the 16th day of
15
16
      September, 2022, at the McHenry County Government
17
      Center, Woodstock, Illinois.
          APPEARANCES:
18
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, (via Zoom)
                     On behalf of the Defendants.
24
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EXHIBIT 11 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

| 1 | THE COURT: Now, moving on to Dulberg |
|----|--|
| 2 | versus Forgive me for not remembering. Dulberg |
| 3 | versus Mast. |
| 4 | Plaintiff's counsel, if you can identify |
| 5 | yourself? |
| 6 | MR. TALARICO: Good morning, Judge. My name is |
| 7 | Alphonse Talarico for the plaintiff. |
| 8 | THE COURT: Okay. And defendant? |
| 9 | MR. FLYNN: Good morning, your Honor. George |
| 10 | Flynn for defendants. |
| 11 | THE COURT: All right. We have a What's |
| 12 | going on? Let me just put it that way. |
| 13 | MR. TALARICO: You're right. What is going on? |
| 14 | Okay. The last time we were up, you gave me |
| 15 | permission to subpoena the records and the |
| 16 | deposition of Hans Mast, especially Exhibit 12, |
| 17 | which I've been challenging as fraudulent. |
| 18 | Served the subpoena on both Ms. Williams |
| 19 | and Mr. Clinton. Those are two people that handled |
| 20 | the case for the Clinton Law Firm. |
| 21 | I got The day before they were supposed |
| 22 | to respond, I called to try to ask if, you know, |
| 23 | they're going to respond. They said yes. They sent |
| 24 | me some documents, but other documents, they claim |

that they are not all that they want -- that they could respond to and were not going to respond.

They won't give -- They're not in compliance. They won't give me an affidavit of completion, et cetera.

As a courtesy to other -- to two members of the bar, I said, Okay, look, I'll extend this. Can you consider this and do this?

So I -- I sent them a notice that I changed the compliance date to October 6th. The earlier compliance date was September 22nd. But every indication in writing is if I -- if I do a motion to compel, they're going to claim attorney-client privilege and work product.

THE COURT: Well, they've got to do something. My interpretation of the law is if you're not going to comply with the subpoena, your options are -- your only option, then, is to file an objection. You can't just refuse.

The ball is in their court. They've done nothing. And you may want to pass that information on to them that unless or until I see something filed on their behalf objecting to the scope of your subpoena, I assume it's appropriate and should be complied with. If you want to do a rule, do a rule,

and I'm fine. But they're going to have to do 1 2 something. They can't just say, No, we're not 3 gonna. 4 MR. TALARICO: That is, so far, what I've 5 gotten, but I will pass that along, your Honor. 6 THE COURT: All right. Yeah. I expect if 7 they're not going to give full compliance -- and based on what you're telling me they're 8 acknowledging it's not full compliance -- if they 9 10 are not going to give you full compliance, they need 11 to come to court. 12 I'll pass that along. MR. TALARICO: 13 THE COURT: Either voluntarily or involuntarily. 14 It's their call. 15 THE COURT: All right. Anything else? 16 MR. FLYNN: Judge, so yesterday we filed our summary judgment motion on the statute of 17 18 limitations issue. You may recall we discussed that 19 we believe there were multiple grounds for summary 20 judgment, but they're separate grounds and it made 21 sense to separate those issues. 22 This record relies mainly on the testimony 23 in this instant malpractice case; whereas, some of the other grounds are more geared toward the 24

underlying case.

THE COURT: All right.

MR. FLYNN: Number one, whether there could have even been liability on the part of the property owners; and secondly, I believe, which dovetails with that, would be the attorney judgment -- attorney immunity doctrine, essentially.

So those (indiscernible) all relied on facts regarding the accident itself that would have taken, you know, additional five to ten pages of facts that are -- So we'd like to do that separately. In fact, we might wait until if and when expert discovery is completed, but -- I'm going to have some more thoughts, but I think we have plenty to chew on now.

As far as the Exhibit 12 from the Hans Mast deposition, I have forwarded a copy of that to counsel. I don't frankly understand what the issue is. I was there for the deposition. Perhaps, at some point, if some motion could clarify what the problem is, but I just don't understand it, and hopefully won't delay the issue -- delay the summary judgment briefing.

