ARDC COMPLAINT AGAINST THOMAS W GOOCH AND SABINA WALCZYK

List of Tables:

Chapter 1: THOMAS GOOCH CONTROL OF DULBERG'S LEGAL MALPRACTICE CASE 17LA377

Relevant Facts:

1. "Evidence of Fraud on the Court in 12LA178" details how Popovich and Mast:

a) Represented Dulberg in 22nd Judicial Circuit Court even though an automatic stay was in place.

b) Did not sign any agreement with the Bankrupty trustee (who he knew has standing as plaintiff in the case once Dulberg declared bankruptcy)

c) Knew that Gagnon already effectively admitted to negligence for Dulberg's injury

d) Never insisted that Gagnon answer interrogatories

e) Tried to get Dulberg to agree to Allstate settlement for $50,000 or less (while an automatic stay was in place)

2. After Popovich and Mast resigned Dulberg hired Brad Balke. Balke also:

a) Contracted with Dulberg even though he knew Dulberg had no standing as plaintiff in the case.

b) Agreed to take the case to trial when contracting.

c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay was in place.

d) Did not sign any agreement with Bankrupty trustee. (who he knew had standing as plaintiff in the case)

e) Knew or should have known that Gagnon already effectively admitted to negligence for Dulberg's injury.

f) Tried to get Dulberg to agree to Allstate settlement for $50,000 or less. (while an automatic stay was in place)

3. After firing Balke, Dulberg hired the Baudins. The Baudins also:

a) Contracted with Dulberg even though they knew Dulberg had no standing as plaintiff in the case. (the third consecutive law firm to do so)

b) Agreed to take the case to trial when contracting. (the third consecutive law firm to do so)

c) Represented Dulberg in 22nd Judicial Circuit Court even though the automatic stay was in place (the third consecutive law firm to do so)

d) Did not sign any agreement with Bankrupty trustee who they knew had standing as plaintiff in the case from September 22, 2015 to October 31, 2016. (the third

consecutive law firm to do so)

e) Knew or should have known that Gagnon already effectively admitted to negligence for Dulberg's injury. (the third consecutive law firm to do so)

f) Worked with Allstate to successfully place an 'upper cap' on the value of PI 12LA178. (while an automatic stay was in place)

These actions are summarized in Table 2 below

TABLE 2: STRATEGIES AND METHODS OF 5 LAW FIRMS RETAINED BY DULBERG

ATTORNEY	STRATEGY	METHODS
Popovich & Mast Personal Injury Case 12LA178	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	Destruction and concealment of evidence Forged signatures Staged depositions (depositions with no actual court reporter present) **Knew defendant Gagnon already admitted negligence for Dulberg's injury** Worked in violation of federal bankruptcy court automatic stay to force a settlement against client's wishes Represented a client when they knew client had no standing as plaintiff in court **Tried to put a cap of $50,000 on the remaining case** (Described in detail in "Evidence of Fraud on the Court in 12LA178")
Balke Personal Injury Case 12LA178	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	**Knew defendant Gagnon already admitted negligence for Dulberg's injury** Worked in violation of federal bankruptcy court automatic stay to force a settlement against client's wishes Represented client when they knew client had no standing as plaintiff in court **Tried to put a cap of $50,000 on the remaining case**
The Baudins Personal Injury Case 12LA178	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	Forgery **Knew defendant Gagnon already admitted negligence for Dulberg's injury** Worked in violation of federal bankruptcy court automatic stay to force a capped binding mediation agreememt against client's wishes Represented client when they knew client had no standing as plaintiff in court **Placed a cap of $300,000 on the remaining case**
Gooch Legal Malpractice Case 17LA377	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	Said he would file lawsuit in 7 days but actually filed more than 11 months later Gooch law office did not even scan client's files into digital form for 6 months **Knew defendant Gagnon already admitted negligence for Dulberg's injury** Suppression of information on bankruptcy, Baudin and Popovich negligence Filed 2 complaints which intentionally included a 'trap door' to allow defendants to get out of the case on 2-619 and 2-615 summary judgment (Described in detail in this document)
Clinton & Williams Legal Malpractice Case 17LA377	**Plaintiff's attorney intentionally weakens or sabotages plaintiff's case**	Massive and sophisticated suppression of key evidence and information during pleadings and discovery document disclosure process **Knew defendant Gagnon already admitted negligence for Dulberg's injury** (Described in detailed in "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation")

4. All successive attorneys to the same (fully disabled) client used the same overall strategy: **To intentionally weaken or sabotage their own client's case**. All three personal injury attorneys retained by Dulberg **acted in violation of the automatic stay**. They continued to appear in the 22nd Judicial Circuit Court (which operated for approximately 25 months in violation of

the automatic stay) claiming to represent Dulberg (who had no standing as plaintiff). All 3 PI attorneys made efforts to **place a cap on the remaining case without having any authority from the Bankruptcy Court to do so**. Both legal malpractice attorneys suppressed all information of how all 3 PI law firms **violated federal bankruptcy laws** from Dulberg and from the complaints.

5. All five law firms (3 personal injury law firms and 2 legal malpractice law firms) knew or could easily discover that the personal injury defendant (who was operating the chainsaw that injured Dulberg) **Gagnon effectively admitted negligence for Dulberg's injury** as of early March, 2013. None of the 5 law firms ever informed Dulberg of this. The original defendant and operator of the chainsaw, Gagnon, admitted to being negligent:

> About 10 months before Dulberg was coerced into settling with the owners of the property (the McGuires) on which the accident occurred and for whom Gagnon was working.
>
> About 21 months before Dulberg declared bankruptcy.
>
> About 39 months before any binding mediation agreement with Gagnon was mentioned.
>
> About 40 months before any cap was placed on any binding mediation award from Gagnon.

6. There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

7. On December 12, 2016 Randall Baudin recommended Dulberg contact his office and ask Myrna for the name of the legal malpractice attorney they use.

8. On or about December 13, 2016 Myrna Boyce provided Dulberg with the contact information for Thomas Gooch and Dulberg first contacted Thomas Gooch the same day.

9. Dulberg first met with Thomas Gooch on December 16, 2016. Dulberg's brother Thomas Kost also attended the meeting.

10. Dulberg told Gooch about his bankruptcy. Dulberg told Gooch that he was forced into a binding mediation process by the bankruptcy Trustee and Judge.

11. At the first meeting Dulberg explained to Thomas Gooch that an arbitration judge awarded $560,000 but Dulberg could only collect $300,000. Dulberg told Gooch that he never agreed to be entered into binding mediation and he refused to sign the agreement so his signature cannot be found on any agreement.

12. Dulberg gave Gooch a copy of the unsigned mediation agreement.[1]

13. Dulberg gave Gooch a certified slip ruling of the Tilschner v Spangler decision[2] dated the

1 Exhibit 106_33391BMAG - Dulberg v. Gagnon Rvsd. - 12-8-16 (00600056xB3A5A).pdf
2 Exhibit 107_2013-11-20_certified slip ruling of Tilschner v Spangler Mast gave Dulberg.pdf

day the ruling was issued, May 6, 2011. Gooch looked up Tilschner v Spangler on his computer, gave the certified slip copy of Tilschner v Spangler back to Dulberg, and told Dulberg he did not need the document because he already has access to the decision through the internet.

14. At the first meeting Dulberg explained to Thomas Gooch that Mast's legal theory of why property owners (the McGuires) were not liable for Dulberg's injury was because the Restatement of Torts 318 is not applicable in Illinois as demonstrated in the case of Tilschner v Spangler.

15. Dulberg explained to Thomas Gooch that Mast explained his legal theory to Dulberg at a meeting with a witness present and with the witness taking notes.

16. Gooch gave Dulberg other documents[1] at their first meeting.

17. On the subject of statute of limitations, Gooch told Dulberg and his brother, Thomas Kost, that the 2 year statute of limitations begins to toll immediately as of Dulberg's first meeting with Gooch. Specializing in legal malpractice, Gooch can be considered an 'expert' on the subject of attorney liability, and therefore Dulberg's first meeting with Gooch establishes the time when Dulberg first "knew" Popovich and Mast breached a duty of care and caused a pecuniary injury. Dulberg and his brother, Thomas Kost, were informed by Gooch that the 2 year statute of limitations begins on December 16, 2016 because this is when Dulberg first learned (from Gooch himself) that he has a valid claim against Popovich and Mast.

18. Gooch did not mention to Dulberg that W. Randal Baudin II and Kelly Baudin, the Baudin Law Group or Baudin & Baudin did anything inappropriate or that Dulberg has a malpractice claim against the Baudins.

19. Gooch did not mention anything about an automatic stay. In fact, Gooch **has never** mentioned anything about any automatic stay applying to the underlying personal injury case.

20. On December 16, 2016 Gooch produced an ATTORNEY-CLIENT RETAINER AGREEMENT ADVANCED FEE WAIVER.[2]

21. The agreement is signed by Paul R. Dulberg and THOMAS W. GOOCH for GAUTHIER and GOOCH.

22. Thomas Gooch entered into an attorney client relationship with Dulberg.

23. Based upon the attorney client relationship, Thomas Gooch and any other attorneys working for his firm owed professional duties to Dulberg, including a duty of care.

24. The agreement stated:

"This is an Agreement you, Paul R. Dulberg of 4606 Haydew Court, McHenry, Illinois,

1 Exhibit 108_2016-12-16_Gooch 1st meeting Documents.pdf
2 Exhibit 109_2016-12-16_Gooch Retainer.pdf

and I, THOMAS W. GOOCH, of THE LAW OFFICES OF GAUTHIER and GOOCH, have made this 16th day of December, 2016."

25. Section 1 of the agreement stated:

"ENGAGEMENT AGREEMENT - You agree to retain and engage me to represent you in relation to a certain matter relating to an excessive fees case against Thomas J. Popovich, the Law Offices of Thomas J. popovich, P.., and his nominees, you authorize me to appear in any lawsuit which may be filed in this matter, to enter into discussions toward settlement or compromise of any such litigation, or to proceed as I deem advisable with your approval."

26. Section 7 of the letter stated:

"SETTLEMENT - I will not make any settlement of your case without your consent, nor will any proceedings be filed in court without your prior knowledge and consent unless necessary to protect you interests on an emergency basis."

27. On December 16, 2016 Thomas Gooch caused a letter[1] to sent to Thomas Popovich and the Law Offices of Thomas J. Popovich, P.C. at 3416 West Elm St, McHenry. The letterhead stated:

"Law Office Gauthier and Gooch 209 South Main St, Wauconda IL."

28. The letter stated:

"RE: Dulberg v Popovich, "Greetings, I have been retained by Paul R. Dulberg to represent him in a cause of action of legal malpractice against you for the mishandling of his case and the settlement of a specific portion of that case for substantially less than could have been obtained."

29. The letter also stated:

"You should aquaint the adjuster you speak with of my identity and if they so wish they may contact me. However, **I intend to file suit against you in the next 7 days**."[Emphasis added]

The letter is concluded:

"Very truly yours, Gauthier & Gooch"

and is signed by Thomas W. Gooch III.

30. On December 21, 2016 Gooch was involved in the preparation of the Allstate Release Agreement signed by Dulberg.

1 Exhibit 108_2016-12-16_Gooch 1st meeting Documents.pdf, (page 4)

31. On December 27, 2016 at 11:39 AM Dulberg sent an email to David Stretch stating:[1]

"Hi Dave,

How do I get a copy of all communication between my bankruptcy Trustee's and the law office of Thomas Popovich, Tom Popovich, Hans Mast, Brad Balke and Kelly & Randy Boudin or any of their assistants sent to the office of Thomas Gooch who currently represents me in another matter?

