

SC

No. 2-23-0072

**IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT**

) Appeal from the Circuit Court of the
) 22nd Judicial Circuit, McHenry County,
) Illinois
)**Relief Sought: Appellant's Brief Due Date Extended**
)**35 Days to December 8, 2023; Appellant be allowed**
)**to retain an auditor to review both the McHenry**
)**Circuit Clerks systems and the Appellate Clerks**
)**Systems for County Circuit Clerks systems for**
)**changed or missing documents; Supplement the**
)**Record on Appeal to include the known missing Report**
)**of Proceedings;**
)**Supplement the Record on Appeal to include the**
)**subpoenaed recording of the Deposition of Defendant**
)**Hans Mast and to include the original transcript of**
)**the changed transcript of September 16, 2022**
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) Honorable Joel D. Berg, Judge Presiding
) 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

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**

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

- 1) On November 2, 2023, Plaintiffs Attorney communicated with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicating his objection to the Motion. (Ill. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b).
- 2) Appellant's Attorneys e-mailed a copy of this Motion to Appellees' Attorneys before filing it.
- 3) The number of days previously requested is 211, the number of days previously granted is 155, and the total number of days is 155. (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 twenty-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 at 8:48 AM. (Please

see Appellant Exhibit F attached)

7a. Common Law Volume 1 has a creation date of April 24, 2023 at 9:31 AM. Common Law Volume 2 has a creation date of April 24, 2023 at 9:28 AM. The Reports of proceedings has a creation date of April 25, 2023 at 806 AM. (Please see Exhibit G attached)

7b. Common Law Record Volume 1, Common Law Record Volume 2 and Reports of proceedings all have a submission date of April 24, 2023 from 10:00 Am to 10:03 AM. (Please see Appellant Exhibit H attached)

- 8) Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.
- 9) Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.
- 10) Appellant's Brief due date was extended a third time by this Honorable Court to November 3, 2023.
- 11) Twenty-One 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; 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.)

(b) Appellant's attorney has made extensive efforts to have
Appellant's Brief ready for filing by the November 3, 2023
considering his extremely heavy court schedule, with two
active Appellate cases, two active Decedent's Estates, a First
Judicial Law Division with nineteen named Defendants ...
and being a sole proprietor without full time staff and the
following facts that relate to this matter.

II. APPELLANT's BASIS FOR AN EMERGENCY MOTION

1) Appellant has recently discovered that the Trial Court Judge for
this case, 2017LA000377 from inception on November 28,
2017 to December 21, 2022 was a friend of Defendant The Law
Offices of Thomas J Popovich, P.C.'s owner Thomas J.
Popovich and said Judge had recused himself from at least one

case where Thomas J. Popovich was a named Defendant.

(Please see Appellant's Exhibit A attached)

2) That the Trial Court Judge for this case, 2017LA000377 from inception on November 28, 2017 to December 21, 2022 was also the Judge at all times in 2012 LA 000178 where Appellant herein was represented by the Law Offices of Thomas A. Popovich P.C. and Thomas J. Popovich individually. (Please see Appellant's Exhibits B page 3 L22 to page 4 L5, C page 4L8-10) where the afore- mentioned Judge acknowledged this fact at least two separate times on the record.

3) That the Trial Court Judge refused a subpoenaed certified electronic thumb drive complete recording by the certified Shorthand Reporter of the deposition of Defendant Hans Mast which reflects the violations of Supreme Court rules and local rules during a hearing to strike the Deposition of Defendant Hans Mast. (Please see appellant's Exhibit D page 477 L21-24 to page 481 line 9)

4) Appellant has discovered missing Transcripts and a materially changed transcript to support Appellant's request for a professional audit trail be produced by an independent service and to supplement the questionable Record on Appeal. The Auditor's Report was finalized and submitted late in the day

yesterday, November 2, 2023 (and was the reason for the delay in filing and serving of this Emergency Motion).(Please see Appellant Exhibit E which is a sample test of changed and missing transcripts by an independent service.)

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 35-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, allow Appellant to Request the Record on Appeal for all related cases, file and for any and all additional relief this Honorable Court deems equitable and just.

Dated: November 3, 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



2-23-0072

E-FILED
Transaction ID: 2-23-0072
File Date: 11/3/2023 7:49 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 November 3, 2023 at 4:59 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: November 3, 2023

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

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McDonald
v.
Porbueh

Case No. 12CA326

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE **FILED**

Reason for Reassignment:

OCT 19 2012

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

☒ Recusal/Judicial Conflict (Reason):

friends with Defendant

☐ Other:

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated:

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; IT IS HEREBY ORDERED that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on November 7, 2012 at 9:15am

☒ Assigned to the Civil Division, Courtroom 202
(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10-19-12

Michael J. Sullivan, Chief Judge

Michael Holden
33 N. LaSalle St. Ste 2000
Chicago, IL 60602

Daniel Konicek
21 W. State St
Geneva, IL 60134

Proof of Service

The undersigned certifies that a copy of the foregoing document was served upon all parties of record by way of email, fax or hand delivery on: 10-19-2012

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

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
15 of McHenry County, Illinois, on the 3rd day of
16 February, 2020, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 THE CLINTON LAW FIRM
20 BY: MS. JULIA C. WILLIAMS
On behalf of Plaintiff;

21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC
22 BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

23

24

1 THE COURT: Any other agreed, uncontested or
2 sides?

3 MS. WILLIAMS: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. WILLIAMS: Julia Williams. We're here on
6 Dulberg vs. --

7 THE COURT: Okay. The Dulberg vs. Mast.

8 MS. WILLIAMS: Yes, that's correct. And I'm --

9 MR. FLYNN: Good morning, Your Honor.

10 MS. WILLIAMS: -- for plaintiff.

11 MR. FLYNN: George Flynn for defendants.

12 THE COURT: Okay. What are we doing?

13 MS. WILLIAMS: We're just going to set it out
14 again for status on discovery. We are pretty well
15 finished with written discovery, at least between
16 the parties.

17 THE COURT: Really old for F1 written --

18 MS. WILLIAMS: Right. Here's our -- we're
19 actually -- we should be done today. We had some
20 201(k) issues.

21 THE COURT: Okay.

22 MS. WILLIAMS: We are going to the law firm to
23 look through their -- through their documents today.
24 I believe everything has been produced, but we just

1 want to verify -- there were some blank pages, and
2 we just want to verify --

3 THE COURT: Okay.

4 MS. WILLIAMS: -- what those are.

5 So I think we're actually going to be fully
6 completed with that today and looking to do --
7 getting ready to do deps, I think, is our next
8 step --

9 THE COURT: How many are --

10 MS. WILLIAMS: -- for depositions.

11 THE COURT: How many F1 deps do you anticipate?

12 MS. WILLIAMS: Well, we'll have probably two.
13 One from the firm and one -- defendant counsel and
14 then defendant firm.

15 THE COURT: Okay.

16 MS. WILLIAMS: And then, obviously, the
17 plaintiff. Now, whether we need more witness
18 deps -- this is a legal malpractice case. Witness
19 deps were taken in the underlying case. I don't
20 know if we're going to need to take those a second
21 time to --

22 THE COURT: I think I pre-tried the underlying
23 case. I have a recollection of this, so -- but I'm
24 not a hundred percent sure, so just throwing that

1 out there...

2 MS. WILLIAMS: Okay.

3 MR. FLYNN: I think I did see Your Honor's name
4 in connection with maybe one order in the case; but
5 I don't see it as an issue.

6 THE COURT: Okay. I'll periodically throw it
7 out there. But in any event, so if we come back in
8 60 days, do you think that gives you enough time to
9 complete?

10 MR. FLYNN: I think it gives us enough time to
11 complete the main F1 witnesses.

12 MS. WILLIAMS: At least the three parties.

13 MR. FLYNN: There were -- there were four --
14 four or five doctors deposed in the underlying case.
15 And four other five other --

16 THE COURT: All right.

17 MR. FLYNN: -- (indiscernible). I don't know if
18 we'll need to redo everybody, but I think we'll have
19 a better idea after we take the party deps.

20 THE COURT: All right. Let's put it out 60
21 days. Can you make April 3rd, a Friday?

22 MS. WILLIAMS: Yes. Let me just double-check.

23 THE COURT: Okay.

24 MS. WILLIAMS: But I believe that's just fine.

1 And that will be status completion of F1. That's --
2 yes.

3 THE COURT: That's just to tell me what we're
4 supposed to be doing.

5 MS. WILLIAMS: Sure. So status completion of
6 F1s on April 3rd, and we'll come back.

7 THE COURT: Okay.

8 MS. WILLIAMS: Thank you very much.

9 MR. FLYNN: Thanks, Judge.

10 THE COURT: Thank you.

11 (Which were all the proceedings
12 had in the above-entitled cause
13 this date.)
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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, MAUREEN S. URBANSKI, an Official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
License No. 084-003308

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

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

15 of McHenry County, Illinois, on the 10th day of May,

16 2018, at the McHenry County Government Center,

17 Woodstock, Illinois.

18 APPEARANCES:

19 THE GOOCH FIRM, by

20 MS. SABINA WALCZYK,

On behalf of the Plaintiff;

21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by

22 MR. GEORGE K. FLYNN,

On behalf of the Defendants.