THE COURT: I don't have any reason to believe

it does, but if plaintiff wants to bring that to my 1 attention, I'll listen. 2 MR. TALARICO: Judge, if I might, as to 3 4 Exhibit 12 in the deposition, I've already drafted 5 the first part of a motion to exclude the 6 deposition, and it's based on Supreme Court Rule 7 206(h)(2). This is not before the Court yet, but I'm giving you some idea of where I'm going. 8 9 THE COURT: All right. 10 MR. TALARICO: 206(h)(2), and orders of the 11 Supreme Court MR30370 and MR303 -- twice amended. 12 It was amended. So two orders, plus the fact that 13 the exhibit, in any form, was not at the deposition 14 and not shown. THE COURT: Mr. Flynn, for you, is the exhibit 15 16 and/or deposition relevant to your motion? 17 MR. FLYNN: It is. This is the deposition of my 18 client, Hans Mast. 19 All right. THE COURT: 20 MR. FLYNN: The attorney that handled the 21 underlying case for the Popovich firm. I don't know 22 that Exhibit 12, in particular, has any bearing on 23 the motion. The deposition, overall, does and it 24 will also effect the future motion for summary

1 judgment if that ever becomes necessary. THE COURT: All right. Until I see the motion, 2 both motions, I can't really determine to what 3 4 extent one is going to impact the other. So I'll 5 wait and see and I'll -- Because summary judgment 6 isn't in the file yet, and --7 MR. TALARICO: I haven't got notice either. 8 THE COURT: Okay. MR. FLYNN: Counsel, my secretary sent a drop 9 10 box link to your e-mail address yesterday. So 11 you're aware of it. 12 MR. TALARICO: I'm aware of it. I didn't know 13 you noticed -- I haven't gotten notice that you put 14 it on today's call because I got it yesterday, and 15 all I got was the document. I don't deny that, Mr. Flynn, of course I did. All I'm saying is it 16 17 wasn't put on the Judge's call, and I didn't know 18 that. So --19 THE COURT: I'm going to put, on my motion --20 because here's what I want to do. Your compliance 21 date on the subpoena, the second one -- I think you 22 said October 6th? 23 MR. TALARICO: October 6th, yes. 24 THE COURT: So why don't we come back on the 7th

| 1 | for status of compliance and status on the motion |
|----|---|
| 2 | for summary judgment, at which time we'll also, |
| 3 | perhaps, address the motion you intend to file. |
| 4 | Then I'll have an opportunity to look at them and |
| 5 | maybe we'll have compliance by that date. But |
| 6 | they're They've got to do something. They can't |
| 7 | just say, No, we're excused. They've got to come to |
| 8 | court and say, We're protected by attorney-client |
| 9 | privilege, so this is all the compliance we need to |
| 10 | give. They don't get to call those shots. |
| 11 | That being said, let's put it on the call |
| 12 | for 9:30. Let's say 9:45, sorry, on the 7th. |
| 13 | Who wants to send me the order? |
| 14 | MR. FLYNN: Well, Judge, I'm happy to send it. |
| 15 | Will a briefing schedule be entered today or not |
| 16 | until |
| 17 | THE COURT: He doesn't have the motion. It's |
| 18 | not noticed up today. I was reluctant I can do |
| 19 | it, if you're agreeable, but I was (indiscernible) |
| 20 | Mr. Talarico's comments that he would be objecting. |
| 21 | Mr. Talarico, what do you want to do? |
| 22 | MR. TALARICO: I would object because, your |
| 23 | Honor, first, it's not on the call, and second, I |
| 24 | want to see what's going to happen with the |
| | |