Thomas Gooch's contact information;
email: tgooch@gauthierandgooch.com
Phone: 847-526-0110
Thanks again, Paul

32. From: David Stretch <stretchlaw@gmail.com>

33. On December 27, 2016 at 4:11 PM Joe Olsen sent an email to David Stretch stating:[2]

"Dave-
You were going to re-check your notes and advise/amend schedules re potential malpractice claim? Can you let me know where you are at w/ the review etc.?"

34. On December 27, 2016 at 4:20 PM David Stretch sent an email to Joseph Olsen stating:[3]

"Joe,
I did check my notes and found nothing. At the time of filing Paul's attorney was the Popovitch firm, Hans Mast was the attorney. That information was disclosed on Schedule B, as you know. Because I couldn't find anything I emailed Paul and asked him to send me a copy of the complaint from any malpractice action he may have filed.
He responded today with a letter from Attorney Tom Gooch, Waukegan, to Mast, announcing that he, Gooch, intended to file a malpractice action within 7 days. The letter was dated December 16. I have received nothing further from Paul. I, minutes ago, forwarded that letter to you. I will let you know if I receive anything further.
Thanks,
Happy New Year
David L. Stretch"

35. The box of 12LA178 paper case files Dulberg left with Gooch just after their first meeting on December 16, 2016 were not scanned[4] into digital files the until June 26, 2017 to June 28, 2017.[5] (more than 6 months after Gooch wrote the letter to Popovich stating he intended to file suit within 7 days).

1 Exhibit 238_2018-12-27_Re Bankruptcy Communication_Stretch.pdf
2 Group Exhibit 39-Olsen subpoena and response: Fwd Re Dulberg.pdf
3 Group Exhibit 39-Olsen subpoena and response: Fwd Re Dulberg.pdf
4 Group Exhibit 36_When Gooch scanned in files (note the creation dates and times on all the files)
5 Exhibit 110_2017-06-29_REMINDER Documents Ready For Pick Up.pdf

36. On November 8th or 9th, 2017 Randall Baudin Sr called Dulberg. After they talked on the phone, sent an email to himself in order to record notes of the conversation. He intended to send the notes to Gooch. Appendix 1 is a record of the exchange.[1]

37. On November 28, 2017 Thomas Gooch filed Dulberg's COMPLAINT AT LAW[2] (which was about 330 days from the time Gooch's letter stating "I intend to file suit within 7 days").

38. The defendants named in the complaint are "The Law Office of Thomas J. Popovich and Hans Mast" Thomas Gooch did not name Thomas J. Popovich individually as a defendant.

39. It is most likely common knowledge among legal malpractice attorneys that a legal malpractice complaint must include both:

1) Claim of how the attorney being sued is legally liable
2) Claim of how the opposing party in the underlying case is legally liable.

This is most likely true for the simple reason that an attorney cannot be held liable for losing a case that was not winnable anyway.

40. COMPLAINT AT LAW consists of 22 paragraphs. There is not a single point in any paragraph related to the duty of care the McGuires owed to Dulberg or any breach of that care (which is considered the"underlying case" or "case within a case" as all legal malpractice attorneys are undoubtably aware).

41. There is no point or paragraph in the complaint which required information to which Gooch did not have access 11 months earlier. There is no evidence that any research had been done from December 16, 2016 to November 28, 2017 that would have caused any delay in filing the COMPLAINT AT LAW.

42. Thomas Gooch did not refer at all to the legal theory (Tilschner v Spangler and the Restatement of Torts 318) which Mast gave to Dulberg to explain why Mast believed the McGuires were not liable for Dulberg's injury in the COMPLAINT AT LAW.

43. Gooch did not include any information about Brad J. Balke, W. Randall Baudin, Kelly Baudin, the Baudin Law Group, Baudin & Baudin or Trustee Olsen or name any of them as defendants. None of their names appeared in the complaint at all.

44. Thomas Gooch did not mention anything about Dulberg's bankruptcy in the complaint or about any attorney violating any automatic stay.

45. Thomas Gooch did not include the fact that Dulberg never agreed to enter into binding mediation and never signed any agreement in the complaint. In fact, in the complaint Gooch wrote that a "high-low agreement" had been "**executed by Dulberg**" in paragraph 16:

1 See Exhibit 3 Appendix A
2 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, **a "high-low agreement" had been executed by DULBERG**, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than the sum of the money, and could have been recovered from the McGuire's had they not been dismissed from the complaint.[Emphasis added]

46. COMPLAINT AT LAW referred to Brad Balke, W. Randall Baudin, Kelly Baudin, Baudin Law Group, and Baudin & Baudin by the term "other attorneys" but never uses the word "Baudin" in any context.

47. Gooch knew or should have known that the CROSS-CLAIM[1] filed on February 1, 2013 by the McGuires against Gagnon was never answered by Gagnon since early March, 2013.

48. Gooch knew or should have known that Popovich and Mast, and Balke, and the Baudins also knew or should have known the CROSS-CLAIM filed by the McGuires against Gagnon was never answered.

49. On February 7, 2018 Defendants Popovich and Mast filed DEFENDANTS' COMBINED MOTION TO DISMISS[2]

50. Item 4 states:

"Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within a case" against the McGuires".

The statement is true since Gooch completely ignored this issue in his 22 paragraph complaint.

51. Item 8 states:

"Dulberg has failed to file his legal malpractice complaint against Popovich and Mast within the two year statute of limitations period which shall begin to run at "the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought."

52. Item 9 states:

"Here, the Plaintiff did not file his Legal Malpractice Complaint against Defendents until November 28, 2017, at least seven (7) months too late."

(By this statement the defendants imply that the statute of limitations begins to toll when Dulberg fired Popovich and Mast, in March, 2015.)

1 Exhibit 112_2013-02-01_CROSS CLAIM FOR CONTRIBUTION AGAINST CODEFENDANT DAVID GAGNON_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf
2 Exhibit 113_2018-02-07_DEFENDANTS' COMBINED MOTION TO DISMISS.pdf

53. MEMORANDUM IN SUPPORT OF DEFENDANTS' COMBINED MOTION TO DISMISS[1] Flynn page 5 states:

> "Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within the case" against the McGuires". Simply put, Dulberg fails to plead any facts n support of his conclusions that there was some liability against the McGuires."

54. On March 27, 2018 Gooch filed PLAINTIFF'S RESPONSE TO DEFENDANTS' COMBINED MOTION TO DISMISS. Rather than simply explain how the McGuires (the 'underlying case') were liable for Dulberg's injury as required by law, Gooch answered arguments of the defense motion to dismiss in the following ways:

> 1. A motion to Dismiss pursuant to section 2-615 attacks the legal sufficiency of the Complaint by alleging defects on its face. Weisblatt v. Colky, 265 Ill.App.#d 622, 625, 637 N.E.2d 1198, 1200 (1st Dist. 1994). Section 2-615 motions "raise but a single issue: whether, when taken as true, the facts alleged in the Complaint set forth a good and sufficient cause of action." Visvardis v. Ferleger 375 Ill.App.3d 719, 723, 873 N.E.2d 436, 440 (Ill.App.I Dist. 2007), quoting Scott Wetzel Services v. Regard, 271 Ill.App.3d 478, 480, 208 Ill. De. 98, 648 N.E.2d 1020 (1995).
>
> 2. When the legal sufficiency of a Complaint is challenged by a section 2-615 Motion to Dismiss, all well-pleaded facts in the Complaint are taken as true and a reviewing court must determine whether the allegations of the Complaint, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. Vitro v. Mihelcic, 209 Ill.2d 76, 81, 806 N.E.2d 1155, 1161 (2005). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved that will entitiled the plaintiff to recover. Zedella v. Gibson, 165 Ill.2d 181, 185, 650 N.E.2d 1000 (1995).

55. The only other section that is related to the 2-615 motion is section 7, which states:

> "Specifically, DULBERG properly established that "but for"the acts of the Defendants in urging DULBERG to release the McGuires, DULBERG suffered substantial damages."

56. Paragraph 10 states:

> "Defendants, in their Motion to Dismiss, are requiring of DULBERG to plead his entire case in a single Complaint."

57. Paragraph 11 states:

> "Plaintiff is not required to prove his case at this stage of the pleadings and the damages as alleged are sufficient to show he was damaged by Defendants' actions and cause of

1 Exhibit 114_2018-02-07_MEMORANDUM IN SUPPORT OF DEFENDANTS'.pdf

action for legal malpratice. Fox v. Seiden, supra, at 294; Platson v. NSM America, Inc., 322 Ill.App. 3d 138, 143 (2nd Dist., 2001)('Cases are not to be tried in the pleading stage, so a claimant need only show the possibility of recovery, not an absolute right to recover, to survive a 2-615 Motion.'). Here, DULBERG has shown at least a possibility of recovery based on the malpractice of POPOVICH, thus should survive Defendants' 2-615 Motion.

58. Paragraph 12 states:

> "The allegations set forth by DULBERG are not conclusions and are sufficient to sithstand a Section 2-615 dismissal. By looking at the Complaint, DULBERG has clearly set forth each of the elements of legal malpractice."

59. The above statements from PLAINTIFF'S RESPONSE TO DEFENDANTS' COMBINED MOTION TO DISMISS[1] are the entire argument Gooch gives toward defeating the 2-615 motion.

60. Rather than simply listing the ways in which McGuires were liable for Dulberg's injury (as required by Illinois law) Gooch attempted to argue that such a simple list is not necessary. (It was a complaint with a "trap door" written into it. It was a complaint set up to fail.)

61. On April 12, 2018 Dulberg sent an email to Gooch and Margaret G. Buckley that stated:

> "I noticed part of the defense argument was centered around our response to "defendants combined motion to dismiss" #4. In there it states that; "DULBERG's gross award of $660,000 was cut to only $300,000 due to a high-low agreement that was executed as part of the McGuire settlement."
> " was executed as part of the McGuire settlement." must be a typo. "was accepted because of the McGuire settlement" is much closer to the truth.
> Im not exactly sure who or where the hi-low idea originated but I suspect it was Allstate Insurance for GAGNON. Randy Jr & Kelly Baudin would know the details.
> Should I contact them?"

Gooch never replied.

62. On May 10, 2018 defendents' 2-615 motion to dismiss Dulberg's complaint was granted. The reasons given were[2]...

> "Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within a case" against the McGuires"[3]

Dulberg was given leave to file a first amended complaint.

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1 Exhibit 115_2018-03-27_PLAINTIFF'S RESPONSE.pdf
2 Exhibit 116_2018-05-10_ROP.pdf
3 Opposing counsel simply used the "trap door" written into the complaint by Gooch to be granted a Motion to Dismiss

63. Around May 20, 2018 Dulberg and Thomas Kost met with Sabina Walczyk just before the first amended complaint was to be filed by Gooch to discuss the complaint before filing it with the court.

Walczyk claimed that legally the discovery of the injury mentioned in 735 ILCS 5/13-214.3(b) was when Dulberg's previous attorneys (The Baudins) in the underlying case received the report from the chainsaw expert Dr Lanford created on Febuary 17, 2016 which stated in part "it is my opinion that Mr. Gagnon was fully responsible for this accident and his parents - the McGuires - were also somewhat responsible by letting their son, Mr. Gagnon, use their chainsaw - a potentially dangerous tool - without enforcing the warnings and instructions available in the owner's manual."