23

24

1 THE COURT: Let's go to work on Dulberg.

2 MS. WALCZYK: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. WALCZYK: Sabina Walczyk on behalf of
5 Dulberg.

6 MR. FLYNN: Good morning. George Flynn on
7 behalf of the Popovich firm and Hans Mast.

8 THE COURT: It is -- it is rare when I know both
9 the plaintiff and the defendant ahead of time. Only
10 through the courtroom, but still unusual.

11 I looked at -- I'm going to tell you what
12 I'm thinking. And then if you choose to argue, you
13 can to -- if you wish to convince me that I'm wrong;
14 or we can go forward. Either is fine.

15 I felt that the 2-615 motion was
16 appropriate because I felt that -- and I -- for a
17 specific reason, not -- not perhaps all the reasons
18 that were cited by the defendant. I felt that the
19 complaint, when it talked about how -- I'm looking
20 for the words, misled -- when it said that the
21 attorneys misled -- lied and misled Mr. Dulberg, I
22 felt that there was some specificity that was going
23 to be required. Because they -- ultimately, these
24 things are going to factor into the statute of

1 limitations issue. And if you're going to say that
2 it was a breach of his duty in lying or misleading,
3 I think we need more particularity in the
4 allegations. You can't just make a conclusory
5 statement to that effect.

6 That's my perspective. What would you
7 like -- I'll give you an opportunity -- opportunity
8 to replead; but if you want to argue against my
9 thinking, I'll listen.

10 MS. WALCZYK: Well, Your Honor, I -- I won't
11 argue with the Court. If Your Honor would like some
12 more specificity as to those certain terms, we can
13 certainly replead and plead those a little bit more
14 specifically to --

15 THE COURT: And with respect to the discovery
16 rule issue --

17 MS. WALCZYK: Uh-huh.

18 THE COURT: -- since it's going to come up one
19 way or another, although I think it's a question of
20 fact, I would like to see it touched upon, because
21 I'm not following the -- the fact that he got more
22 from the arbitrator than had been initially
23 suggested by his attorneys, isn't really telling me
24 anything. So I need maybe a little bit more

1 information to understand the relationship of the
2 two things.

3 With respect to the issue of -- on the
4 2-619, I felt that in light of how I was going with
5 the 2-615, I really couldn't rule on the -- the
6 application of the discovery rule. And, ultimately,
7 I saw that in the long run, it was going to be a
8 question of fact, and I would probably need -- and I
9 could only address that with some more facts than
10 what's just contained in the complaint.

11 With respect to estoppel, I didn't agree --
12 and you can tell me why you think I'm wrong, but I
13 didn't agree with the argument that you were making
14 because it -- it, carried to its logical conclusion,
15 I could mislead and lie to my client about the --
16 about the implications and why he should settle, and
17 then once he agrees to it, then I'm -- I'm released
18 from my breach of my duty.

19 So I don't think that it -- that that was
20 the type of scenario involved when the courts were
21 discussing the estoppel issue.

22 Do you have anything -- do you want to
23 contest that?

24 MR. FLYNN: Not at this time, Your Honor. I --

1 I've always learned that it's better to quit while
2 you're ahead. And with -- without giving a roadmap
3 to the plaintiff, I do think that having their best
4 complaint on file benefits us all.

5 THE COURT: Yes.

6 MR. FLYNN: So going back to the 2-615 issues,
7 again, a legal malpractice case, they've got to
8 plead and prove, not only the legal malpractice, but
9 the elements of the underlying case. And it seemed
10 to me, and as we pointed out, that -- that all of
11 the allegations were very conclusory. That they
12 would have gotten more, they wouldn't have done
13 this, that the -- that Hans Mast and the Popovich
14 firm should have undertaken additional actions in
15 the underlying case, but they don't say what those
16 are. And I think that they -- they're required to
17 if they believe that there was a breach of a duty
18 that led to damages.

19 The high-low agreement, which is very
20 confusing to me and to my client, frankly, because
21 he's never seen it, and as I understand it, that's
22 outside of the four corners --

23 THE COURT: It is outside, but it did lead to an
24 area where I was also a little bit confused. And

1 I -- and I think you touched on -- I'll ask you: Is
2 the complaint having to do with the settlement with
3 the McGuires, or does it somehow relate to the suit
4 that continued with respect to Gagnon and the
5 high-low agreement?

6 MS. WALCZYK: Well, I think it's a little bit of
7 both, because it started with the suit against
8 McGuires, which settled. And then it looks like
9 there was a high-low agreement signed.

10 THE COURT: Okay.

11 MS. WALCZYK: And --

12 THE COURT: Was it signed by Mr. Mast?

13 MS. WALCZYK: Oh, I believe it was signed by
14 Mr. Dulberg. I haven't seen it.

15 THE COURT: Okay.

16 MS. WALCZYK: However, we can attach it if -- if
17 you want --

18 THE COURT: If -- if you are going to allege
19 malpractice as a result of entering into the
20 high-low agreement, yes, I would require you, then,
21 to attach it and to make that a little more
22 explicit.

23 MS. WALCZYK: Yes.

24 THE COURT: Because I -- I came away thinking

1 that was not part of your complaint, but I wasn't a
2 100 percent sure.

3 Also, let's see -- yeah, I need to know
4 with some specificity what facts were concealed and
5 how he was misled. I had problems with,
6 particularly, I had -- paragraphs 20 and 21 and felt
7 that you should have included more in that. And I
8 won't probably say more than that.

9 MS. WALCZYK: Uh-huh.

10 THE COURT: And I -- on the estoppel argument,
11 as I've said, I don't think that it is clear that
12 the signing of the release was something that could
13 be assumed to be knowing and voluntary when the
14 plaintiff is alleging that he was misled as to the
15 ramifications of that. Excuse me. Let's see.
16 Okay.

17 Any -- so I'm granting on the 2-615. I
18 will grant you leave to refile or replead.

19 MS. WALCZYK: Okay.

20 THE COURT: And what else? Is there anything
21 else that we need?

22 MR. FLYNN: Just as a housekeeping, again,
23 depending on what theory you're going under, if it's
24 related to the Gagnon settlement, and we may have

1 more people coming to the party; but if not, then
2 that's it.

3 THE COURT: Yeah. I mean, if you're going to
4 draw that in, then I need it a little more explicit.

5 MS. WALCZYK: Okay.

6 THE COURT: And I got -- in fact -- I'm reading
7 from my notes. I need facts on what was false,
8 misleading and what -- what you mean by coercion.

9 MR. FLYNN: So the 615 is granted with leave to
10 replead.

11 THE COURT: Yes.

12 MR. FLYNN: I wasn't clear, I guess, on whether
13 there's an actual ruling on the 619 or --

14 THE COURT: 619, I'm denying because --

15 MR. FLYNN: Okay.

16 THE COURT: -- there's a question of fact --

17 MR. FLYNN: Okay.

18 THE COURT: -- at this stage.

19 And I think that even if they include
20 additional facts in their complaint, I would still
21 come back to it being a question of fact, because
22 I -- there's going to be a lot more about their
23 relationship than I think can be reflected in merely
24 the complaint. I would -- so I mean, if you were to

1 bring another 2-619, feel free.

2 MR. FLYNN: Sure.

3 THE COURT: But I would still think it's going
4 to be a question of fact as to what is clear --
5 Dulberg's claims are with respect to how he was
6 misled or facts were concealed.

7 MR. FLYNN: Okay.

8 THE COURT: Because it's going to depend on
9 their interaction.

10 MR. FLYNN: And it is the -- the language of
11 statute is "knew or reasonably should have been
12 known." And, again, this -- he does have counsel
13 that came in right after my clients got out. So,
14 again, the Blue Water Partners case says you --
15 potentially, you can't bury your head in the sand.

16 THE COURT: No, you can't. But because I -- of
17 the absence of information --

18 MR. FLYNN: Fair enough.

19 THE COURT: -- I was reluctant to go further.
20 The statute of limitations, you might get a little
21 bit farther, but I still might run into a fact
22 question.

23 MR. FLYNN: Understood.

24 THE COURT: So how long do you need?

1 MS. WALCZYK: If I could have 28 days, Your
2 Honor.

3 THE COURT: Sure.

4 MS. WALCZYK: We have a trial coming up.

5 THE COURT: And to answer or otherwise plead?

6 MR. FLYNN: 28, please.

7 THE COURT: All right. That would -- excuse me.
8 Why don't we come back in -- 60 days is July 9th.
9 How about July 11th, a Wednesday? Or do you have --
10 it's all the same to me, so long as I am here.

11 MR. FLYNN: Let's see. I believe I'm going to
12 be out of state that week.

13 THE COURT: Okay. When is it convenient for you
14 to come here? She's here all the time, so I
15 don't --

16 MR. FLYNN: The following week would be --

17 THE COURT: What day works for either of you the
18 following week?

19 MS. WALCZYK: We may actually have a trial that
20 week. That may or may not go; I'm not sure at this
21 point. At least the first two days, if we could do
22 towards the end of week, that would be great for us.