| 1 | compliance, if there's going to be compliance. |
|----|---|
| 2 | Because then my motion to strike the deposition, |
| 3 | which is part of his summary judgment motion, would |
| 4 | be have to be |
| 5 | THE COURT: I'll take a look at it. I'm not |
| 6 | going to enter a briefing schedule. I want to take |
| 7 | a look at both motions to determine if we can |
| 8 | proceed with the summary judgment or if I've got to |
| 9 | resolve the motion to strike first. |
| 10 | MR. TALARICO: Okay. Thank you, Judge. |
| 11 | MR. FLYNN: So the compliance date of the |
| 12 | subpoena was October 6th? I just I hate to delay |
| 13 | this any further. If there's going to be a motion, |
| 14 | I would like to see it on file. Fact discovery has |
| 15 | been closed for some time. |
| 16 | THE COURT: Yeah. You mean the motion to strike |
| 17 | the deposition? |
| 18 | MR. FLYNN: Right. Right now it's just a |
| 19 | thought. There's no motion on file. The fact |
| 20 | discovery has been closed |
| 21 | THE COURT: I got the idea it was about to be |
| 22 | filed, but maybe that was an incorrect assumption. |
| 23 | Mr. Talarico? |
| 24 | MR. TALARICO: I'm sorry? |
| | |

| 1 | THE COURT: When will you file your motion? | | | |
|----|--|--|--|--|
| 2 | MR. TALARICO: When? If I could have a week | | | |
| 3 | after the 6th when I know I'll file my motion | | | |
| 4 | within a week after | | | |
| 5 | THE COURT: You're filing a motion to strike the | | | |
| 6 | deposition, and I I didn't know that was | | | |
| 7 | dependent on compliance. How is it dependent on | | | |
| 8 | compliance? | | | |
| 9 | MR. TALARICO: That's the I don't know what | | | |
| 10 | information I'm going to get from them regarding the | | | |
| 11 | deposition. | | | |
| 12 | THE COURT: Okay. How about we come back | | | |
| 13 | October 14th? That gives you enough time. Then | | | |
| 14 | your motion will be on file by that day and we can | | | |
| 15 | deal with everything. | | | |
| 16 | MR. TALARICO: Fine with me, your Honor. | | | |
| 17 | THE COURT: You know what? I've got to do it on | | | |
| 18 | the 13th. I can't do it on the 14th. | | | |
| 19 | Can you make it the 13th at 10:00 o'clock? | | | |
| 20 | MR. TALARICO: I can, Judge. | | | |
| 21 | MR. FLYNN: I'm available. Again, Judge, I've | | | |
| 22 | forwarded the exhibits to counsel's attention. I | | | |
| 23 | was there at my client's deposition. It was taken | | | |
| 24 | by Zoom. The exhibits were scanned electronically. | | | |

1 I just don't see what the issue is. It seems as if 2 it's a another dilatory tactic to avoid --3 MR. TALARICO: I don't do dilatory --4 THE COURT: Hold on. I can't rule on the motion until I see it. I can't rule -- I can't determine 5 6 whether or not the issues raised about the 7 deposition are even relevant to your motion -- to the motion for summary judgment until I see it 8 9 because I do have questions, and I want to resolve 10 those on my own. 11 I don't want any unnecessary delay, either, 12 and that's why I'm trying to give this a short date 13 after the compliance date. I do want to move this 14 along, and the Supreme Court tells me it should have 15 been resolved two years ago, but they don't have to 16 deal with the actual case. Not this one in 17 particular, but all cases should be resolved at 18 three. 19 That being said, is there anything else we 20 need to address today? 21 MR. TALARICO: No. Judge. The only thing I want 22 to say is happy almost fall to everybody. THE COURT: So we'll see you at 10:00 o'clock on 23 24 October 13th.