Walczyk insisted that legally Dulberg knew of the injury from the chainsaw expert's report and not the award amount because of the phrase "knew or reasonably should have known" found in 735 ILCS 5/13-214.3(b), an argument later used by Flynn.

Walczyk knew or should have known that:

a. A chansaw expert is not a legal expert when it comes to breaches in the standard of care, tolling a staute of limitation or when a 2 year statute of limitations begins for legal malpractice.

b. The injury had to be a quantifiable financial or pecuniary injury before Dulberg 'knew or reasonably should have known'.

c. That the discovery of the injury is not the discovery of the attorneys 'wrong doing' but rather the discovery of the 'pecuniary loss' that resulted from the attorneys 'wrong doing'.

d. That any cause of action filed for legal malpractice prior to the pecuniary injury on 12/12/2012 would be thown out because the financial loss for the attorney 'wrong doing' could not be quantified and the underlying case had not come to rest.

e. Dulberg and his bothers Thomas Kost were not attorneys and could not define the 'injury' mentioned in 735 ILCS 5/13-214.3(b) on their own and were completely reliant on their legal counsel to do such.

64. On June 7, 2018 FIRST AMENDED COMPLAINT AT LAW[1] was filed with the Court. The FIRST AMENDED COMPLAINT AT LAW consists of 32 paragraphs. The first 13 paragraphs are identical to the original complaint. There were (once again) no paragraphs related to the duty of care the McGuires owed to Dulberg or a breach of that care in the FIRST AMENDED COMPLAINT.

65. In the FIRST AMENDED COMPLAINT AT LAW there is no mention of a minimum or maximum award limit at all.

1 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf

66. In the FIRST AMENDED COMPLAINT AT LAW, Gooch refers to Brad Balke, W. Randall Baudin II, Kelly Baudin, Baudin Law Group, and Baudin & Baudin as "other attorneys" but never uses the name "Baudin" in any context.

67. Paragraph 24 of FIRST AMENDED COMPLAINT AT LAW states:

> "Thereafter, DULBERG retained other attorneys and proceeded to a court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000 **based upon the insurance policy available**."[Emphasis added]

68. There is no mention of any automatic stay. Thomas Popovich individually is not named as a defendant.

Rather than simply listing the ways in which McGuires were liable for Dulberg's injury (as required by Illinois law), Gooch attempted to argue that such a simple list is not necessary. (The same "trap door" was written into the AMENDED COMPLAINT. It was another complaint set up to fail.)

69. On July 5, 2018 Popovich and Mast filed DEFENDANTS' MOTION TO DISMISS[1]

70. Item 5 states:

> "Dulberg fails to allege requisite facts in support of a legal malpractice claim, including each and every element of the "underlying" case or "case within a case" against the McGuires."

This statement is identical to the statement in paragraph 49 on their first MTD. Opposing counsel could give an identical reply because Gooch made an identical mistake. (The AMENDED COMPLAINT was set up to fail a second time.)

71. Item 6 states:

> "Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615."

72. MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW[2] Page 6 states:

> "He also fails to plead any facts concerning the McGuires' liablility in the unlerlying case." This is the same reason the original complaint was rejected."

The statement is true. (This is the "trap door" that was written into both complaints.)

73. Page 3 states:

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1 Exhibit 118_2018-07-05_DEFENDANTS' MOTION TO DISMISS.pdf
2 Exhibit 119_2018-07-05_MEMORANDUM IN SUPPORT OF DEFENDANTS'.pdf

"Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award".

74. On August 17, 2018 Gooch filed PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW[1]. Rather than simply explain how the McGuires (the 'underlying case') owed a duty of care to Dulberg (as an invitee on their property with hazardous work being performed) and were vicariously liable as Gagnon's direct employers for Dulberg's injury as required by law, Gooch answered arguments of the defense motion to dismiss in the following ways:

75. Gooch produced "Argument (under 2-615)"[2] titled "Dulberg sufficiently states a cause of action for legal malpractice against the Defendants" in which in paragraph 1 (line 1) Gooch states:

"In his First Amended Complaint, DULBERG sufficiently set forth the necessary elements of legal malpractice."

76. In "Argument (under 2-615)" Gooch gives a 34 paragraph argument for why the Defendants' 2-615 Motion for Dismissal should not be granted. Not one of the 34 paragraphs addressed why the McGuires owed Dulberg a duty of care the day of the accident. Not one of these items addressed how the McGuires breached that duty to Dulberg.

77. On September 7, 2018 at 10:06 AM Dulberg sent an email to Gooch stating:[3]

"Please find the attached comments_on_Letter_to_Judge_Meyer.txt file

Will see you on Monday to discuss"

In the attached file it stated:

"Comments on "Letter to Judge Meyer" by MAST defendents....

Defendents wrote: "What did they (the McGuires) do wrong?"

a) MCGUIRES purchased and provided GAGNON a chainsaw without following the directions and heeding the warnings clearly printed in the operator's manual's that accompanied the chainsaw. Chainsaw was purchased on 5-22-2011 and was first used on 6-28-2011, the day DULBERG was injured.

b) The operator's manual clearly states in large, bold font: "WARNING - To ensure safe and correct operation of the chainsaw, ths operator's manual should always be kept with or near the machine. Do not lend or rent your chainsaw without the operator's instruction manual."

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1 Exhibit 120_2018-08-17_PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS FIRST.pdf

2 Exhibit 120_2018-08-17_PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS FIRST.pdf, page 2

3 Exhibit 225_2018-09-07-a_Dulberg-Gooch 100481-100483_Sent_Dulberg vs Law Offices of Thomas J Popovich PC et a_Pages-3.pdf

c) Just under this warning on the same page the operator's manual clearly states in large, bold font: "WARNING - Allow only persons who understand this manual to operate your chainsaw."

d) The manual has a list clearly labeled as "SAFETY RULES". The first listed rule is: "Read this manual carefully until you completely understand and can follow all safety rules, precautions, and operatng instructions before attempting to use the unit."

e) The second listed safety rule is: "Restrict the use of your saw to adult users who understand and can follow safety rules, precautions, and operating instructions found in this manual."

f) The fourth listed safety rule is: "Keep children, bystanders, and animals a minimum of 35 feet (10 meters) away from the work area. Do not allow other people or animals to be near the chainsaw when starting or operating the chainsaw (Fig.2)." There is a large picture next to this rule of people standing at least 35 feet away from a person operating a chainsaw.

g) The MCGUIRES asked DULBERG to help GAGNON. DULBERG did not go to the MCGUIRES property to help cut down a tree. He went to see if he wanted the wood. Only after he was on the property for more than two hour was he asked by the MCGUIRES if he could help GAGNON.

i) Had the MCGUIRES read and followed the warnings and safety rules in the operators manual, the injury to DULBERG could not have occurred.

j) The MCGUIRES were in possession of the owners manual and looked at it while DULBERG was present, however they asked DULBERG to help GAGNON anyway. They had the manual and DULBERG did not. They had access to knowledge about the warnings clearly stated in the manual that DULBERG did not have. "A duty to warn exists where there is unequal knowledge, actual or constructive, and the defendant, possessed of such knowledge, knows or should know that harm might or could occur if no warning is given." (many citations available)

Defendents wrote: "There is no factual allegation as to why such an expert mattered."

The expert on chainsaw use later retained by DULBERG stated that the owners of the chainsaw are liable for not heeding the clear warnings written in bold font on the operator's manual.

Defendents wrote: "DULBERG fails to specify how he was misled. Even if MAST made a mistake about the MCGUIRES' insurance coverage, it made no difference, and there was no damage. DULBERG cannot explain why $300,000 versus $100,000 in coverage made any difference, when he settled for $5,000. Had he settled for $99,999.99, his argument for damages may be colorable. In any event, he alleges no facts in support of the allegation that facts were "concealed.""

MAST never claimed the McGuires insurance policy limit was $100,000. He claimed the GAGNON insurance policy limit was $100,000 when it was actually $300,000. DULBERG never knew what GAGNONs actual coverage was until he retained new

counsel.

DULBERG still does not know what the MCGUIRES' policy limit was because MAST never informed him despite repeated requests to MAST by DULBERG for that information. In fact, there is no evidence at all within the case documents later given by MAST to DULBERG that MAST was ever in possession of the MCGUIRES' policy terms or limits.

DULBERG explicitly asked for documents related to the MCGUIRES' insurance policy and was refused by MAST."

The information in the attached file was never included in any of the pleadings or the Gooch case file turned over after Gooch was fired by Dulberg suggesting that Gooch intentionally ignored the contents of this email.

78. On September 7, 2018 Gooch sent an email with the Subject: "Automatic reply: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et a" stating:[1]

"I will be on a well deserved vaction thru the morning of September 12. I will however be taking cell phone calls as needed and will be checking email at least twice a day. I will have access to client files. My colleague, Sabina Walczk will be available and may be contacted at our office."

79. On September 10, 2018 Dulberg delivered copies of chainsaw manuals to the office of Gooch. They were scanned and named:

Duhlberg Manual Received on 9.10.18 fr. Client- 3.pdf
Duhlberg Manual Recieved on 9.10.18 fr. Client- 2.pdf

The files were placed in the Gooch digital case file in this folder:

Gooch Thumbdrive/UNDERLYING CASE DOCS[2]

80. As described in "Evidence of Fraud on the Court in 17LA377 During Clinton -Williams Representation" Clinton and Williams appear to mock their own fully disabled client by repeatedly mis-typing his name as "Duhlburg" (as can be seen in "Visual Aid 11 - Mocking client")[3]. Gooch mocked Dulberg the same way.[4]

81. On September 12, 2018 the hearing on the Motion to Dismiss took place. Neither Gooch nor Sabina appeared in court. They did not anounce they wouldn't attend beforehand. They simply didn't show up. Dulberg was alone in court.

82. On September 12, 2018, over 500 days after Gooch wrote the letter to opposing counsel

1 Exhibit 121_2018-09-07_Automatic reply Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf
2 Key Clinton Folder 1: UNDERLYING CASE DOCS (contains the files)
3 Visual Aid 11 - Mocking client.png
4 See paragraph 93

stating his intention to file a complaint within 7 days, the defense 2-615 motion to dismiss Dulberg's first amended complaint was granted for the same reason the earlier 2-615 motion to dismiss Dulberg's original complaint was granted on May 10, 2018. It is because Gooch did not list a single item in the original COMPLAINT AT LAW[1] or in the FIRST AMENDED COMPLAINT[2] that addressed why the McGuires owed a duty of care to Dulberg or how they breached that duty. Dulberg was given leave to submit a second amended complaint.

83. On September 12, 2018 at 12:33 PM Dulberg sent an email to Gooch and Sabina stating:[3]

> "I missed either of you in court this morning. I did not bring my phone into the courthouse so i couldn't call you. Hope nothing bad happened to delay you and that everything is okay. From what i understood, Judge Meyer moved forward without you and struck down the vast majority of our amended pleading as conclusions or redundant."

84. Dulberg explained to Gooch that Judge Meyer gave a number of specific rulings in court which describe why he granted the Motion to Dismiss. Dulberg suggested Gooch should order the Report of Proceedings.

85. On September 19, 2018 Gooch sent an email to Dulberg stating:[4]

> "Court order is not as problem, get it to you today. The transcript is expensive and needs to be ordered frpom the court whih we can do but I believe is a waste of money pls advise oif you wish me to order it. We are preparing the amended complaint."