23 THE COURT: 20th?

24 MR. FLYNN: 20th works.

1 MS. WALCZYK: That's perfect.

2 THE COURT: All right. We'll see you on
3 July 20th.

4 MR. FLYNN: Thank you, Your Honor.

5 MS. WALCZYK: Thank you very much.

6 THE COURT: Thank you.

7 (Which were all the proceedings
8 had in the above-entitled cause
9 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, MAUREEN URBANSKI, an official Court
6 Reporter for the Circuit Court of McHenry County,
7 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 Maureen S. Urbanski

16 Certified Shorthand Reporter
17 License No. 084-003308
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

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11 Defendants.)

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15 of McHenry County, Illinois, on the 21st day of
16 December, 2022, at the McHenry County Government
17 Center, Woodstock, Illinois.

18

19 APPEARANCES:

20 LAW OFFICE OF ALPHONSE A. TALARICO, by
21 MR. ALPHONSE A. TALARICO (via Zoom),

22 On behalf of the Plaintiff,

23 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
24 MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

1 THE COURT: For the record, this is on Dulberg
2 versus Mast.

3 Plaintiff's counsel, if you could identify
4 yourself.

5 MR. TALARICO: Yes, your Honor. My name is
6 Alphonse Talarico.

7 THE COURT: And defendant.

8 MR. FLYNN: Good morning, your Honor. George
9 Flynn for the defendants.

10 THE COURT: And for the record, I -- Mr. Dulberg
11 is in attendance, and once again, I hope we're not
12 being recorded. That being said, we'll move on to
13 the motion.

14 Plaintiff, you have a motion.

15 MR. TALARICO: Yes, Judge. I'd like to -- we
16 filed our motion -- we filed -- counsel filed a
17 response, we filed a reply. We'd like to rely on
18 that, with one additional presentation or request of
19 the Court.

20 THE COURT: Okay. What is that?

21 MR. TALARICO: I'd like to offer an informal
22 proof -- an offer of proof, which is the exact
23 and -- and -- what is the best way -- the audio
24 transmission of the deposition, in full, with all

1 the parties, which was sent to us through a
2 subpoena.

3 THE COURT: Okay. You mean from Mr. Mast's --
4 or Mast's -- deposition?

5 MR. TALARICO: Correct. Everything that -- that
6 would help the Court understand all of these
7 problems. Because you --

8 THE COURT: Well, we do have -- we have the
9 transcript.

10 MR. TALARICO: Yes, your Honor, but the
11 transcript is selective.

12 THE COURT: Okay. Mr. Flynn, comment.

13 MR. FLYNN: I would object, Judge. The
14 plaintiff has already filed a second amended motion
15 and response. He's had plenty of opportunity to
16 bring this to the Court's attention.

17 THE COURT: Okay. Mr. Talarico, final word.

18 MR. TALARICO: Judge, this is for the aid to --
19 for the Court -- this Honorable Court to understand
20 what's going on.

21 As to the second amended, I replied to
22 that, that -- the only difference between the
23 amended and the second amended, Judge, was the stamp
24 on Exhibit 17 didn't show up, so I re-filed it. But

1 it was filed timely. As soon as I realized the
2 stamp didn't show up on Exhibit 17, I re-filed it
3 with an emphasis on the Exhibit 17. Mr. Flynn
4 received it on time with notification that it's
5 Exhibit 17.

6 THE COURT: Well, that's not the issue, but the
7 issue is --

8 MR. FLYNN: It's not. And just for the record,
9 there was a typo in my response brief. I wasn't
10 taking issue with the timing of the filing of the
11 second amended, other than the fact that it's two
12 years after the deposition.

13 THE COURT: But that -- that's a different --

14 MR. FLYNN: But --

15 THE COURT: That's a different issue.

16 MR. FLYNN: Exactly.

17 THE COURT: The first issue is whether or not
18 to -- the Court will accept plaintiff's request to
19 submit the audio of the deposition at issue of
20 Mr. Mast that, I believe, was taken June 25th, 2020.

21 And, Mr. Talarico, anything else to say in
22 support of that oral motion?

23 MR. TALARICO: No, Judge. That -- that's -- if
24 you'll accept it, it's in the -- I believe

1 Mr. Dulberg is in the courtroom, and if he may
2 approach the bench, he will hand it to you.

3 THE COURT: No, he's on Zoom. In any event, I'm
4 going to deny the -- oh, are you -- Come on up.

5 MR. SCOTT DULBERG: Do you mind if I just hand
6 it here?

7 THE COURT: Well, no, you're going to come up.
8 I'm not going to accept that.

9 Your name, sir?

10 MR. SCOTT DULBERG: Scott Dulberg.

11 THE COURT: Okay. And you're here to deliver a
12 Zip drive of the audio; am I correct?

13 MR. SCOTT DULBERG: Yes.

14 THE COURT: All right. And I -- But I'm going
15 to rule on plaintiff's motion. I'm not going to
16 accept it. I'm not going to consider it for
17 purposes of the hearing on this motion. So you can
18 keep it, but thank you for -- for showing up and
19 bringing it.

20 MR. SCOTT DULBERG: Thank you.

21 THE COURT: Because -- I'm not going to accept
22 it because I don't think it adds, materially, to my
23 understanding of what transpired. I've got the
24 deposition transcript. I've read the parts that I

1 believe are relevant. I've read the motions. I've
2 heard this argument.

3 I don't think that the audio tran- -- the
4 audio recording is going to assist me in any way,
5 based upon my understanding of what the ultimate
6 issue is on this motion.

7 So that will be denied, and we'll
8 incorporate that into the motion -- or in the order.
9 I'm sorry.

10 Moving on to the motion, this is
11 plaintiff's motion to either re-depose or strike, or
12 both, the deposition of Mr. Mast taken June 25th,
13 2020; am I correct?

14 MR. TALARICO: Yes, your Honor.

15 THE COURT: And, further, am I correct that
16 the -- the reason for this is issues with respect to
17 what's identified as Exhibit 12?

18 MR. TALARICO: No, your Honor. That's just one
19 small part of it. The entire motion is based on
20 Supreme Court rules and on -- or in effect at the
21 time the deposition was taken.

22 THE COURT: No, no, no. Tell me the substance.
23 Don't tell me what the rules are. Because my
24 reading of your motion focused on Exhibit 12 and the

1 failure -- or the alleged failure to produce it
2 prior to the deposition or give an exhibit list.

3 So tell me, what is the reason why you want
4 to re-depose Mr. Mast? Because I think that's
5 ultimately your request.

6 MR. TALARICO: That's right. Judge, within our
7 motion and our reply, we've indicated that it's not
8 just Exhibit 12. Focusing on Exhibit 12 makes it
9 too easy. The entire deposition -- the Internet
10 went down almost the entire time. It's in the notes
11 that I highlighted. It's in the transcript. They
12 were not seeing Exhibits 1 through 15 at the same
13 time. They weren't seeing them. They weren't being
14 uploaded to the admin- -- the administer of -- of
15 oath. 12 wasn't even part of it. It was added, I
16 don't know, 14 days later.

17 THE COURT: But, ultimately --

18 MR. TALARICO: So we --

19 THE COURT: -- the exhibits were seen; am I
20 correct?

21 MR. TALARICO: No. They were not seen.

22 THE COURT: None of the exhibits were seen?

23 MR. TALARICO: They were not seen in accordance
24 with the rules, your Honor.

1 THE COURT: That's -- see, you --

2 MR. TALARICO: The rules --

3 THE COURT: You throw those phrases in, in
4 accordance with the rules.

5 Did the deponent see the exhibits, yes or
6 no?

7 MR. TALARICO: No.

8 THE COURT: Mr. Flynn, comment.

9 MR. FLYNN: Judge, to say that the Internet was
10 down for --

11 THE COURT: I don't want to go down there. Did
12 the -- did Mr. Mast see the exhibits?

13 MR. FLYNN: My recollection and understanding is
14 that Mr. Mast saw all of the exhibits. There may
15 have been an issue with a portion of Exhibit 12;
16 however, he was -- he was cross-examined at Page 49
17 through 52 regarding Exhibit 12, generally speaking,
18 and the case law that was contained in his file.

19 The bottom line is, it doesn't add
20 anything. He didn't recall the specific cases that
21 he discussed with --

22 THE COURT: Did he see the exhibits? That's all
23 I wanted to know.

24 MR. FLYNN: I don't know that he saw the full

1 exhibit in its entirety.

2 THE COURT: Okay.

3 MR. FLYNN: It -- But it wasn't necessarily
4 provided to him, so --

5 THE COURT: For purposes of this record,
6 Exhibit 12 is copies of case law; am I correct?

7 MR. FLYNN: Generally speaking, correct.

8 THE COURT: Mr. Talarico.

9 MR. TALARICO: That's correct, Judge. But,
10 again, we're not just focusing on Exhibit 12. We're
11 focusing on all the exhibits that were supposedly
12 shown to Mr. -- to Mr. Mast. He didn't see them.
13 He didn't see them.

14 THE COURT: Okay.

15 MR. TALARICO: There was confusion as to what
16 the numbers were.

17 THE COURT: Whose exhibits were they?

18 MR. TALARICO: They were the plaintiff's, but it
19 was the defendant's equipment that caused the
20 problem.

21 THE COURT: And the plaintiff conducted the
22 deposition; am I correct?

23 MR. TALARICO: That is correct.

24 THE COURT: And the plaintiff was aware of

1 any -- the plaintiff's attorney, at that time, was
2 aware of any glitches or difficulties with respect
3 to having the deponent view all of the exhibits; am
4 I correct?