| 1 | MR. TALARICO: Thank you, Judge. |
|----|---|
| 2 | THE COURT: And, Mr. Flynn, if you could send in |
| 3 | the order? |
| 4 | MR. FLYNN: Judge, just to be clear, it's |
| 5 | 10:00 o'clock? |
| 6 | THE COURT: Yeah. |
| 7 | MR. FLYNN: Okay. 10:00 o'clock on 10/13. |
| 8 | 0kay. |
| 9 | THE COURT: All right. We'll see you then. |
| 10 | (Which were all the proceedings |
| 11 | had in the above-entitled cause |
| 12 | this date.) |
| 13 | |
| 14 | |
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| 1 | STATE OF ILLINOIS) | | |
|----|---|--|--|
| 2 |) SS: | | |
| 3 | COUNTY OF McHENRY) | | |
| 4 | | | |
| 5 | I, KATHLEEN STROMBACH, an official | | |
| 6 | Court Reporter for the Circuit Court of McHenry | | |
| 7 | County, Twenty-Second Judicial Circuit of Illinois, | | |
| 8 | transcribed the electronic recording of the | | |
| 9 | proceeding in the above-entitled cause to the best | | |
| 10 | of my ability and based on the quality of the | | |
| 11 | recording, and I hereby certify the foregoing to be | | |
| 12 | a true and accurate transcript of said electronic | | |
| 13 | recording. | | |
| 14 | | | |
| 15 | Kathleen Strombach | | |
| 16 | Kathleen Strombach Official Court Reporter License No. 084-003755 | | |
| 17 | LICENSE NO. 004-003733 | | |
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| STATE OF ILLINOIS) | | | |
|---|--|----------------------|--------------------------------------|
| COUNTY OF MCHENRY) SS | FILED McHenry County, Illinois | GEN. NO. | Jury Non-Jury |
| Dulber | JAN 1 0 2018 KATHERINE M. KEEFE Clerk of the Circuit V Surt | Popov. | ch |
| Date: 15-18 Plaintiff's Attorney | | Defendant's Attorney | george Flynn |
| | ORDER | | |
| This matter | co-3 + | - be | heard on |
| Law Office of | 2 Thomas | J. Pop | over P.C.s |
| and Hous Ma | st's mot | e- 40- | extins.o- |
| of time to | answir c | other | Wise pland, |
| if is hereby | order | RESF في EN | ONSE TO DULBERG'S IERGENCY MOTION |
| 1) Detendants | ' motion | 15 grad | Fed. |
| 2) Defendants | to answ | ce 6- 6 | , the wise |
| pland by tab. | rivity ' | | |
| 3) Scheduling (| ron ference | set for | tebrury |
| 27, 2018 24 | 9:00 A. | | |
| Prepared by: Fly | | | 7 |
| Attorney for: Popolish of Attorney Registration No.: 62 | MISST (| | AM.Dr |
| Attorney Registration No.: 62 | - SYSゲ/ Judge | | 1/1/2 |

Purchased from re:SearchIL

C 47

| Plaint | IN THE CIRCU COURT OF THE TWENTY-SECOND JU CIAL CIRCUIT McHENRY GOUNTY, Illinois McHenry County, Illinois Circuit Clerk Use Only ORD ORD ORDJ ORDDWP VS KATHERINE M. KEEFE Clerk of the Circuit Court ase Number EXHIBIT 13 TO THE FIRM'S | | |
|--|---|--|--|
| Deten | RESPONSE TO DULBERG'S EMERGENCY MOTION | | |
| | EWERGENCY WOTTON | | |
| | Plaintiff(s) appear in person/by attorney | | |
| | Defendant(s) appear in person/by attorney | | |
| | Summons not served; alias summons to issue; return date | | |
| | Summons has been properly served on Defendant(s) | | |
| | Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for \$, | | |
| - | plus interest of \$ plus attorney fees of \$ for a total of \$ plus court costs. | | |
| | Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for | | |
| | Plaintiff(s) against Defendant(s) for \$, plus interest of \$ | | |
| | plus attorney fees of \$ for a total of \$ plus court costs. | | |
| | Case set for trial arbitration on, 20 atm. in Courtroom | | |
| | Defendant(s) shall file an Appearance within days of today's date, or without further Notice to | | |
| | Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in | | |
| | favor of Plaintiff(s). | | |
| | NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, | | |
| | OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE. | | |
| | Defendant(s) shall file an answer or other pleading within days of today's date. | | |
| | This case is continued on Motion of Plaintiff; Defendant; By Agreement; Court; | | |
| | to Dismiss, Anabo 20 18 at 10, Offin for 12012 | | |
| | Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute. | | |
| | Case dismissed with/without prejudice on Plaintiff's motion. | | |
| | After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for \$, | | |
| | plus interest of \$ plus attorney fees of \$ for a total of \$ plus court costs. | | |
| | After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s). | | |
| | COURT FURTHER ORDERS: Plaintiff to file Response to | | |
| prof; on to D.3n.35 is 28 days (march 27, 2018) | | | |
| Defendent to F.T. Reply in 19 days (April 10, 2018) | | | |
| Defulat to deliver courtisy copies of all brists by April 172019 | | | |
| Date: 2-27-18 (Span of Mc) | | | |
| Judge / | | | |
| CV-ORD13: Revised 10/01/08 | | | |
| ased fro | m re:SearchIL C 93 | | |





IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

| PAUL R. DULBERG, |) Appeal from the Circuit Court of the) 22 nd Judicial Circuit, McHenry County,) Illinois |
|---|--|
| Plaintiff-Appellant |) Relief Sought: Appellant's Brief Due Date Extended) to September 29, 2023) |
| HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C. |)) |
| Defendants-Appellees |)))))))))))))))))))))))))))))))))))))) |

. SECOND MOTION FOR EXTENSION OF TIME TO FILE APPELLANT"S BRIEF (Civil)

Plaintiff-Appellant Paul R Dulberg (Appellant) moves this Honorable Court for an extension of Time to file Appellant's Brief to September 29, 2023 and in support of said motion states as follows:

1. On July 24, 2023 and before filing this motion, Plaintiff's attorney telephoned both attorneys representing the Defendants and left a voice mail message for each indicating that I would be seeking an extension of time for filing the Appellant's Brief for 60 days based upon various problems based upon the stress of being a sole practitioner with a extremely heavy active case load complicated by an extremely stressful personal. problem. Neither attorney was available but in each case I left a detailed rendering of

> **EXHIBIT 14 TO THE FIRM'S** RESPONSE TO DULBERG'S **EMERGENCY MOTION**

- my extremely stressful personal problem that added to the normal high stress of practicing law. I asked to be notified if either had an objection and that I would wait a reasonable amount of time to include any objection they might have . (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b).
- 2. On July 24, 2023 I received a telephone message from Defendants' attorneys stating Defendants have no objections.
- 3. The number of days previously requested is 60, the number of days previously granted is 60, and the total number of days is 60.(Local rule 104 (a)(1))
- 4. The total number of days requested, and the total number of days granted to other parties are (0) none. (Local Rule 104(a)(2))
- 5. The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is two hundred fifty-nine days.

 (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))
- 6. Appellant filed his Notice of Appeal on March 3, 2023.
- 7. The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023.
- 8. Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.
- 9. Sixty days is insufficient to prepare and file Appellant's Brief for the following reasons: 9(a) The record on appeal consists of three volumes totaling 2,660 pages;
 - 9(b) Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing report of proceedings, mismatched sections, documents with only one of the Defendants' names where it should be all,

Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink-... and so on. (Investigation Continues.)

10. Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the July, 31, 2023 considering the above listed problems and his Court hearing/filing schedule on April 25, 2023 case # 2021P008775 Public Administrator's motion, May 4, 2023 case # 2022L010905 where he argued a "Motion for a Special Order" and additionally he had to brief two separate 735 ILCS 5/2-619.1 motions and a separate 735 ILCS 5/2-615 motion for hearings on May 25, 2023 and July 31, 2023, resolve a dispute regarding an order to be entered on May 4, 2023 where the Honorable Judge declined to choose between proposed orders and there wasn't a Court Reporter, drafting and filing/serving case # 2023CH04351 on May 2, 2023 a Complaint for Declaratory Judgment with an expiring Statute of Limitations against a municipal corporation and twenty-one additional defendants and two emergency personal problems as previously stated in support of Appellant's first Motion for Extension of Time.

following court schedule required Appellant's Attorney's preparation and appearances:

May 31, 2023 The Estate of Hutchinson, Deceased 19PR000098 continuing after

remand from the Illinois Appellate Court, 2nd District for further proceedings; Dulberg v.