86. On September 19, 2018 Dulberg sent an email to Gooch stating:[5]

> "I'm willing to pay for the transcript. It details which parts of the order were struck down for redundancy and which were considered conclusions. it should help you in writing the amended complaint."

87. Dulberg then asked his brother, Thomas Kost, to try to figure out why the Gooch complaints were not being accepted by the court and what needed to be done to fix the problem.

88. On October 1, 2018 Thomas Kost wrote a plain text document for Paul Dulberg called "second_amended_complaint_comments.txt"[6] and emailed the document to Dulberg. Dulberg then sent[7] the text document as an email attachment to Thomas Gooch.

89. The end of the text document includes the following statement:

> "Within these notes I tried to explain 3 points:

---

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf
4 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf
5 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf
6 Exhibit 123_2018-10-02_second_amended_complaint_comments.txt
7 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf, (page 40)

1) That the first amended complaint failed to adequately address the underlying case that DULBERG had against the MCGUIRES. In other words, we have to show that DULBERG would have prevailed against the MCGUIRES if it wasn't for the actions of MAST. The first amended complaint did not sufficiently address the "case within a case" or the "underlying case", which is against the MCGUIRES.

2) The case against the McGuires could be made by using the restatement of torts 343 or by using general negligence or in any other way that a premises liability or negligence expert would recommend.

3) Arguments which support the liability of MAST have already been made in the first amended complaint. But there are a few additional arguments that that may prove helpful to include. They are the reasons Mast gave to Dulberg why he will get $5,000 or nothing. The only case Mast cited to Dulberg was Tilscher v Spangler, and because the case confirmed that restatement of torts 318 is not applicable in Illinios, Mast told Dulberg he has no case against the McGuires. Mast also told Dulberg the judge would grant a summary judgement if Dulberg refused the offer."

90. The text document has a section titled "HOW TO PRESENT THE LIABILITY OF THE MCGUIRES:" which lists 10 specific items labelled "a" through "i'. The contents are:

"Facts:

a) MCGUIRES purchased and provided GAGNON with a chainsaw without following the directions and heeding the warnings clearly printed in the operator's manual that accompanied the chainsaw. Chainsaw was purchased on 5-22-2011 and was first used on 6-28-2011, the day DULBERG was injured.

b) The operator's manual clearly states in large, bold font: "WARNING - To ensure safe and correct operation of the chainsaw, ths operator's manual should always be kept with or near the machine. Do not lend or rent your chainsaw without the operator's instruction manual."

c) Just under this warning on the same page the operator's manual clearly states in large, bold font: "WARNING - Allow only persons who understand this manual to operate your chainsaw."

d) The manual has a list clearly labeled as "SAFETY RULES". The first listed rule is: "Read this manual carefully until you completely understand and can follow all safety rules, precautions, and operating instructions before attempting to use the unit."

e) The second listed safety rule is: "Restrict the use of your saw to adult users who understand and can follow safety rules, precautions, and operating instructions found in this manual."

f) The fourth listed safety rule is: "Keep children, bystanders, and animals a minimum of 35 feet (10 meters) away from the work area. Do not allow other people or animals to be near the chainsaw when starting or operating the chainsaw (Fig.2)." There is a large picture next to this rule of people standing at least 35 feet away from a person operating a

chainsaw.

g) The MCGUIRES asked DULBERG to help GAGNON. DULBERG did not go to the MCGUIRES property to help cut down a tree. He went to see if he wanted the wood. Only after he was on the property for more than two hours was he asked by the MCGUIRES if he could help GAGNON.

h) The MCGUIRES were in possession of the owners manual and looked at it while DULBERG was present, however they asked DULBERG to help GAGNON anyway. They had the manual and DULBERG did not. They had access to knowledge about the warnings clearly stated in the manual that DULBERG did not have. "A duty to warn exists where there is unequal knowledge, actual or constructive, and the defendant, possessed of such knowledge, knows or should know that harm might or could occur if no warning is given." (Pitler, 92 Ill.App.3d at 745, 47 Ill.Dec. 942, 415 N.E.2d 1255, quoting Kirby v. General Paving Co. (1967), 86 Ill.App.2d 453, 457, 229 N.E.2d 777.)

i) Had the MCGUIRES read and followed the warnings and safety rules in the operators manual, the injury to DULBERG could not have occurred.

As stated in part (g), DULBERG came to the property in order to see if he wanted the wood from the tree and not to help with cutting. Only after being on the property for more than two hours in the MCGUIRES' presence did the MCGUIRES ask DULBERG to help GAGNON. Therefore DULBERG was clearly an invitee and was owed a duty of 'reasonable care' by the MCGUIRES.

The MCGUIRE'S were in possession of the operator's manual of the chainsaw. They were also the owners of the chainsaw. Multiple warnings were clearly printed in bold font in the operator's manual, so the MCGUIRES should have realized that asking DULBERG to help GAGNON while not following any of the warnings described in parts (b), (c), (d), (e), and (f) involved an unreasonable risk of harm to DULBERG.

The MCGUIRES should have expected that since DULBERG did not have access to the operator's manual he was not aware of the explicit warnings described in parts (b), (c), (d), (e), and (f).

Therefore the MCGUIRES failed to exercise reasonable care toward DULBERG. They had access to knowledge about the warnings clearly stated in the manual that DULBERG did not have. "A duty to warn exists where there is unequal knowledge, actual or constructive, and the defendant, possessed of such knowledge, knows or should know that harm might or could occur if no warning is given." (Pitler, 92 Ill.App.3d at 745, 47 Ill.Dec. 942, 415 N.E.2d 1255, quoting Kirby v. General Paving Co. (1967), 86 Ill. App.2d 453, 457, 229 N.E.2d 777.)

The chainsaw accident was or should have been reasonably foreseeable to a person who read the warnings described in parts (b), (c), (d), (e), and (f) and failed to heed those warnings. Had the MCGUIRES read and followed the warnings and safety rules in the operators manual, the injury to DULBERG could not have occurred.

91. The text document includes a section titled "CONCERNING MAST'S LIABILITY" which

states:

> " MAST told DULBERG at a meeting in which DULBERG was trying to decide whether to accept the MCGUIRE's offer of $5,000 that because the restatement of torts 318 is not applicable in Illinois, DULBERG had no case against the MCGUIRES and that the MCGUIRES did not have to offer any settlement at all. DULBERG asked MAST to cite case law that shows why the MCGUIRES were not at least partially liable for DULBERG'S injury, and MAST cited Tilscher v Spangler, a case which confirms that restatement of torts 318 is not applicable in Illinois. But note the claim of MCGUIRE'S liability given above relies on restatement of torts 343 or a general neglegence claim. It is completely independent of restatement of torts 318.
>
> At the same meeting MAST also informed DULBERG that the MCGUIRES made an offer of $5,000 to be nice (they did not have to offer anything) and if DULBERG did not accept the offer it would be withdrawn and the MCGUIRES will ask for summary judgement. MAST informed DULBERG that the presiding judge would grant the MCGUIRES a summary judgement dismissing the case against them, leaving DULBERG with no settlement at all from the MCGUIRES."

92. This text document sent from Dulberg to Gooch included instructions to list the liabilities of McGuires and the liabilities of Mast in a clear and explicit way in the complaint.

93. On 10/2/2018 1:06 PM Thomas Gooch replied to Dulberg by email stating:[1]

> ">
>
> > Mr. Duhlberg;
> >
> > I have your attachment and am deeply offended by it.
> >
> > I more upset over being ordered to call you today. I am preparing for trial and frankly don't have time to read or comment on your attempts to educate me on what legal malpractice is all about, I particularly don't have time top read outdated cases on the elements of a legal malpractice case, nor do I have any intention of quoting the law you sent to me.
> >
> > You understand full well I'm sure that I have been doing this for a very long time, if I need help on understanding the law I will get from someone who knows how to do legal research, you and your brother don't.
> >
> > If I have anymore of this authoritative comments or instructions I will have to give

1 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf

particular thought to withdrawing my appearance and letting you represent your self or find someone else, understand this is not an empty threat, I will tolerate any more of this. If I need a factual question answered and I'm sure I will in the course of this litigation then I will ask you but kindly stop with rudimentary research. The Google searches of you and your brother are not replacements for my law license.

>

> I generally don't have a proble3m with relatives helping out and being involved just so long as the client understands that the relatives involvement may waive the attorney client privilege. However at this point your brother has become more the problem then helpful. While I can not prevent him from injecting himself into your case through you, I am no longer willing to have him present at conferences or communicate directly with me.

>

> At this point with everything I have going and the attitude you are displaying I have serious doubts as continuing to represent you. Kindly do not communicate with my staff on the telephone in the manner you chose today

>

> Sincerely

>

> Thomas W Gooch"

94. It is described in "Evidence of Fraud on the Court in 17LA377 During Clinton -Williams representation" Clinton and Williams appear to mock their own fully disabled client by repeatedly mis-typing his name as "Duhlburg" (as can be seen in "Visual Aid 11 - Mocking client")[1]. Note that Gooch begins the letter by writing "Mr. Duhlberg". This appears to be a shared inside joke between Popovich, Mast, Gooch and Clinton and Williams. They all mis-spelled his name the same way.

95. Dulberg responded by email stating[2],

"Hello Tom and Sabina, I didn't understand the last email I received so I need some clarification. I was never rude or not courteous to you staff and your staff was always courteous to me. Yesterday I talked with Nikki breifly just to confirm that the office received the email. She was friendly and courteous. I said nothing rude or offensive.

I never ordered you or anyone to call me yesterday. I honestly don't know why you believe I did. I was not aware there was anything offensive in the attachment I sent. As I read it again I still can't see anything offensive in it.

As you know I have a permanent disability. You may not know I am on medication to control pain and spasms and this medication does not allow me to focus on complex

1 Exhibit 124_Visual Aid 11 - Mocking client.png
2 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf

subjects to a prolonged time. Since I do not understand your last email and I don't have much time before appearing in court I need to know where I stand.

Are you thinking of not continuing to represent me in this case?

Are you going to submit a second amended complaint on October 10 and appear in court?

Will I be given enough time to review the complaint before it is submitted?

May I comment on it or request changes to it or ask questions about it?

I do not want to offend anyone, so I need to know what I can comment on or ask questions about.

I have no memory of any inappropriate behavior when talking to Nikki yesterday. Please let me know how I can communicate with your staff or what I can include in an email in the future so you are not offended again.

Sorry if I did anything wrong. Sincerely, Paul Dulberg "

96. On October 3, 2018 Gooch replied to Dulberg's email point by point. Gooch responses are in red font. The email[1] is reproduced:

"From: Thomas W. Gooch III gooch@goochfirm.com

Subject: RE: from tom

Date: October 3, 2018 at 12:56 PM

To: Paul Dulberg pdulberg@comcast.net

As you know I have a permanent disability. You may not know I am on medica:on to control pain and spasms and this medica:on does not allow me to focus on complex subjects for a prolonged :me. Since I do not understand your last email and I don't have much :me before appearing in court I need to know where I stand.

You seem to have been very focused when you delivered to me your research notes on the elements of legal malprac8ce, not that I need the wri;en lecture on what legal malprac8ce consists of

Are you thinking of not con:nuing to represent me in this case?

Yes I am considering withdrawing on your behalf. I need no research from you on legal malprac8ce answering my ques8ons on facts is helpful when I ask. I want no more involvement from your brother, Obviously he can talk to you all you want, I can't prevent that but if I perceive further interference from him then I will have to re-evaluate my con8nued ability to competently represent you. I will not allow him to be here in my office for any purpose. "

Are you going to submit a second amended complaint on October 10 and appear in court?