5 MR. TALARICO: That's correct, your Honor.

6 THE COURT: And the plaintiff (sic) who was
7 representing Mr. Dulberg at the time, for whatever
8 reason, did not raise an objection at the time or
9 ever with respect to the manner in which the
10 deposition proceeded.

11 MR. TALARICO: No, your Honor. (Indiscernible)
12 she left it to me -- or to the following counsel.
13 She said to Mr. Dulberg, Mr. Dulberg, whatever those
14 objections are, your next counsel has to make them.

15 THE COURT: Okay. Well, that -- but the
16 handling attorney at the time who represented
17 Mr. Dulberg's interests proceeded with the
18 deposition and did not give notice to anyone of any
19 complaint with respect to the manner in which it was
20 conducted; am I correct?

21 MR. TALARICO: You are correct.

22 THE COURT: Okay. What else do you want me to
23 know?

24 MR. TALARICO: I want you to know, Judge, also,

1 that not only does the objection have to take place
2 at the time of the deposition itself. When the
3 evidence is being brought -- when the evidence is
4 being subject to admission, I can bring that -- I
5 can raise that now and object to it.

6 THE COURT: Okay. But the -- the exhibits were
7 always in control of the plaintiff's attorneys, and
8 you're asking to penalize the defendant for what
9 appears to be a -- an issue you have with the manner
10 in which prior counsel conducted the deposition.

11 MR. TALARICO: No, your Honor. It's -- as far
12 as the defendant, it's their electronic equipment
13 that failed.

14 THE COURT: And there were no objections made at
15 the time or subsequent, and this motion was brought
16 approximately two and a half years after the
17 deposition in question; am I correct?

18 MR. TALARICO: You are correct. But it's also
19 within the time of the ruling. I can do this now.

20 THE COURT: You can file any motion you like,
21 but I'm -- I'm going to deny your request. I don't
22 think that there's any reasonable basis under which
23 I can compel the defendant to appear for a second
24 deposition because of these issues. It appears that

1 prior counsel was satisfied with the -- her ability
2 to conduct the deposition, and she was always in
3 control of all of the exhibits, so I don't see a
4 problem there.

5 If anybody should have been raising an
6 objection about the problems, it should have been
7 defendant, not -- not the plaintiff two and a half
8 years after the deposition they proceeded with. So
9 I'm going to deny the request.

10 Anything else that we need to do
11 today?

12 MR. FLYNN: Judge, just that there was some
13 additional relief requested in the latest reply
14 brief filed, and that included a request that the
15 Court take judicial notice of -- what's really an
16 implication. I think this is on Page 17 of the
17 response.

18 I would just request that that specific
19 request for relief also be denied in connection with
20 the motion.

21 THE COURT: Okay. Let me just call it up. I'm
22 looking at Page 18. What is it?

23 MR. FLYNN: I believe it was on Page 17 of the
24 response -- I'm sorry -- the reply brief that was

1 just filed.

2 THE COURT: Okay. The notice of the
3 adjudicative facts?

4 MR. FLYNN: Correct. I think it says in
5 Paragraph 12(j), plaintiff requests that this
6 Honorable Court take judicial notice of the
7 adjudicative fact that the references to Restatement
8 (Second) of Torts Section 318 impliedly references
9 Tilschner versus Spangler.

10 THE COURT: That -- that's not really ultimately
11 the purpose of this motion, and it's not contained
12 in the prayer for relief. That strikes me as a new
13 motion. Wasn't going to consider it, and so I'm --
14 to the extent that I have to rule on it, on an
15 issue I don't even think that's in front of me
16 appropriately --

17 MR. FLYNN: It's just relief that was in -- in
18 this response that I didn't have any opportunity to
19 address.

20 THE COURT: I will -- I will deny all aspects of
21 plaintiff's motion.

22 MR. FLYNN: Okay.

23 THE COURT: I think that covers it.

24 Is there anything else?

1 MR. FLYNN: Thank you. That's it.

2 THE COURT: Okay. We have a future date, don't
3 we?

4 MR. FLYNN: We have a pending motion for summary
5 judgment, and plaintiff's response is due, I think,
6 next week.

7 THE COURT: Okay. All right.

8 MR. FLYNN: But I don't --

9 THE COURT: You're back February 1st, and I --
10 Mr. Flynn, could you draft the order and please get
11 it in as early as possible.

12 MR. FLYNN: I will. And, Judge, we spoke
13 last time about your continued handling of the
14 case. Do you have any information to share in that
15 regard?

16 THE COURT: Nope. Nope. I -- I'm in a
17 different division and, um, I can't take cases with
18 me.

19 MR. FLYNN: Okay.

20 THE COURT: That would be interesting, but no, I
21 can't take them. I can't take them with me. Too
22 many --

23 MR. FLYNN: Okay. So --

24 THE COURT: -- egos involved. Not -- I'm not

1 referring to Judge Berg.

2 MR. FLYNN: Sure.

3 THE COURT: But there -- Yeah, there's too many
4 hurdles to try --

5 MR. FLYNN: I understand. So the schedule
6 stands?

7 THE COURT: The schedule stands. If you wish to
8 have that addressed, you'll have to bring it in
9 front of Judge Berg.

10 MR. FLYNN: Okay.

11 THE COURT: I will warn you, he's got a small
12 claims call. I would -- I'm warned to avoid
13 Thursdays and Fridays for hearing because those,
14 apparently, are heavy days.

15 But you may find out the hard way. Who
16 knows?

17 MR. FLYNN: Okay.

18 THE COURT: All right.

19 MR. FLYNN: Thank you very much, your
20 Honor.

21 THE COURT: You can send in the order. I will
22 sign it when I see it.

23 MR. FLYNN: Thank you.

24 THE COURT: All right. Thank you. Have a good

1 day.

2 MR. FLYNN: You, too. Thank you.

3 (Which were all the proceedings
4 had in the above-entitled cause
5 this date.)
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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, KATHLEEN STROMBACH, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Kathleen Strombach
Kathleen Strombach
Official Court Reporter
License No. 084-003755

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

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 JOEL D. BERG, Judge of said Court of
15 McHenry County, Illinois, on the 1st day of
16 February, 2023, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE TALARICO, by

20 MR. ALPHONSE TALARICO, (Via Zoom)

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by

23 MR. GEORGE K. FLYNN,

24 On behalf of the Defendant.

1 THE COURT: You are here on Dulberg against
2 Mast?

3 MR. FLYNN: I am, Judge.

4 THE COURT: I have the other side here on that
5 as well. Well, no. I have Mr. Dulberg here. I
6 have Mr. Talarico as well. Mr. Talarico, are you
7 ready for a hearing if I call it early, sir? I'm
8 sorry, sir, you are muted. I'm not --

9 MR. TALARICO: Yes, your Honor.

10 THE COURT: Good morning. Are you ready for
11 hearing a couple minutes early, sir?

12 MR. TALARICO: Absolutely.

13 THE COURT: Thank you very much. This is
14 Dulberg against Mast, et al. I have Mr. Talarico
15 present via Zoom as is Mr. Dulberg. Counsel, would
16 you please state your name?

17 MR. FLYNN: Thank you, your Honor, George Flynn
18 on behalf of the defendants.

19 THE COURT: Thank you, Mr. Flynn. We are before
20 the Court for a hearing on pending motions. The one
21 most notable is the summary judgment. What else are
22 we hearing this morning, gentlemen?

23 MR. FLYNN: That's all we have, as far as I
24 know, Judge.

1 THE COURT: Good. Because that's all I read.

2 MR. TALARICO: That's all I know, Judge.

3 THE COURT: Now I feel way better. It just said
4 pending motions. All I could find was summary
5 judgment. I read the motion. I read the response.
6 I read the reply. I have read all the attachments,
7 as they were relevant. It's your motion.

8 MR. FLYNN: Thank you, Judge. And I wasn't sure
9 I -- with Judge Meyer's standing orders, with
10 respect to courtesy copies, I wasn't sure if the
11 Court had a chance to review the briefs, but since
12 your Honor has indicated that you have --

13 THE COURT: I have read everything. It's all
14 based on a two-year statute of limitations on a
15 lawsuit over a chain saw.

16 MR. FLYNN: That's exactly right. So I will be
17 brief. The only case cited by the plaintiff in its
18 response with respect to the accrual of the injury
19 was a Suburban Real Estate case which is a
20 transactional legal malpractice case, not a
21 litigated matter. I think the -- all of the cases
22 we have cited and including the dicta in that
23 Suburban Real Estate case indicates that the accrual
24 date in a litigated matter is the date of

1 settlement, judgment or dismissal.

2 Here, we had a January 14 settlement that
3 was consummated. There was a good faith finding and
4 dismissal at that time. Mast and Popovich continued
5 to represent Mr. Dulberg for another year or so and
6 prosecuting the case against the other defendant in
7 the case.

8 Dulberg became disillusioned with Mast,
9 admitted that he was looking for additional
10 counsel -- or substitute counsel even as early as
11 July of 2014. Ultimately, Mast and Popovich
12 withdrew in March of 2015. The case proceeded
13 against Gagnon. There was a mediation in December
14 of 2016 at which time he indicates now that he first
15 became aware of his legal malpractice case.