Baudins et al 2022L010905 drafting and filing Response to Defendants' 735 ILCS 2
619.1 Motions to Dismiss; Dulberg v. Olsen Notice of Supreme Court rule 304(a)

Appeal First District 1-23-1142 on June 26, 2023; (on June 28, 2023 a traumatic

Subsequent to the filing of Appellant's initial Motion for Extension of Time the

personal event that was experienced by Appellant Paul R. Dulberg" attorney that continues to the filing of this Second Motion for Extension of Time and onward (Please see below); preparation for a sur-response in Dulberg v. Baudins et al; preparation for an Amended Complaint and Response for a Motion for Summary Judgment due with an appearance July 31, 2023 in 2022L010905, Court Appearance on July 20, 2023 two separate Defendants' 735 ILCS 5/2-615 Motions to Dismiss Case 2023CH 04351, First District, Kost v. Village of Mt. Prospect et al;

Appellant's Attorney traumatic ongoing event began on June 28, 2023 and continues.

On June 28, 2023 Appellant's Attorney's Fiancée entered the airport in Manila, Philippines to take a flight to the U.S. to meet with future family, current friends, and Appellant's Attorney. The schedule flight was to stop in Tokyo, Japan for a short lay over then on to O'Hare International Airport (ORD) Illinois.

June 28, 2023 in the Manilla, Philippines was the last time anyone has seen or heard from her. She did not arrive at O'Hare and a cooperative customs agent told Appellants' Attorney that she was not being detained by customs and upon further investigation stated she was not on the passenger manifest of the connecting flight in Tokyo, Japan. Subsequently, the embassies in both countries were contacted, an international investigation firm was hired and local government personnel began an independent investigation.

No trace of Appellant's Attorney's Fiancée has been found.

The stress of an active practice coupled with the terrible stress of a missing loved one for over 27 days has affected Appellant's Attorney in many negative ways.

11. Appellant is a sole practitioner and has no full-time staff to help in the preparation of

Appellant's Brief.

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-

Appellant's Attorney good faith and extensive efforts to comply with the initial and

extended briefing schedule, the problems caused by the Report on Appeal based on its

page size and the errors by the Clerk of the Circuit Court in preparation of the Record

on Appeal (and as additional relief consider ordering the Clerk to prepare an Amended

Record on Appeal) and grant Appellant a minimum of 60 additional days up to and

including September 29, 2023 to file his Appellant's Brief and any and all additional

relief this Honorable Court deems equitable and just.

Dated: July 24, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico

ARDC 6184530

707 Skokie Boulevard suite 600

Northbrook, Illinois 60062

(312) 808-1410

contact@lawofficeofalphonsetalarico.com

5

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 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 verily believes the same to be true.

/s/ Alphonse A. Talarico



2-23-0072

E-FILED Transaction ID: 2-23-0072 File Date: 7/24/2023 4:27 PM

Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

PROOF OF DELIVERY

SC

I am sending this Motion for Extension of Time to File Appellant's Brief, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum, Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on July 24, 2023 at 4:30 p.m. I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: July 24, 2023

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

Transaction ID: 2-23-0072 File Date: 7/24/2023 4:27 PM

Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

| PAUL R. DULBERG, |) Appeal from the Circuit Court of the) 22 nd Judicial Circuit, McHenry County,) Illinois |
|---|--|
| Plaintiff-Appellant | |
| HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C. |))) |
| Defendants-Appellees |)))))))))))))))))))))))))))))))))))))) |

NOTICE OF FILING SECOND MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

TO: George K. Flynn and Michelle M. Blum Karbal Cohen Economou Silk Dunne, LLC 200 S Wacker Drive, Suite 2550 Chicago, Illinois 60606

Tel: (312) 431-3700, Fax: (312) 431-3670

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PLEASE TAKE NOTICE that on Jule 24, 2023, the undersigned filed the NOTICE OF FILING SECOND MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF of Plaintiff-Appellant Paul R. Dulberg with the Clerk of the Appellate Court Second District, Illinois, a copy is hereby served upon you.

CERTIFICATE OF SERVICE BY ELETRONIC DELIVERY

I, Alphonse Talarico, an attorney, on oath state that I served the foregoing:

NOTICE OF FILING MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF upon counsel listed above by an approved electronic filing service provider (EFSP) on July 24, 2023 at 4:30 p.m.

/s/ Alphonse A. Talarico
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(312) 808-1410
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VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 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 verily believes the same to be true.

/s/ Alphonse A. Talarico