We may seek an extension, we appear on court dates as a general rule always. You

1 Exhibit 122_2018-08-31_Dulberg vs Law Offices of Thomas J Popovich PC et a.pdf

do not and have not had any court dates that require your appearance.

Will I be given enough :me to review the complaint before it is submiFed?

When I determine the complaint is in my opinion legally sufficient it gets filed, naturally you will get a copy of it for your records.

May I comment on it or request changes to it or ask ques:ons about it?

You, not your brother, can ask all the ques8ons you wish. I generally do not ask a client if a complaint is legally sufficient, nor do I want a client draFing a complaint that I have to sign. Most clients do not know the difference between pleading conclusions of law or fact, pleading evidence or the correct pleading of ul8mate material factual allega8ons. In as much as you have advised you are on pain medicine unable to "focus on complex subjects I ques8on how much you could help in any event. I can get a lot done when I don't have to answer emails like this one.

I do not want to offend anyone, so I need to know what I can comment on or ask ques:ons about.

Making demands and lecturing me on the law are greats way to be offensive, likewise demanding to know when you will be called and comments about caring about anyone else we represent or other cases is not conducive to not offending us.

gooch"

97. On October 3, 2018 Dulberg called the Clinton Law Firm. At 10:43 AM on October 3, 2018 Julia Williams of the Clinton Law Firm sent an email to Dulberg which stated[1],

> "Dear Paul, It was nice to talk to you today. We would be able to meet next Friday, let me know if that works for you and a good time."

98. On October 9, 2018 Dulberg could not accept the conditions that Gooch was demanding and fired Gooch.[2]

99. On October 8, 2018 the Gooch firm sent an email to Dulberg stating:[3]

> "Dear Mr.ulberg: Attached please find the plaintiff's discovery requests tio the Defendants in regards to the above-referenced matter. Please note their responses are due by November 5, 2018. Whenever I receive them, I will forward to you. Melissa J. Podgorski Paralegal The Gooch Firm"

100. On October 8, 2018 Thomas Gooch sent out a discovery packet[4] to opposing counsel. Gooch sent out discovery documents "before 5:00PM on October 8, 2018".

1 Exhibit 125_2018-10-03_1043 AM_RECV_Legal Malpractice Case (2).pdf
2 Group Exhibit 33_Gooch Termination
3 Exhibit 126_2018-10-08_email.pdf
4 Group Exhibit 32 Gooch Discovery package

101. On October 9, 2018 Gooch filed a motion to withdraw[1]. The order was granted on October 15, 2018.

102. On October 10, 2018 Dulberg sent a zipped folder[2] as an email attachment to Williams of the Clinton Law Firm which contained the letter which angered Gooch, and on October 12, 2018 Dulberg and his brother, Thomas Kost, met Ed Clinton and Julia Williams. (zipped folder "Duberg Complaint.zip" as exhibit)

103. Dulberg gave Gooch an Advance payment retainer of $10,000.00[3] plus an additional advance of $5000.00[4] for costs. $480.00 went to copy costs and filing fees. The remaining $4520.00 was for hiring an expert witness. Gooch never hired the expert witness and never returned the advance. Gooch profited $14,520.00 from Dulberg, $4520.00 of which should have been returned to Dulberg upon Gooch's withdrawl but never was.

104. On August 20, 2020 at 5:10 AM Dulberg sent an email to Clinton and Williams stating:[5]

> "... I emailed Mary about the case files but I have one other concern. At our first meeting Ed made copies of the checks I wrote to Gooch. I would like a copy of these included in the case file. The retainer check was $10,000 and another $5,000 check was written to cover the initial costs for filing fee's and an expert witness. Ed said he would get the $5,000 back from Gooch. Was anything done with this or does Gooch still have the extra $5,000 for the expert witness that was never hired? ..."

105. Dulberg's experiences with Clinton and Williams are described in "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation".

106. The Gooch case file was received by the Clinton Law firm on or about November 21, 2018.

107. Thumbdrive with the Gooch case file[6] contains switched file names for Saul Ferris letter and Kupets and DeCaro letter

108. There are no "Tilschner v Spangler" references anywhere on the Thumbdrive.

"TEAM-WORK" BETWEEN GOOCH, CLINTON AND WILLIAMS (AND OPPOSING COUNSEL) AND THE KEY INFORMATION THEY TARGET

'TEAM-WORK' EXAMPLE 1: Concealing key evidence (Tilschner v Spangler):

109. The chronology of the suppression of Tilschner v Spangler given below demonstrates intricate "team-work" between Gooch and Clinton and Williams:

---

1 Exhibit 127_2018-10-09_MOTION TO WITHDRAW.pdf
2 Key Clinton Folder 2_Duberg Complaint
3 Exhibit 109_2016-12-16_Gooch Retainer.pdf
4 Exhibit 246_2017-11-22_Scan of bank statement shown 5000.00 check Dulberg paid to Gooch for 480.00 costs and 4520.00 advance for expert witness.pdf
5 Exhibit 203_2020-08-20_0510 AM_SENT_Dulberg v Mast Motion to Withdraw.pdf
6 Key Clinton Folder 1: Dulberg Paul Dulberg Files From Client\Misc (contains switched file names)

1) Gooch was told that Tilschner v Spangler and the Restatement of Torts 318 were the reasons Mast gave Dulberg for why the McGuires are not responsible for Dulberg's injury at his first meeting with Dulberg (on 2016-12-16).

2) Gooch was handed a certified slip copy of Tilschner v Spangler[1] that Mast provided to him and looked at it.

3) Gooch refused it and told Dulberg he can download the information from the internet.

4) Tilschner v Spangler was explicitly cited in the emailed letter[2] that led to the firing of Gooch (in detailed descriptions in 2 different paragraphs on 2018-10-02).

5) There is no mention of Tilschner v Spangler in the Gooch Thumbdrive[3], which is the entire case file from Gooch's office.

6) The same letter (with detailed descriptions of Tilschner v Spangler's importance in 2 different paragraphs) was given to Clinton and Williams during their first meeting.[4]

7) Dulberg and his brother, Thomas Kost, discussed Tilschner v Spangler with Clinton and Williams at the first meeting.

8) Clinton and Williams were informed of the importance of Tilschner v Spangler in detail and in writing at least 6 different times [5]

9) Williams removed Dulberg's references to Tilschner from the second amended complaint.[6]

10) Dulberg sent emails with the certified slip copy of Tilschner v Spangler which Dulberg received from Mast on 2013-10-20.[7]

11) Williams separated it.[8]

12) Williams never Bates-stamped the certified slip copy of Tilschner v Spangler and never handed it over to opposing counsel.[9]

13) There was an inexplicable technical problem with exhibit 12 during the Mast deposition.[10]

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1 Exhibit 107_2013-11-20_certified slip copy of Tilschner v Spangler Mast gave Dulberg.pdf
2 Exhibit 123_2018-10-02_second_amended_complaint_comments.txt
3 Key Clinton Folder 1-Gooch Thumbdrive
4 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, paragraph 3
5 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C
6 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C
7 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C, paragraph 2C5
8 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C, paragraph 2C6
9 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2C, starting paragraph 2C6.
10 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2,

14) In October, 2022 Williams could not recall any details about the contents of exhibit 12 when asked only weeks after preparing answers and documents on exhibit 12 in answer to a subpoena.[1]

15) The 6 year suppression was so thorough that when Dulberg mentioned Tilschner v Spangler in a court document in November, 2022 opposing counsel Flynn replied:[2]

"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.**"

The suppression of Tilschner v Spangler demonstrates an **intricate team-work between Gooch, Clinton, Williams and opposing counsel Flynn**. It involves an interconnected chain of events from December, 2016 to December, 2022.

"TEAM-WORK" EXAMPLE 2: Concealing Admission of Negligence of Defendant Gagnon in Underlying Case 12LA178

110. On February 1, 2013 Ron Barch filed CROSS-CLAIM FOR CONTRIBUTION AGAINTS CO-DEFENDANT DAVID GAGNON[3]. In the cross-claim the McGuires state as follows:

7. At the time and place alleged, notwithstanding his aforementioned duty, Defendant David Gagnon was then and there guilty of one or more of the following negligent acts and/or omissions:

a. Caused or permitted a chainsaw to make contact with Plaintiffs right arm;

b. Failed to operate said chainsaw in a safe and reasonable manner so as to avoid injuring Plaintiff's right arm;

c. Failed to maintain a reasonable and safe distance between the chainsaw he was operating and Plaintiff's right arm;

d. Failed to properly instruct Plaintiff prior to approaching him with an operating chainsaw;

Section 2K

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2K, paragraph 2K-66

2 Exhibit 128_2022-11-30_Flynn Answer to Motion to Strike Mast Deposition.pdf , (¶ 12 on page 4)

3 Exhibit 112_2013-02-01_CROSS CLAIM FOR CONTRIBUTION AGAINST CODEFENDANT DAVID GAGNON_CERTIFICATE OF SERVICE_Barch-McGuires copy-OCR.pdf

c. Failed to properly warn Plaintiff prior to approaching him with an operating chainsaw;

f. Failed to maintain the chainsaw in the idle or off position when he knew or should have known that Plaintiff was close enough to sustain injury from direct contact with the subject chainsaw;

g. Failed to maintain a proper lookout for Plaintiff while operating the subject chainsaw;

h. Failed to maintain proper control over an operating chainsaw;

1. Was otherwise negligent in the operation and control of the subject chainsaw.

8. That the injuries alleged by Plaintiff PAUL DULBERG, if any, were the direct and proximate result of negligence on the part of Defendant David Gagnon.

111. David Gagnon or his attorney has never filed an answer to these allegations in the CROSS-CLAIM for contribution. By not filing an answer to CROSS-CLAIM for contribution Gagnon effectively admitted to each of charges (a), (b), (c), (d), (e), (f), (g), (h) and (I) of….

112. As Dulberg's attorneys at that time Popovich and Mast knew Gagnon never filed an answer to the CROSS-CLAIM. As Dulberg's subsequent attorneys in his personal injury case, both Brad Balke and the Baudins also knew Gagnon never filed an answer to the CROSS-CLAIM. Dulberg's first legal malpractice attorney, Gooch, also knew Gagnon never filed an answer to the CROSS-CLAIM. Clinton and Williams also knew Gagnon never filed an answer to the CROSS-CLAIM.

113. Gooch and Clinton and Williams all knew (or should have known that) Mast and Popovich must have known about the CROSS-CLAIM filed by the McGuires against Gagnon and unanswered by Gagnon since early March, 2013. This was not mentioned in COMPLAINT[1] AT LAW or AMENDED COMPLAINT[2] or SECOND AMENDED COMPLAINT[3].

114. The original defendant and operator of the chainsaw, Gagnon, admitted to being negligent:

About 10 months before Dulberg was coerced into settling with the owners of the property (the McGuires) on which the accident occurred and for whom Gagnon was working.

About 21 months before Dulberg declared bankruptcy.

About 39 months before any binding mediation agreement with Gagnon was mentioned.

About 40 months before any cap was placed on any binding mediation award from Gagnon.

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 Exhibit 132_2018-12-06_Second Amended Complaint.pdf

115. There was no reason for any of these activities to take place if the defendant who operated the chainsaw already admitted to being negligent.