16 Mr. Dulberg had every opportunity in
17 discovery through interrogatories, production
18 requests, I took his deposition. I asked him over
19 and over again in several different ways how he
20 first became aware of his injury and that it was
21 wrongfully caused. The only response he could give
22 was that a lawyer told him that he had a case. He
23 couldn't provide any specifics. He has a burden of
24 proving the -- a late discovery. He cannot meet it.

1 He will never be able to meet it.

2 THE COURT: Do we know, by the way, how did he
3 come to me because the lawyer, if I recall, was
4 Mr. Gooch. So he was represented by I believe
5 Mr. Balke if I recall correctly followed by
6 Mr. Baudin.

7 MR. FLYNN: That's correct.

8 THE COURT: Where did Mr. Gooch come into this?
9 Who shipped him off to Mr. Gooch to even get
10 opinion, do we know?

11 MR. FLYNN: One of those two lawyers, I think,
12 recommended that he seek an opinion from a lawyer,
13 generally speaking, that handles legal malpractice
14 cases. Whether it was a direct referral, I don't
15 know if the evidence shows that. I think
16 Mr. Dulberg testified that I believe it was
17 Mr. Baudin recommended that he see a legal
18 malpractice attorney.

19 So Mr. Gooch met with him. Allegedly
20 provided an opinion that there was a case without
21 any reason and then almost a year later filed a
22 lawsuit. Again, first Mr. Dulberg raised privilege
23 when I asked him how -- how and what -- how you
24 became aware of this legal malpractice case, the

1 injury and the wrongful causation, he claimed
2 privilege. Finally, that was waived or otherwise
3 disposed of, and then, he admitted he couldn't -- I
4 said the legal opinion Dulberg received from Gooch
5 was verbal. Gooch simply stated you have a case
6 here. You have a valid case. When asked did he
7 tell you exactly what they did wrong in connection
8 with the representation, Dulberg said he probably
9 did. I'm not recalling it right now. I'm pulling a
10 blank. There are no specifics.

11 So again, the burden is his to prove a
12 later discovery. He's not able to do that. I'm
13 happy to answer any questions the Court has, but
14 again, I'll rest on the briefs.

15 THE COURT: Thank you very much. Mr. Talarico,
16 sir?

17 MR. TALARICO: Yes, sir. I'm -- what would you
18 like me to address first? I guess we could start
19 with the fact that defendant didn't follow the local
20 rules, and therefore, plaintiff could not properly
21 respond. And the local rule says that if they do
22 not follow the local rules, you can strike the
23 motion or deny it.

24 All I'm asking is deny the motion based on

1 the fact that they did not follow the local rules.

2 THE COURT: I respectfully decline to do so,
3 sir. A written motion could have been filed
4 expressly asking for that relief. A response was
5 filed that addressed it. I've read the response. I
6 understand your concerns that by not following the
7 local rules, they may have made it more difficult
8 for us to suss out what are the disputed issues of
9 material fact and what aren't. But I've been able
10 to pretty much get a grip on everything the way it's
11 been filed.

12 MR. TALARICO: All right. Thank you, Judge.
13 The second thing is, again, we didn't follow the
14 rules that (indiscernible) we didn't respond -- we
15 responded generally. So I would like that the
16 ruling you just made to extend to our response too.

17 THE COURT: Of course it does.

18 MR. TALARICO: Thank you, sir. Okay. Then, the
19 next issue is the Suburban case. Plaintiff --
20 defendant, I'm sorry, defendant seems to indicate --
21 well, he does indicate that the reason that Suburban
22 doesn't apply is that there is a difference between
23 a transactional case and a litigation case. Now, I
24 read the Suburban case many, many times over and the

1 Supreme Court does not distinguish that their ruling
2 is for one type of case or the other. What their
3 ruling is is that the statute of limitation and they
4 construed the exact specific statute does not begin
5 until there is a pec -- pecuniary loss.

6 Prior to that, Mr. Dulberg would have
7 brought an action, he would have had no damages. So
8 that -- what that does is because the general rule
9 and which has been voiced in -- by the Illinois
10 Supreme Court Justice Thomas in the Porter case is
11 that when the Supreme Court construes a statute,
12 that becomes part of the statute until the -- the --
13 I can't think of the word, legislation --
14 legislature decides to change it. So what we have
15 is the prior cases cited by Mr. Dulberg are not
16 effective because he's citing it to the rule and not
17 to the particular case we are talking about. The
18 Suburban case says no damages, the statute does not
19 begin to run. And that is part of the statute. It
20 hasn't been changed.

21 Now, as to the last thing, we have raised
22 many affirmative -- I mean, I'm sorry, many issues
23 of material fact that are in dispute. But most
24 important -- the clearest ones, Judge, are the

1 defendant's affirmative defenses. There are four
2 affirmative defenses which -- which plaintiff has
3 denied all four.

4 Now, there is a recent case, if you'll hold
5 on just one second, and I'll find it, but the
6 indication -- it's not that recent, but it's -- the
7 indication is that -- this is West Suburban Mass
8 Transit versus Consolidated Rail Corporation. It's
9 1-89-2916. If this was done the Appellate Court but
10 it was by the -- the opinion was by Justice
11 McMorrow, who of course became Supreme Court judge,
12 that summary judgment is not appropriate when there
13 is affirmative defenses in dispute.

14 I think that pretty much sums it all,
15 Judge. We have got many material facts in dispute,
16 including four affirmative defenses which were
17 denied specifically by plaintiff.

18 THE COURT: Respectfully, sir, merely saying
19 something is in dispute does not make it so though,
20 does it?

21 MR. TALARICO: Judge, I'm saying that the answer
22 filed was it was in dispute.

23 THE COURT: So by filing a response to their
24 affirmative defense denying the affirmative defense,

1 you're telling me that that in and of itself is
2 sufficient to defeat summary judgment.

3 MR. TALARICO: Yes, I am.

4 THE COURT: What if your client --

5 MR. TALARICO: I --

6 THE COURT: What if your client at subsequent
7 depositions testifies inconsistent with the answer?

8 MR. TALARICO: In the case that I cited, Judge,
9 the burden is upon the person, in effect, in this
10 case the defendant, to eliminate that dispute. The
11 dispute exists as he did not resolve that dispute.

12 THE COURT: So when did the cause of action
13 arise?

14 MR. TALARICO: December 12, 2016, I believe.

15 THE COURT: Why on that date?

16 MR. TALARICO: Because there was an arbitrary --
17 a mandatory arbitration hearing which I included
18 the -- the findings that showed that the judge --
19 the retired judge in that case evaluated it at
20 \$660,000, and Mr. Dulberg was not able to obtain
21 anything close to that.

22 THE COURT: And why not?

23 MR. TALARICO: Well, for two reasons, one,
24 because he settled first improperly for \$5,000 with

1 the landowner, and the second case is because he was
2 instructed improperly to -- to sign -- well, he
3 actually claims he never signed the agreement, but
4 that there was an agreement to do a binding
5 arbitration limited to the policy amount of 300,000.

6 THE COURT: Who entered into that agreement?

7 MR. TALARICO: That is a question of fact. I
8 don't know, but Dulberg says he did not sign it and
9 never wanted to.

10 THE COURT: When was the agreement entered into?

11 MR. TALARICO: I don't have the exact date,
12 Judge. A few months before that. I can only say
13 that that was -- that was during the time that
14 Mr. Dulberg was in bankruptcy, and that was also
15 part of the Baudin's instruction.

16 THE COURT: So the agreement to limit recovery
17 to 300,000 was signed well after the Popovich firm
18 was no longer representing Mr. Dulberg on this
19 matter?

20 MR. TALARICO: Yes, that's true.

21 THE COURT: So how is his change in strategy
22 somehow extend -- so in other words, what you're
23 saying -- well, I'm trying to wrap my head around
24 this. You are saying that that agreement your

1 client never wished to enter into, he didn't sign,
2 Popovich didn't sign, Mr. Mast didn't sign. His
3 actual third attorney signed it, Mr. Baudin, not
4 even Mr. Balke. But because that was somehow signed
5 and in effect, then the cause of action against Mast
6 and Popovich for legal malpractice is extended out
7 to the date of the final mediation hearing because
8 of an agreement and limitation on damages at the
9 mediation hearing over which they had zero control?

10 MR. TALARICO: What I am saying, Judge, is the
11 analysis in the Suburban case, the damages -- prior
12 to that, Mr. Dulberg had no actual damages,
13 therefore, he couldn't bring an action. He had
14 nothing to say that Mast cost him this much or this
15 much or Popovich cost him this much because that
16 would -- that would have been stricken for -- they
17 had no damages, so he had no cause of action.

18 The damages arrive -- arose on the days
19 that Mr. Dulberg found out through the binding
20 arbitration that the case was worth so much more
21 than what he's going to get, and therefore --
22 that -- that enumerates the damages.

23 THE COURT: But respectfully, Mr. Talarico, and
24 please correct me if I'm wrong because this is where

1 I'm getting the disconnect, the but-for portion of
2 this analysis but for the high-low agreement
3 limiting damages to the policy amount of \$300,000,
4 he would have had a judgment for the entire \$660,000
5 if Tom Popovich and Hans Mast had never even
6 existed.

7 MR. TALARICO: I'm not clear on what you are
8 asking, Judge. Could you --

9 THE COURT: What I'm asking is isn't the failure
10 to recover the \$660,000 as opposed to 300,000
11 attributable to the high-low agreement that was
12 entered into well over a year or if not two or more
13 years after Popovich and Mast were out of the case?

14 MR. TALARICO: Well, Judge, I -- first of all,
15 he didn't enter into it. He's claimed over and over
16 that that's not his signature. It was forged.
17 There is many issues about that in the bankruptcy.

18 THE COURT: But again, counsel -- but again, my
19 point being I don't really care if he signed it or
20 didn't sign it. My point being that it is that
21 agreement that limited his damages, and that
22 agreement was entered into way after Popovich and
23 Mast withdrew from this case, right?

24 MR. TALARICO: That's right, but --

1 THE COURT: He so would have got -- so he would
2 have gotten all 660,000 had that agreement not been
3 entered into.

4 MR. TALARICO: Judge, but at -- before the judge
5 ruled in that binding mediation, he had no idea how
6 much the case was worth. They had told him it was
7 worth \$5,000 and then some. That -- that date --
8 that's the date when he knows when there was a
9 factual pecuniary damage. He knows the case is
10 worth much more than they told him and he's got
11 numbers behind it. Before that, he had nothing to
12 plead.

13 THE COURT: Respectfully, the case is worth that
14 much against Mr. Gagnon, not necessarily against
15 Mr. Gagnon's -- I believe it was his parents, the
16 two people that settled out of it. The \$660,000 is
17 a finding of liability against Mr. Gagnon, isn't it?

18 MR. TALARICO: Yes, it is.

19 THE COURT: So how is it a finding of liability
20 against the two people that were settled with?

21 MR. TALARICO: Because those people were settled
22 with instructions by Mr. Mast that they could not
23 win any money against them. His instructions were
24 that they -- they would get out on summary judgment,

1 he would get nothing, take \$5,000 as a gift. He was
2 over and over that that -- that that argument was
3 made between Mast and between Dulberg, and some of
4 those documents are part of what we filed.

5 THE COURT: All right. Anything else,
6 Mr. Talarico?

7 MR. TALARICO: Not at the moment, Judge. Thank
8 you.

9 THE COURT: Thank you, sir. Final word, please.

10 MR. FLYNN: Thank you, Judge. Just briefly with
11 respect to the pecuniary loss, the loss or the
12 injury, which is the language used in the statute,
13 was in January of 2014 when the case against the
14 McGuires, Bill and Caroline McGuire. Caroline was
15 Gagnon's mother. Bill McGuire was the stepfather.
16 That case was foreclosed in January of 2014. No
17 recovery could have been had other than the \$5,000
18 at that point in time. That's when there was an
19 injury.

20 The question -- the second prong of the
21 analysis is when did he have a reasonable belief
22 that the injury was wrongfully caused. Dulberg had
23 every opportunity, he admitted that he had talked to
24 hundreds of lawyers. He could have asked Balke, he

1 could have asked Baudin. He didn't ask any of them,
2 allegedly.

3 Under Illinois law, he has a duty to
4 investigate if he thinks there is an issue. He
5 had -- he became disillusioned with Mast in 2014.
6 Mast withdrew in March of 2015. Again, the injury
7 is January 2014.

8 THE COURT: Thank you very much.

9 MR. TALARICO: Judge, may I say one thing?

10 THE COURT: You may.

11 MR. TALARICO: Thank you. The Supreme Court
12 case, the Suburban case makes it clear that being
13 alerted to a problem or alerted to malpractice is
14 not sufficient enough until -- they use the specific
15 word alerted and say that is not sufficient. There
16 has to be a pecuniary loss.

17 So whether he talked to a thousand
18 attorneys and whether they all told him all
19 different things, he's alerted but he had to face a
20 loss. That's all, Judge. Thank you.

21 THE COURT: Thank you. He was clearly alerted.
22 Let's cut to the chase. He was hesitant -- he was
23 hesitant to ever even sign the settlement agreement
24 to the point where it took him over two months to do

1 it. He clearly had his doubts. He clearly had his
2 lack of faith. He signed the settlement agreement
3 anyway. A year later, the attorneys withdrew. He
4 went to another attorney, still raised the issue.
5 Went to another attorney, still raised the issue.
6 Met with hundreds of attorneys. He was clearly
7 alerted.

8 When did the pecuniary loss occur? Here is
9 the amazing part, and this is what -- where the
10 disconnect comes on this case and it's why I'm
11 having so much trouble with it, I'm being urged that
12 the pecuniary loss occurred when the decision was
13 given on the binding mediation. But the reason I
14 believe that's a disconnect is because -- for two
15 reasons. The loss that occurred on the binding
16 mediation that is being urged upon the Court is a
17 loss of what appears to be \$360,000. The difference
18 between the \$660,000 that the mediator indicated
19 the -- were the appropriate measure of damages
20 against Mr. Gagnon and the \$300,000 insurance policy
21 limit, that \$360,000 difference and the amount that
22 was awarded and the amount that the mediator claimed
23 should have been awarded is based on an agreement
24 that somebody entered into. We don't know who that

1 somebody was, but we know for a fact that that
2 somebody was not Hans Mast or the Law Offices of Tom
3 Popovich because the agreement occurred well after
4 they were out of Dodge.

5 But didn't the pecuniary loss itself, in
6 fact, occur if there was a cause of action to which
7 you were alerted? The pecuniary loss occurred when
8 he only got \$5,000. I agree with defense counsel.
9 Statute of limitations lapsed. Merely denying the
10 statute of limitation without more in the
11 depositions and the sworn testimony does not itself
12 create an issue of material fact.

13 The motion for summary judgment is heard.
14 It is most respectfully allowed. Thank you very
15 much, gentlemen.

16 MR. FLYNN: Thank you.

17 THE COURT: Both of you, outstanding. Even
18 though they didn't comply with local rules, I will
19 say gentlemen, to both of you, outstanding
20 pleadings. Very thorough, very well written. I had
21 no issues going through them. I spent three days
22 going through all of them repeatedly, and you both
23 made my job -- well, I'm not going to say easy, but
24 you certainly did your jobs. And I very much

1 appreciate your time. Thank you, gentlemen.

2 MR. FLYNN: Thank you, Judge. And for what it's
3 worth, I apologize for not doing numbered paragraphs
4 on the statement of facts. I did follow that format
5 with Judge Meyer in another summary judgment motion
6 that was granted. This case was originally before
7 Judge Meyer. So --

8 THE COURT: I take no offense. I take no
9 offense by anybody. The pleadings were what they
10 were, and I had no issue reading them. Thank you
11 all very much for your time.

12 MR. TALARICO: Thank you, Judge.

13 THE COURT: Thank you, sir.

14 (Which were all the proceedings
15 had in the above-entitled cause
16 this date.)

17

18

19

20

21

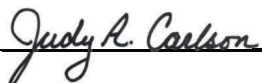
22

23

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, JUDY CARLSON, an official Court Reporter
6 for the Circuit Court of McHenry County,
7 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 
16 Certified Shorthand Reporter
17 License No. 084-003347
18
19
20
21
22
23
24

AFFIDAVIT

Saira Pasha, being first duly sworn on oath, deposes and states as follows:

1. I am a licensed attorney in Illinois. I graduated from Chicago-Kent College of Law in 2012 and was admitted to the bar the same year. I have a Bachelor of Science degree in Operations and Information Management with an emphasis in information systems from Northern Illinois University. Since August 2020, I have worked as an independent consultant and testifying expert specializing in audit trail analysis, specifically in medical malpractice cases. I consult for and testify on behalf of both plaintiffs and defendants. A large portion of my work focuses on data integrity and completeness of production, such as obtaining prior versions of modified records and identifying, requesting, and obtaining data and records that were created but have not yet been produced. I have reviewed over 300 audit trails from more than 20 electronic medical record systems. The underlying concepts of audit trails for systems and the storage and retrieval of data from a database are essentially universal and apply to many kinds of systems, including court filing systems.
2. An audit trail is a timestamped report of actions performed by all users in a system, such as view, edit, add, delete, print, etc. In addition to audit trails, there are other reports and analytical tools that can be performed on record systems to conduct a comprehensive forensic analysis of electronically stored information.
3. I have been retained as a consultant by The Law Office of Alphonse A. Talarico for the purpose of evaluating file content discrepancies and missing file contents for a case under appellate review.
4. I reviewed the following materials for my analysis:
 - Transcript of court proceeding from 9/16/2022 titled “Dash Dash 09-16-2022 17LA377 Dulberg”
 - Transcript of court proceeding from 9/16/2022 titled “Dilatory Dilatory 09-16-2022 17LA377 Dulberg”
 - Emails to and from court reporters related to the transcripts listed above
 - Report titled “[Compare Report] Dash Dash 09-16-2022 17LA377 Dulberg”
 - Table of Contents of the Report of Proceedings filed on 4/24/2023 for the appellate case (2-23-0072) listing all Report of Proceedings in the file in chronological order
 - McHenry County Circuit Court’s Public Case Access website information for the underlying case (2017LA000377)