"TEAM-WORK" EXAMPLE 3: Concealing Bankruptcy and Violations of Federal Bankruptcy Laws (automatic stay, loss of standing to pursue claim, capping value of assets in BK estate, ect)

116. The following sequence of events demonstrates "team-work" related to bankruptcy:

1) Gooch was told Dulberg declared bankruptcy on November 26, 2014.

2) Gooch did not include any information about Dulberg declaring bankruptcy in the COMPLAINT AT LAW[1].

4) Gooch did not include any information about Dulberg declaring bankruptcy in the AMENDED COMPLAINT AT LAW[2].

5) Clinton and Williams were told that Dulberg declared bankruptcy on November 26, 2014.

6) Clinton and Williams were told[3] by Dulberg to include paragraphs on bankruptcy in the SECOND AMENDED COMPLAINT. CLINTON AND WILLIAMS removed all mention of bankruptcy from the SECOND AMENDED COMPLAINT

7) Concerning Dulberg's comments about bankruptcy he wanted included in the SECOND AMENDED COMPLAINT Williams told Dulberg:[4]

"Attached please find the revised version of the second amended complaint. We will plan to file it tomorrow by morning. If you can, I request that you send further thoughts and edits by 5pm today. I have a deposition in the afternoon and cannot file it later in the day. I reviewed your comments and edits. Overall, many were accepted. **There were some, particularly the language about the bankruptcy, that I thought were unnecessary and would simply muddy the waters for the judge.**

In this case, we need to show that Mast/Popovich had a duty to advise you properly and protect your interest, they failed to do that by urging you to settle with the McGuires when you could have continued with the case against them and obtained a much better result, instead you settled and were not able to recover at least $300,000. **The bankruptcy proceedings are necessary to this case. They will add color to the case and the information will definitely come out in the discovery process. That being said, I don't want to confuse the issues and the recovery by making allegations about the bankruptcy in the complaint. Further, I don't want to increase any burden of proof we may have by making allegations that are necessary to prove our case. ...**"

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 Exhibit 134_2018-12-04_1420 PM_SENT_2nd amended complaint draft_ATTACHMENTS.pdf
4 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2A

8) Williams played "hoaxes"[1] with bankruptcy documents

9) Williams told the judge "I think we produced a number of the bankruptcy issues, but we can talk about it today and definitely try to work out -- there's definitely -- there was a bankruptcy. We're not trying to hide that bankruptcy, so. And the trustee did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual."[2]

10) On February 19, 2020 at 6:09 AM (which was the morning of Dulberg's deposition) Dulberg sent an email with the subject "Capped ADR agreement issue" to Julia C. Williams and Ed Clinton which stated:[3]

"Hi Julia and Ed,

Yesterday we talked about the bankruptcy court ordering the case into ADR with a cap on the amount that could be recovered.

This was an agreement between Allstate, the Baudins and the trustee that put the motion before the bankruptcy court.

I did some talking with at least 12 bankruptcy attorneys on those free legal advise forums last night

All said basically the same thing. This should not have been allowed without the owner of the case/asset, me, agreeing to it.

I was given this example which I believe best explains it.

In chapter 7 bankruptcy
You go into Bankruptcy and the court orders your assets (like your home) to be auctioned off to pay your creditors which is legal
But they took it one step too far when they capped the amount
Since it's already going to auction its not fair to you, the actual owner of the asset or even the creditors, to cap the amount that can be recovered at auction
They are supposed to let the auction play out to recover what the highest bidder pays, not cap it.
Capping the highest bid at an auction makes no sense
The same goes for any recovery from any asset including a personal injury suit
I'm sorry this happen to you

Now that I know this, I'm not 100% here, but I think I understand why the trustee Joe Olsen hired the Baudins to represent him Any advise on this would be helpful ..."

Clinton and Williams did not answer the email.

117. Gooch, Clinton and Williams together have kept all issues related to 'bankruptcy' out

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, Chapter 2, Section 2A

2 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2A, paragraph 2A15

3 Exhibit 135_A10-Capped ADR agreement issue.pdf

of the 17LA377 Common Law Record and Reports of Proceedings for 6 years (except for one minor mention in the 2018-09-05 RoP which was pointed out in EXAMPLE 2).

"TEAM-WORK" EXAMPLE 4: Concealing true sources of $300,000 upper cap on the value of the PI claim.

118. Records of Proceedings of 12LA178 from June 13, 2016 to August 10, 2016 provide clear evidence of:

a) **Who** placed a $300,000 upper cap on the value of the personal injury case

b) **When** the agreement was made

c) **Where** the agreement was made

The evidence was easily available to both Gooch and Clinton and Williams the entire time (in the Reports of Proceedings of the 'underlying' case 12LA178).

a) **Who** placed a $300,000 upper cap on the value of the personal injury case (***The Baudins and Allstate alone***)

b) **When** the agreement was made (***On or before August 10, 2016 in violation of the automatic stay***)

c) **Where** the agreement was made (***In the 22nd Judicial Circuit Court***)

119. On July 11, 2016 the following exchange took place in the 22nd Judicial Circuit Court:[1]

THE COURT: Dulberg. Do we have -- When do you want to come back?

UNIDENTIFIED SPEAKER: We're entering continuing the motions, is that what we're doing?

THE COURT: Yes.

UNIDENTIFIED SPEAKER: Okay. When's your next available date, Judge?

THE COURT: For a hearing?

UNIDENTIFIED SPEAKER: Yes.

UNIDENTIFIED SPEAKER: Or a brief.

THE COURT: Are we briefed? Has it been briefed?

UNIDENTIFIED SPEAKER: No. They're just motions that I presented as emergencies and then we continued them pending discussions.

THE COURT: Well, when -- **if it goes into mediation, the motions become moot. Or do we have to address them regardless? I don't know what they are**.

1 Exhibit 129_2016-07-11_CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - (1).pdf

UNIDENTIFIED SPEAKER: I think the type of **mediation** we would do, it would be moot because --

UNIDENTIFIED SPEAKER: Yeah, other than, possibly, an IME. But, you know, we can certainly work -- we've worked well together so far, so we could certainly see if we can work things out.

THE COURT: Speaking generally, I'd probably grant an IME. I haven't seen your motion, though,so I don't know. I mean, I could put this over to July 21st, and that should give you enough time to decide what you want to do with mediation.

UNIDENTIFIED SPEAKER: I can be here.

THE COURT: Okay. All right. And that will be just at 9:00 o'clock for presentation of the motion, and then we'll figure out what we're going to do.

UNIDENTIFIED SPEAKER: Thank you for your time.

UNIDENTIFIED SPEAKER: Thank you. Appreciate it.

120. On July 21, 2016 the following exchange took place in 22nd Judicial Circuit Court:[1]

APPEARANCES: THE BAUDIN LAW GROUP LTD., by: MS. KELLY N. BAUDIN, on behalf of the Plaintiff;

LAW OFFICE OF STEVEN A. LIHOSIT, by: MS. SHOSHAN E. REDDINGTON, on behalf of the Defendant David Gagnon.

MS. BAUDIN: Kelly Baudin on behalf of the plaintiff. Mr. Dulberg is present and approaching.

MS. REDDINGTON: Good morning, Judge. Shoshan Reddington for the defendant.

THE COURT: Good morning.

MS. REDDINGTON: We talked last night. We've got some things agreed to, so I would like to just give us a moment to discuss that and step back up.

THE COURT: Okay. I will pass.

MS. BAUDIN: Thank you.

MS. REDDINGTON: Thank you.

THE COURT: All right. Thank you.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

MS. BAUDIN: Okay, Judge. **As you know, we had previously been discussing binding mediation. We came to a semi-agreement, --**

THE COURT: Okay.

1 Exhibit 130_2016-07-21_CC-Civil - 12LA000178 - 3_2_2022 - - - REOP - - (2).pdf

MS. BAUDIN: -- but we would like probably two weeks to just see if we can figure out the details and see if we can reach an agreement on how that is going to proceed. So I think we're looking at an August 4th date for that.

THE COURT: Can't do August 4th --

MS. BAUDIN: Oh, okay. I just was looking at two weeks, Your Honor.

THE COURT: -- because that's when I'm not here.

MS. BAUDIN: Oh, I see on the calendar. I apologize.

THE COURT: Any day after that.

MS. REDDINGTON: The following week, anything?

MS. BAUDIN: Grab my -- Let's say either the 8th or the 10th are probably the best.

THE COURT: Either's fine?

MS. REDDINGTON: My calendar's currently crashed on my -- so I can't answer that, but --

MS. BAUDIN: Why don't we do the 10th, just so it's --

THE COURT: Is there a date you know you're going to be here?

MS. REDDINGTON: No.

THE COURT: Okay.

MS. REDDINGTON: Judge, and I have several motions, and what I'd like to do is get the trial stricken which is on 9/- --

MS. BAUDIN: 27th I believe or 22nd?

MS. REDDINGTON: -- the 26th, and then to set it for the status instead on the 8/10, and then I also had a motion on an IME. I'm a little stymied right now because my claim rep is out this week and there's a couple of issues that I can't answer for counsel, but **if we do get the agreement in place, what we'd like to do is do the mediation and then come back for a status to dismiss it once the mediation is done, if that's agreeable.**

THE COURT: First off, with respect to the motion to strike the trial date, any objection?

MS. BAUDIN: No.

THE COURT: All right. I will -- I will strike the trial date for September 26, as well as the pretrial

date of the 23rd.

MS. REDDINGTON: Okay.

THE COURT: I will enter and continue your other motions until we're certain what's going to happen.

MS. REDDINGTON: Okay.

THE COURT: The removal of the trial date pretty much means we can do anything.

MS. REDDINGTON: Takes care of that. Okay. And **hopefully we'll come back with everything in place and then we'll just even set a date and then get a status for after that date to be able to come back and say it's done; we're willing to dismiss with prejudice because mediation's binding and it's done.**

THE COURT: All right. However you want to do it, it is fine.

MS. REDDINGTON: Thank you.

THE COURT: All right. Take care.

MS. BAUDIN: Thank you

121. On August 10, 2016, in violation of the automatic stay, the Baudins and Reddington moved to enter into binding mediation on August 10, 2016, The date of the Binding Mediation hearing was already set for December 8, 2016 by the time the following exchange took place on August 10, 2016 in the Circuit Court:[1]

MS. REDDINGTON: Number one, Dulberg vs. Gagnon. Shoshan Reddington for the defendant. **We have (indiscernible) scheduled for 12-8.**

THE COURT: Okay.

MS. REDDINGTON: We'd like to have a status date after that date.

THE COURT: What date works for you? You said December 8?

MS. REDDINGTON: December 8.

THE COURT: Okay. How about the following Monday, the 12th? Or do you want to go out further? The 16th, Friday?

Even though the information is available in court records of Dulberg's underlying case against Gagnon, neither Gooch's firm nor Clinton's firm ever pointed it out to Dulberg or mentioned it in any court record. Instead, the following comments were made in court records.

On November 28, 2017 the following statement appeared in COMPLAINT AT LAW:[2]

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. **Unfortunately, a "high-low agreement" had been executed by DULBERG**, reducing the maximum amount he could recover to #300.000.00 based upon the insurance policy available. The award was substantially more than the sum of the money, and could have been recovered from the

1 Exhibit 131_12LA000178--2016-08-10--ORD_0097.pdf, CC-Civil - 12LA000178 - 3_3_2022 - - - REOP - - (4).pdf, (Lines 2-10)

2 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

McGuire's had they not been dismissed from the complaint.

In this first version (of 2017-11-28) by Gooch an upper cap was "executed by Dulberg".