5. Based on my analysis of these materials, I conclude to a reasonable degree of professional certainty and recommend as follows:

- There are multiple substantive differences, including modifications and deletions, between two transcripts for the same court proceeding that took place on 9/16/2022. One of the edits is about a material issue: whether expert discovery was closed. To verify the accuracy of what was said at this proceeding, I recommend a forensic investigation, including but not limited to obtaining a copy of the original recording and obtaining an audit trail for the recording system itself. Based on what the audit trail from the audio recording system shows, a live forensic inspection of the system may be warranted.
- The Table of Contents for the Report of Proceedings for the appellate review that was filed on 4/24/2023 does not list all court proceeding recordings that were created in the underlying matter. It is also inconsistent with representations made on the McHenry County Circuit Court Public Case Access website. I recommend an audit trail of the appellate court's filing system(s) be produced to objectively determine which documents were uploaded to its system(s), when they were uploaded, the user(s) who uploaded the documents, and if applicable, which documents were removed from the appellate review file. Based on what the audit trails from the systems show, a live forensic inspection of the systems may be warranted.
- Because there are allegations of removing the existence of recordings from specific court proceedings from the public access website for the McHenry County Circuit, I recommend an audit and forensic investigation to obtain objective facts and the timeline of when data was added and then removed from the underlying case's record. I recommend obtaining the audit trails for McHenry County Circuit Court's filing system(s) and performing a live forensic inspection of the system if warranted by the audit trail data.

Discrepancies between two transcripts for the 9/16/2022 court proceeding

6. A court proceeding was held on 9/16/2022 in Judge Meyer's courtroom in the McHenry County Circuit Court courthouse for the underlying case (2017 L 000377).
7. The McHenry County Circuit Court courthouse uses technology that creates audio recordings of court proceedings which court reporters can access to create transcripts of those proceedings.
8. There are two distinct transcripts for this proceeding. The first transcript was emailed from a court reporter to Plaintiff on 9/26/2022 and is titled "Dash Dash 09-16-2022 17LA377 Dulberg." The second transcript was emailed from a different court reporter to Plaintiff on 9/27/2022 and is titled "Dilatory Dilatory 09-16-2022 17LA377 Dulberg." (The names of the files were presumably created to distinguish the transcripts).

9. There are multiple substantive differences between the two transcripts. Below is one example of a significant substantive difference in a statement made by defense counsel George Flynn about a material issue: expert discovery. The first transcript includes the phrase “You gave a ruling that expert discovery is completed” (page 5, lines 12-13)

8	So those (indiscernible) all relied on
9	facts regarding the accident itself that would have
10	taken, you know, additional five to ten pages of
11	facts that are -- So we'd like to do that
12	separately. In fact, we might wait until -- You
13	gave a ruling that expert discovery is completed,
14	but I'm going to (indiscernible) but I think
15	(indiscernible).

10. The second transcript includes phrase “if and when expert discovery is completed” for the same page and line numbers:

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

11. These two statements are not only substantively different, they also do not sound alike when spoken aloud.
12. Another substantive difference between the two transcripts is the inclusion of the word “dilatatory” in two sentences.
13. In the “Dash Dash 09-16-2022 17LA377 Dulberg” transcript (page 11, line 2) the court reporter uses “(indiscernible)”, implying that the word stated by Mr. Flynn could not be understood. In the next line, there are hyphens at the end of “do” in Mr. Talarico’s response, implying Mr. Talarico never said any word after “do.”

1	just don't see what the issue is. It seems as if
2	it's a (indiscernible) tactic to avoid --
3	MR. TALARICO: I don't do --
4	THE COURT: Hold on. I can't rule on the motion
5	until I see it. I can't rule -- I can't determine

14. In “Dilatory Dilatory 09-16-2022 17LA377 Dulberg,” page 11, line 2, the transcription of defense counsel’s statement by replacing the “(indiscernible)” with “dilatory ” On the next line, plaintiff’s Mr. Talarico’s response is transcribed as “I don’t to dilatory..” implying that the word was spoken, while the original transcript indicates no word was spoken nor was there an indiscernible sound.

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
5	until I see it. I can't rule -- I can't determine

15. These are two examples of significant and substance differences between the two transcripts that warrant further investigation to confirm accuracy.
16. To verify the accuracy of both transcripts and determine what was actually said by the parties on 9/16/2022, I recommend obtaining the original recording of the proceeding from the McHenry County Circuit Court’s audio recording system. I also recommend simultaneously obtaining an audit trail for the specific audio recording file at issue, from 9/16/2022 through present, to identify all parties who accessed the recording, when they accessed it, if any edits were made to the recording, and other objective data pertaining to the veracity of the recording.

Missing recordings of court proceedings from January and February 2018

17. The Table of Contents for the Report of Proceedings from the appellate case was filed on 4/24/2023. It lists all reports of proceedings from the underlying case included in chronological order beginning on 5/10/2018, as seen in the excerpt below:

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

v.

MAST, HANS ET AL

Defendant/Respondent

Reviewing Court No: 2-23-0072

Circuit Court/Agency No: 2017LA000377

Trial Judge/Hearing Officer: JOEL D BERG

E-FILED **2**
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:03 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT



REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 2

Date ofProceedingTitle/DescriptionPage No.05/10/2018 HEARING - MOTION DISMISS

R 3-R 14 (Volume 1)

07/20/2018 MOTDIM

R 15-R 18 (Volume 1)

09/12/2018 HEARING - MOTION STRIKE

R 19-R 28 (Volume 1)

18. The public case access website for the McHenry County Circuit Court allows users to search for court events and documents related to cases. For the underlying case at issue, the top of the “Court Events” tab looks like this:

Katherine M. Keefe
Clerk of the Circuit Court • 22nd Judicial Circuit
Public Case Access

Case Information

2017LA000377 DULBERG, PAUL VS MAST, HANS, ET AL
TYPE LAW > \$50,000 - LEGAL MALPRACTICE - OVER \$50,000.00
FILED 11/28/2017
STATUS CLOSED - 02/01/2023

[Court Events](#) | [Documents](#) | [Parties](#) | [Charges / Sentences](#) | [Summons](#) | [Judgments](#) | [Financial Summary](#)

Future Court Events

No future Court Events for this case

Previous Court Events

Date	Room	Event Type/Result	Result	Judge
04/24/2023	AP	APPEAL - RECORD DUE	APPEAL - RECORD SENT	NO JUDGE
04/21/2023	AP	APPEAL - NOT DUE	APPEAL - NOT RECEIVED	NO JUDGE
02/01/2023	201	HEARING - SUMMARY JUDGMENT	ENTERED - SUMMARY JUDGMENT	BERG
02/01/2023	201	HEARING - SUMMARY JUDGMENT	** JUDGMENT - AGAINST PLAINTIFF	BERG
12/21/2022	201	HEARING	DENIED	MEYER
12/21/2022	201	STATUS - CHECK	STRIKE FROM CALL	MEYER
12/09/2022	201	HEARING	ALLOWED	MEYER
12/05/2022	201	STATUS - CHECK	SET - DATE FOR HEARING	MEYER
11/09/2022	355	MOTION - VACATE	ALLOWED	MEYER

19. Scrolling to the bottom of the same tab reveals the court events beginning from 1/10/2018.

06/05/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
04/03/2020	201	STATUS - CHECK	NOTICE - COVID19 PARTIAL SHUTDOWN	MEYER
02/03/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
11/04/2019	201	LEAVE - FILE AFFIRMATIVE DEFENSE	ALLOWED	MEYER
11/04/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
09/05/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
05/30/2019	201	MOTION - DEFAULT	WITHDRAWN - MOTION	MEYER
02/25/2019	201	MOTION - DEFAULT	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
02/25/2019	201	MOTION - SUBSTITUTION OF ATTORNEY	ALLOWED	MEYER
02/25/2019	201	STATUS - CHECK	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
11/13/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
11/13/2018	201	STATUS - ATTORNEY	SATISFIED	MEYER
10/15/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
10/15/2018	201	MOTION - WITHDRAW	ALLOWED	MEYER
09/12/2018	201	HEARING - MOTION STRIKE	ALLOWED	MEYER
07/20/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
05/10/2018	201	HEARING - MOTION DISMISS	ALLOWED - IN PART	MEYER
02/27/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
01/10/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER

20. As seen in the screen shot above, there was a court event on 1/10/2018 during which a motion to extend time was granted and a court event on 2/27/2019 during which a motion to dismiss was set for hearing. The third court event listed took place on 5/10/2018.

21. The recordings from the first two court events in the underlying case were not included in the file contents for appellate review. I did perform a line-item check for every court event; it is possible recordings for other events are also missing.

22. The 1/10/2018 court event was listed as “Motion – Extend Time.” I reviewed the Table of Contents to determine if any recording for a “Motion- Extend Time” court event existed and found one for 3/15/2021. Therefore, there is no reason to conclude that the 1/10/2018 recording was not included in the file materials because that type of court event is not recorded.