122. On May 10, 2018 the following exchange took place between Gooch counsel Sabina Walczyk and opposing counsel Flynn:[1]

> page 5, line 19"
>
> Mr Flynn: "The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --
>
> THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?
>
> MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then **it looks like there was a high-low agreement signed.**
>
> THE COURT: Okay.
>
> MS. WALCZYK: And --
>
> THE COURT: Was it signed by Mr. Mast?
>
> MS. WALCZYK: Oh, **I believe it was signed by Mr. Dulberg. I haven't seen it.**
>
> THE COURT: Okay.
>
> MS. WALCZYK: However, we can attach it if -- if you want --
>
> THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.
>
> MS. WALCZYK: Yes.
>
> THE COURT: Because I -- I came away thinking that was not part of your complaint, but I wasn't a 100 percent sure."

In this second version (of 2018-05-10) his own attorney states they have never seen the agreement and they think "Dulberg signed it".

123. In the FIRST AMENDED COMPLAINT Gooch stated:[2]

> "24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered

1 Exhibit 226_2018-05-10_ROP 17LA377.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf

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

In this third version (of 2018-06-13) by Gooch the $300,000 cap just seemed to ***show up***. The Judge ordered Gagnon to pay much more but Gagnon apparently didn't because of the "insurance policy available" (and apparently Dulberg pursued the matter no further).'

124. In the SECOND AMENDED COMPLAINT Williams stated:[1]

"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.**"

In this fourth version (of 2018-12-06) by Clinton and Williams also the $300,000 cap just seemed to ***show up***. The Judge awarded an amount that Gagnon ***just decided not to pay*** (and Dulberg apparently pursued the matter no further).'

125. On September 5, 2019 Williams stated in court:[2]

MS. WILLIAMS: I think we produced a number of the bankruptcy issues, but we can talk about it today and definitely try to work out -- there's definitely -- there was a bankruptcy. We're not trying to hide that bankruptcy, so. **And the trustee did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual.**"

In this fifth version (of 2019-09-05) by Williams it is stated for the first time that a *bankruptcy trustee* was involved in placing an upper cap of $300,000 on the value of the PI case 12LA178. Note that Dulberg retained Gooch on 2016-12-12 and this is the first time either the term "bankruptcy' or "trustee" were ever mentioned in relation to the 'upper cap' (and the last time, too).

126. A summary of 5 different versions of how the $300,000 'upper cap' was placed on the value of PI case 12LA178 which Gooch, Williams and Clinton stated in 17LA377 Common Law Records and Reports of Proceedings are given in Table 3 below.

TABLE 3: FIVE INCORRECT VERSIONS OF THE ORIGIN OF A $300,000 'UPPER CAP' PLACED ON THE VALUE OF 12LA178 GIVEN BY DULBERG'S

1 Exhibit 132_Second Amended Complaint
2 Exhibit 133_2018-09-12_Record of Proceedings.pdf

COUNSEL

TABLE 3: SOURCE OF THE $300,000 'UPPER CAP' PLACED ON 12LA178 ACCORDING TO DULBERG'S ATTORNEYS	
Version 1 2017-11-28 Gooch	"**Unfortunately, a "high-low agreement" had been executed by DULBERG**, reducing the maximum amount he could recover to $300.000.00 based upon the insurance policy available."
Version 2 2018-05-10 Gooch	WALCZYK: ...And then **it looks like there was a high-low agreement signed**. THE COURT: Was it signed by Mr. Mast? MS. WALCZYK: Oh, **I believe it was signed by Mr. Dulberg. I haven't seen it.**
Version 3 2018-06-07 Gooch	"**DULBERG was only able to collect $300,000.00 based upon the insurance policy available."**
Version 4 2018-12-06 Williams-Clinton	"**Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally."**
Version 5 2019-09-04 Williams-Clinton	"**And the trustee did resolve -- there was an arbitration based on the trustee's recommendation in the bankruptcy for the individual"**

127. Gooch crafted the first 3 versions. The first 3 versions are incompatible with each other.

128. Clinton and Williams crafted Versions 4 and 5. Version 5 contradicts Version 4. They are incompatible.

129. 'Bankruptcy' is never mentioned in any of the 5 versions as having anything to do with an 'upper cap'.

130. Version 1 and Version 2 blame Dulberg for executing an 'upper cap'. Version 3 blames the existence of an insurance limit as the source of an 'upper cap'. Version 4 blames 'insurance available' as the source of an 'upper cap'. Only in Version 5 'bankruptcy' is mentioned (for the first time on 2019-09-04, almost 3 years after Dulberg first met Gooch) and only in passing in a single Report of Proceedings.

131. All 5 Versions in Table 3 are inventions created by Dulberg's own attorneys to conceal the true origin of the 'upper cap'. Even though all 5 different versions are created by Dulberg's attorneys, Dulberg was described as the source of all 5 untrue and incompatible versions.

"TEAM-WORK" EXAMPLE 5: Intentionally confusing Statute of Limitations toll date and placing Dulberg's privileged attorney-client communications at issue

Legal malpractice attorney Thomas Gooch: (1) **set an artificial Statute of Limitations toll date**[1] to confuse Dulberg and (2) **placed Dulberg's privileged attorney client communications at issue**[2] at his first meeting with Dulberg**.** Gooch told Dulberg that their first meeting together is the time when the 2 year statute of limitations to file a complaint against Popovich and Mast begins to accrue.

In doing this Gooch gave Dulberg a false impression of how to determine a statute of limitations accural date. Gooch also created a situation where privileged attorney-client communications may now need to be produced to opposing counsel to "prove" the claim that some event occurred at the first attorney client meeting which "accrues" the statute of limitations.

132. About 18 months after Gooch told Dulberg that the statute of Limitations accrues from their first meeting together and about 6 months after stating the same in COMPLAINT AT LAW, Gooch changed his opinion of when Dulberg's statute of limitations began to accrue.

133. On December 16, 2016 Thomas Gooch caused a letter[3] to sent to Thomas Popovich and the Law Offices of Thomas J. Popovich, P.C. at 3416 West Elm St, McHenry. The letterhead stated: "Law Office Gauthier and Gooch 209 South Main St, Wauconda IL..

134. The letter stated: "RE: Dulberg v Popovich, "Greetings, I have been retained by Paul R. Dulberg to represent him in a cause of action of legal malpractice against you for the mishandling of his case and the settlement of a specific portion of that case for substantially less than could have been obtained."

135. The letter also stated: "You should aquaint the adjuster you speak with of my identity and if they so wish they may contact me. However, **I intend to file suit against you in the next 7 days.**" The letter is concluded "Very truly yours, Gauthier & Gooch" and signed by Thomas W. Gooch III.

136. On December 27, 2016 at 11:39 AM Dulberg sent an email to David Stretch stating:[4]

> "Hi Dave,
>
> How do I get a copy of all communication between my bankruptcy Trustee's and the law office of Thomas Popovich, Tom Popovich, Hans Mast, Brad Balke and Kelly & Randy Boudin or any of their assistants sent to the office of Thomas Gooch who currently represents me in another matter?

1 In "TEAM-WORK" Example 5 red font is used to highlight quotes and statements that are related to 'setting an artificial Statute of Limitations toll date'.
2 In "TEAM-WORK" Example 5 blue font is used to highlight quotes and statements that are related to 'placing Dulberg's privileged attorney-client communications at issue'.
3 Exhibit 108_2016-12-16_Gooch 1st meeting Documents.pdf, (page 4)
4 Exhibit 238_2018-12-27_Re Bankruptcy Communication_Stretch.pdf

Thomas Gooch's contact information;
email: tgooch@gauthierandgooch.com
Phone: 847-526-0110
Thanks again, Paul

137. On December 27, 2016 at 4:11 PM Joe Olsen sent an email to David Stretch stating:[1]

"Dave-
You were going to re-check your notes and advise/amend schedules re potential malpractice claim? Can you let me know where you are at w/ the review etc.?"

138. On December 27, 2016 at 4:20 PM David Stretch sent an email to Joseph Olsen stating:[2]

"Joe,
I did check my notes and found nothing. At the time of filing Paul's attorney was the Popovitch firm, Hans Mast was the attorney. That information was disclosed on Schedule B, as you know. Because I couldn't find anything I emailed Paul and asked him to send me a copy of the complaint from any malpractice action he may have filed.
He responded today with a letter from Attorney Tom Gooch, Waukegan, to Mast, announcing that he, Gooch, intended to file a malpractice action within 7 days. The letter was dated December 16. I have received nothing further from Paul. I, minutes ago, forwarded that letter to you. I will let you know if I receive anything further.
Thanks,
Happy New Year
David L. Stretch"

139. The box of paper files Dulberg left with Gooch just after their first meeting on December 16, 2016 were not scanned into digital files the until June 26, 2017[3] [4] (more than 6 months after Gooch wrote the letter to Popovich stating he intended to file suit within 7 days).

140. On November 28, 2017 Thomas Gooch filed Dulberg's COMPLAINT AT LAW[5] (which was about 330 days from the time Gooch's letter stating "I intend to file suit within 7 days").

141. The Defendants Popovich and Mast will later claim that the Statute of Limitations should be tolled from any of the following dates:

1) March 15, 2015 (when Dulberg fired Popovich and Mast)
2) February 26, 2015 (when Dulberg met Saul Ferris)
3) June, 2015 (after Dulberg retained and fired Balke)
4) December 31, 2014 (when Popovich and Mast will try to claim that Dulberg met

1 Group Exhibit 39-Olsen subpoena and response: Fwd Re Dulberg.pdf
2 Group Exhibit 39-Olsen subpoena and response: Fwd Re Dulberg.pdf
3 Exhibit 110_2017-06-29_REMINDER Documents Ready For Pick Up.pdf
4 Group Exhibit 36_When Gooch scanned in files/Gooch files created June 26, 27, 28, 2017/
5 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

with Ferris to discuss an "accident" that occurred on January 24, 2013 (the day of Dulberg's deposition, this claim is based on a partially forged letter))

5) September 22, 2015 (when Dulberg's retained the Baudins)

Every one of these claims (1) through (5) would place the toll date **more than 2 years** earlier than November 28, 2017 when Gooch filed the COMPLAINT AT LAW.

142. But if Gooch filed in 7 days (like he claimed in the letter to the Defendant) the filing date would have been around December 23, 2016, avoiding any problem with any of the toll dates (1) through (5). Instead, Gooch waited about an additional 323 days to file COMPLAINT AT LAW, placing the filing date more than 2 years after dates (1) through (5).

143. During the approximately 323 days it took Gooch to file the complaint Dulberg periodally called or stopped in at Gooch's office and was told the following:

a. Gooch has been away from work for a few months due to his wife's dire health issues.

b. Gooch can't file the complaint because Gooch is still scanning documents.

c. Gooch has a trial in another case this month and can't be disturbed.

d. Gooch is away on vacation for a month.

e. Gooch hasn't been into work for a couple months because he is disabled and has debilitating health issues.

f. Gooch has to wait until he finds the right expert witness to file the complaint.

144. In November of 2017 Dulberg went to Gooch's office and voiced his concerns about the delays and was assured by Gooch the delays are not a problem because we have 2 years to file suit and if we have an issue he knows the Judge. Dulberg told Gooch to get the complaint filed ASAP. After the Judge dismissed the AMENDED COMPLAINT Gooch told Dulberg that Dulberg pressured Gooch to get the complaint filed ASAP caused the mistakes made in the complaint because he was rushed and wasn't finished with his investigation.