02/10/2021	HEARING - MOTION COMPEL	R 101-R 124 (Volume 1)
03/15/2021	MOTION - EXTEND TIME	R 125-R 153 (Volume 1)
03/25/2021	HEARING - MOTION COMPEL	R 154-R 159 (Volume 1)
04/03/2021	MOTION - COVID19 PARTIAL SHUTDOWN	R 160-R 166 (Volume 1)

23. Plaintiff/Appellant alleges that the public record access system for McHenry County originally listed recordings for these two 2018 proceedings under the documents tab but were removed at a later date. Below is a screen shot of the top portion of the “Documents” tab for the underlying case. As the image below indicates, “Report – Proceedings” is a type of document included in the list.

Clerk of the Circuit Court • 22 nd Judicial Circuit		
Public Case Access		
Case Information		
2017LA000377 DULBERG, PAUL VS MAST, HANS, ET AL		
TYPE LAW > \$50,000 - LEGAL MALPRACTICE - OVER \$50,000.00		
FILED 11/28/2017		
STATUS CLOSED - 02/01/2023		
<div> Court Events Documents Parties Charges / Sentences Summons Judgments Financial Summary </div>		
Filed	Type	Description
03/13/2023	RFQIPRA	REQUEST - PREPARATION OF RECORD ON APPEAL
03/07/2023	LETFCG	LETTER - FROM CIRCUIT CLERK
03/06/2023	PROS	PROOF - SERVICE
03/03/2023	NOTAPL	NOTICE - APPEAL
02/27/2023	REOP	REPORT - PROCEEDINGS
02/08/2023	REUP	REPLY - PROCEEDINGS
02/01/2023	ORDSJ	ORDER - SUMMARY JUDGMENT
01/19/2023	NOTF	NOTICE - FILING
01/19/2023	RELD	REPLY - DEFENDANTS
12/28/2022	NOTF	NOTICE - FILING

24. To objectively determine if the “Documents” tab of the McHenry County Circuit Court public portal ever included a listing of “Report – Proceedings” for the 1/10/2018 and 2/27/2018 court events, I recommend a forensic audit of the system(s) in which these data elements are stored and used to display information on the public access portal website.
25. To objectively determine if the recordings from the 1/10/2018 and 2/27/2018 court events were 1) ever part of the McHenry County Circuit Court file for the underlying, 2) were transmitted/uploaded to the appellate court filing system, and 3) were ever received or were part of the appellate court’s filing system or file, audit trails from each of the respective systems must be generated and produced. Based on the data included in those reports, a live forensic inspection of the systems may be warranted. If audit trails from those systems are not produced, I recommend performing a live forensic inspection of the systems at issue.

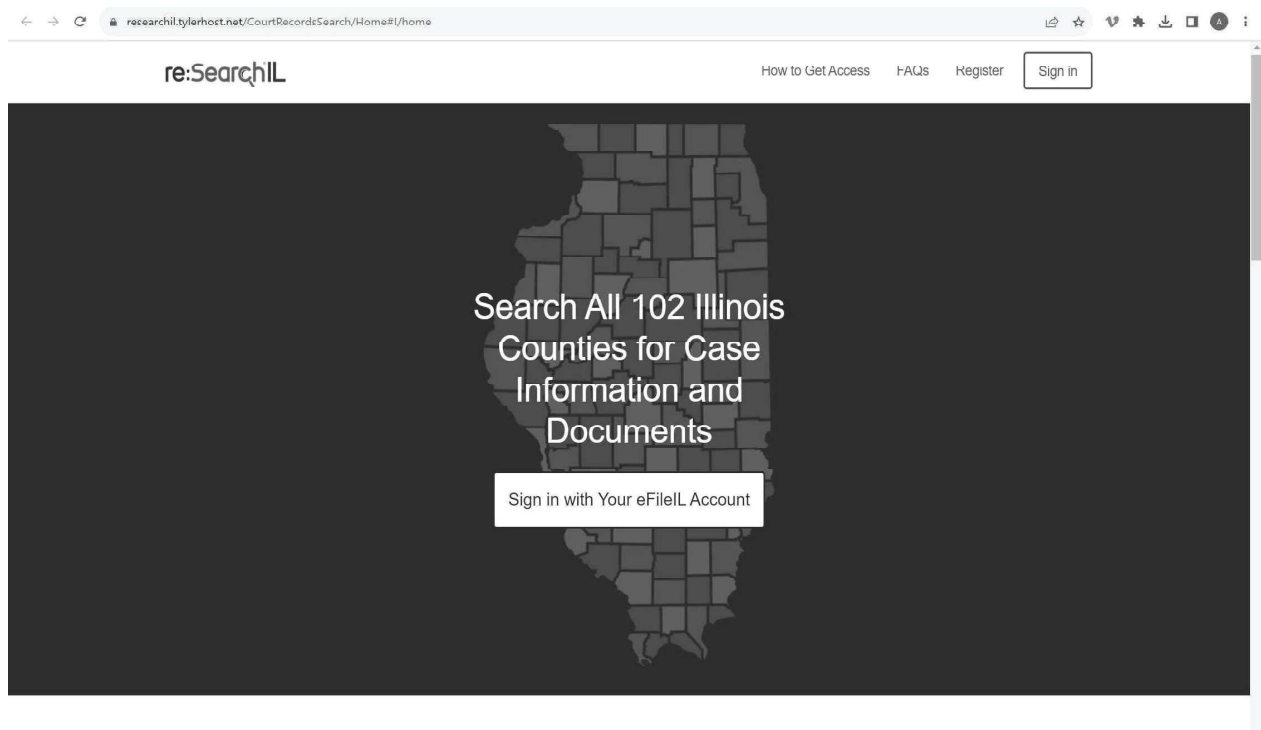
26. To objectively determine if recordings were created for the 1/10/2018 and 2/27/2018 court events, an audit trail from the McHenry County Circuit Court audio recording system must be generated and produced. Based on the data contained in those reports, a live forensic audit of the audio recording system may be necessary.
27. The website for Illinois's court systems makes reference to two distinct systems: one document repository system and e-filing systems.



28. The website displays several options for e-filing:



29. The document repository system link takes you to a separate system called re:SearchIL, managed by Tyler Technologies.



30. Based on my preliminary review of these websites and technologies, the systems used by both the appellate court and the circuit court in this case are capable of producing audit trails for regulatory and compliance reporting. These reports can also be used to verify the integrity of the records and data in this matter.

Under penalty of perjury, I certify the above statements are true and correct.

Saira Pasha

From: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> 

Subject: Fw: Appellate Court - 2nd District Case No. 2-23-0072: Record

Date: November 3, 2023 at 4:02 PM

To: Paul Dulberg <pdulberg@icloud.com>, Paul Dulberg <Paul_Dulberg@comcast.net>, T Kost <tkost999@gmail.com>

AT

From: DoNotReply-ILCourts@illinoiscourts.gov <DoNotReply-ILCourts@illinoiscourts.gov>

Sent: Tuesday, April 25, 2023 8:48 AM

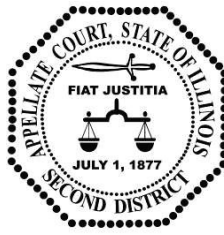
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Subject: Appellate Court - 2nd District Case No. 2-23-0072: Record

Record - Record on Appeal Filed has been filed by the Appellate Court - 2nd District in 2-23-0072.

This email was sent to contact@lawofficeofalphonsetalarico.com.





**ILLINOIS APPELLATE COURT
SECOND DISTRICT**

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

April 25, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Boulevard, #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 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.tylerhost.net. (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: 07/18/2023
(Ill. S. Ct. Rs. 341, 342, 343)

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
Michelle Marie Blum

Exhibit G

Paul Dulberg <Paul_Dulberg@comcast.net>

Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Common Law Record Vol 1 creation date pdf metadata:

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799802 9057 0 obj
799803 <</CreationDate(D:20230424093130-05'00')/ModDate(D:20230428154111+00'00')/PagesOfCLR(2148)/PagesOfExhibit(0)/PagesOfROP(512)/VolCLR(2)/VolExhibit(0)
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Common Law Record Vol 2 creation date pdf metadata:

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385425 <</CreationDate(D:20230424092819-05'00')/ModDate(D:20230428154120+00'00')/Producer(Aspose.PDF for .NET 21.5.0)/Creator(Aspose Ltd.)>>
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385427 13002 0 obj
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Reports of Proceedings creation date pdf metadata:

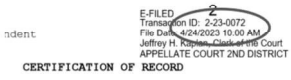
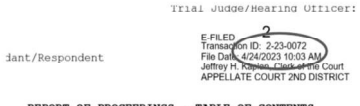
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98645 endobj
98646 7187 0 obj
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Exhibit H

Paul Dulberg <Paul_Dulberg@comcast.net>

Fri 11/3/2023 4:51 PM

To:Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

DOCUMENT	CREATION DATE	SUBMISSION DATE	
Common Law Record Volume 1	April 24, 2023 at 9:31 AM	 ndent CERTIFICATION OF RECORD	SUBMITTED 29 MINUTES AFTER CREATED
Common Law Record Volume 2	April 24, 2023 at 9:28AM	 ./Respondent COMMON LAW RECORD - TABLE OF CONTENTS	SUBMITTED 35 MINUTES AFTER CREATED
Report of Proceedings (missing pages)	April 25, 2023 at 8:06AM	 dant/Respondent REPORT OF PROCEEDINGS - TABLE OF CONTENTS	SUBMITTED 22 HOURS BEFORE CREATED