145. On November 28, 2017 COMPLAINT AT LAW paragraph 20 stated:

"20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG **realized for the first time** that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. **Following the mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016."**

146. On June 7, 2018 AMENDED COMPLAINT AT LAW paragraphs 28 to 30 stated a different version of the same event:[1]

1 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf

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

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

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

147. On December 6, 2018 SECOND AMENDED COMPLAINT AT LAW (prepared by Clinton and Williams) paragraphs 54 to 57 stated a third version of the same event:[1]

"54. Dulberg was only able to recovery approximately $300,000 of the award fromGagnon'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."

These 3 versions of the same event are summarized in TABLE 4A and TABLE 4B below.

1 Exhibit 123_2018-12-06_Second Amended Complaint.pdf

TABLE 4A: THREE INCORRECT VERSIONS OF WHEN DULBERG "FIRST KNEW" OF AN "INJURY" GIVEN BY DULBERG'S COUNSEL

TABLE 4A:	3 INCORRECT VERSIONS OFWHEN AND HOW DULBERG "FIRST KNEW" OF AN "INJURY" ACCORDING TO DULBERG'S ATTORNEYS
VERSION 1 Gooch COMPLAINT 2017-11-28	"20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG **realized for the first time** that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. **Following the mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016."**
VERSION 2 Gooch AMENDED COMPLAINT 2018-06-07	"28. Following the execution of the mediation agreement and the final mediation award, DULBERG **realized for the first time in December of 2016** that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake. 29. It was not until the mediation in December 2016, **based on the expert's opinions that DULBERG retained for the mediation**, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis. 30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and **received that opinion on or about December 16, 2016**."
VERSION 3 Clinton and Williams SECOND AMENDED COMPLAINT 2018-12-06	"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."

TABLE 4B: THREE INCORRECT VERSIONS OF WHEN DULBERG "FIRST KNEW OF AN "INJURY" SIMPLIFIED

<table>
<tr><th colspan="2">TABLE 4B: 3 INCORRECT VERSIONS
OF HOW DULBERG "FIRST KNEW" OF AN "INJURY"
SIMPLIFIED</th><th>WHEN IT HAPPENED</th></tr>
<tr><td rowspan="2">VERSION 1
Gooch

COMPLAINT
2017-11-28</td><td rowspan="2">DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake</td><td>Following the execution of the mediation agreement with the"high-low agreement" contained therein, and the final mediation award</td></tr>
<tr><td>independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016</td></tr>
<tr><td rowspan="3">VERSION 2
Gooch

AMENDED
COMPLAINT
2018-06-07</td><td rowspan="3">, 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.

"became reasonably aware pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis</td><td>Following the execution of the mediation agreement and the final mediation award... in December of 2016</td></tr>
<tr><td>based on the expert's opinions that DULBERG retained for the mediation</td></tr>
<tr><td>independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.</td></tr>
</table>

TABLE 4B: 3 INCORRECT VERSIONS OF HOW DULBERG "FIRST KNEW" OF AN "INJURY" SIMPLIFIED		WHEN IT HAPPENED
VERSION 3 Clinton-Williams SECOND AMENDED COMPLAINT 2018-12-06	Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable. 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. 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.	Only after Dulberg obtained an award against Gagnon... Following the execution of the mediation agreement and the final mediation award...in December of 2016 based on the expert's opinions that Dulberg retained for the mediation.

148. In Version 1, Version 2 and Version 3 Dulberg's attorneys Gooch, Clinton and Williams all identify Dulberg's "injury" as ***the settlement with the McGuires for $5,000***. Dulberg's attorneys Gooch, Clinton and Williams all identify Dulberg's "injury" as taking place in January, 2014.

149. Illinois law on this issue toll cannot begin until pecuniary injury is received as explained in: ***Suburban Real Estate Servs. v. Carlson, 2020 Ill. App. 191953 (Ill. App. Ct. 2020)***

The logic that versions 1, 2 and 3 take is very simple: Gooch, Clinton and Williams:

a) Form a basic concept of Dulberg's "injury" (as the settlement with the McGuires in January, 2014).

b) Describe when Dulberg "first discovered" or "knew or should have known" of Dulberg's "injury"

c) Ignore when a pecuniary injury is received (ignore (1) ***Suburban Real Estate v Carlson*** and cited cases[1])

d) Omit and ignore that a principal is required to answer for an agent's negligent or wrongful actions.

150. Omission of the vicarious liability aspect of the McGuire liability for their agents neglent

1 For a list of key cases cited in ***Suburban*** see parapraph 207

actions later leads to Judge Berg's confusion and disconnect about when a pecuniary injury can be realized and when a statute of limitations begins in 735 ILCS 5/13-214.3 (b).

151. The column "WHEN IT HAPPENED" in Table 4B contains at least 2 entries for each Version 1, 2 and 3.[1] Opposing counsel Flynn later used the multiple claims to accuse Dulberg of "fiddling" with when he "first knew" of his "injury".

152. On July 2, 2020 Flynn filed a Supplemental Request for Production of Documents.[2]

153. On July 2, 2020, at 12:10 PM Williams sent a forwarded email to Dulberg stating:[3]

> "Opposing Counsel has tendered a supplemental request for production. Please review. A response is due by July 30, 2020. You can begin gathering responsive documents. Some of the document may be subject to attorney-client privilege. Best Regards,"

154. Most of the documents Dulberg would need to gather to answer the supplemental production request were still being suppressed by Williams and were released by Williams for the first time one week later on July 9, 2020 (hidden behind thousands of pages of previously released documents). The more than 6000 pages of documents contained all the previously suppressed emails of Balke, Saul Ferris, the letter from Saul Ferris to Dulberg among other suppressed documents.[4]

155. On July 27, 2020 at 2:24 PM Ed Clinton sent an email to Dulberg stating:

> "... Please see the attached letter. Best Regards ..."[5]

In the attached letter Clinton and Williams resigned as Dulberg's attorneys.

156. From July, 2020 (just after Clinton and Williams resigned) until November, 2021 Flynn maintained the following 3 forms of pressure on Dulberg and his new attorney:

1) Demand for detailed supplimental production responses (from the 2020-07-09 flood of over 6000 documents)

2) Demand to be given Dulberg's privileged attorney-client communications with Gooch

3) Pressure Dulberg to admit receiving in the mail a partially forged declination letter from attorney Saul Ferris. (The letter was actually addressed to Flynn's own client Popovich.

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1 This results in multiple incorrect claims of when Dulberg 'first knew" of an "injury" as listed in Table 5B.

2 Exhibit 136_2020-07-02_1211 PM_RECV_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377_ATTACHMENTS.pdf, (page 6-8)

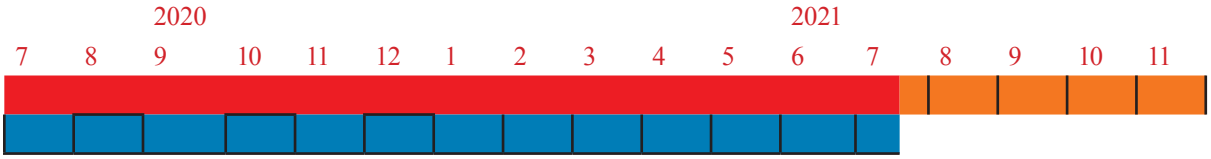
3 Exhibit 136, (page 1)

4 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, starting paragraph 35 and Chapter 2, Section 2B

5 Exhibit 137_2020-07-27_1424 PM_RECV_Dulberg v Popovich 2017 L 377_ATTACHMENTS.pdf

How opposing counsel maintained pressure is described in "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1 and Chapter 2, Section 2B THE EXAMPLE OF SAUL FERRIS. The following paragraphs 155 to 171 further supplement the record of how the opposing counsel maintained pressure on Dulberg.

157. The following graphic shows over how many months these 3 forms of pressure were applied to Dulberg by Flynn.



The **demand for detailed supplemental discovery answers** (shown in red above) lasted until July 19, 2021 (about 12 months). The **demand for access to Dulberg's attorney-client privileged communication** (shown in blue above) lasted until July, 2021 also (about 12 months). This is when **pressure for Dulberg to admit untrue statements about an alleged letter from Saul Ferris** (which was actually addressed to Popovich, shown in orange above) began and lasted for 4 more months.

158. Pressure was applied to Dulberg as pro-se and to Dulberg's new attorney (since Clinton and Williams had already made secret plans to withdraw as Dulberg's counsel by late June, 2020).[1]

159. On July 29, 2020 at 1:56 PM Dulberg sent an email to Ed Clinton and Julia Williams with the subject "Need clarification on outstanding issues before your departure" stating:[2]

> "... Outstanding questions on open issues for Clinton firm before departure:
> ...
> 2. What happened with the objections raised during Dulberg's deposition when Dulberg was questioned about conversations with Dulberg's former counsel Gooch? Did you get a ruling or does that still need to be argued before judge Meyer? ..."

Williams answered:

> "... 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. ..."[3]

Dulberg also asked:

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

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, starting paragraph 31 and Chapter 2, Section 2E
2 Exhibit 138_Need clarification on outstanding issues before your departure.pdf (page 1)
3 Exhibit 138_Need clarification on outstanding issues before your departure.pdf (page 2)

Williams answered:

> "... 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. ..."

160. On July 30, 2020 at 10:21 AM Williams sent an email to Dulberg stating:[1]

> "These document requests are due today. We have obtained a 28 day extension so the responses are now due August 27, 2020. We anticipate filing our motion to withdraw. Thus, you will need your new counsel to respond or prepare your own response. Best Regards"

161. On July 30, 2020 at 1:50 PM Dulberg sent an email to Williams stating:[2]

> "Thank you for getting this extended. I'm pulling from memory here because I had a Dr's appointment today and am away from my desk I just took your July 2 email and reviewed it. I didn't collect the documents because I thought I had already turned over all the gooch files and emails to you and I thought we waived privilege for Boudin and you have all of that as well. I suppose other than the last request asking for "documents" relating to a conversation between Baudin and myself when we were leaving the ADR the rest of this would be contingent on Judge Meyers decision of the objections over Gooch questioning that were raised during my deposition. I'm still not sure how I'm supposed to have documents from a verbal conversation with Baudin. I will look at all this again when I get home."

162. Clinton and Williams filed a Motion to Withdraw[3] on August 18, 2020. This left Dulberg without an attorney and with the series of incorrect and contradictory statements listed in TABLE 4A and TABLE 4B which is assumed to represent Dulberg's own statements on when he "first discovered" his "injury".

163. On August 18, 2020 at 2:13 PM Flynn sent an email to Williams stating:[4]

> "This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k). I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated. I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved). The supplemental discovery we served

1 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, Page 11
2 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 13)
3 Exhibit 140_2020-08-18_Motion to Withdraw.pdf
4 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 31)

merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020. Please feel free to contact me if you would like to discuss this matter."

164. On August 18, 2020 at 2:42 PM Williams sent an email to Dulberg stating:[1]

"We previously obtained an extension info time to respond to document discovery in your case—see below—to August 27. Opposing counsel is insisting on the August 27 response date. As we are withdrawing, it is likely more appropriate for your new counsel to respond to the discovery. lternatively, you could seek more time when the matter is before the Judge on Sept 10. Best Regards,"

165. On August 18, 2020 at 2:49 PM Dulberg sent an email to Williams stating:[2]

"Please remind me,

Was this the emails and communications with Gooch that they are after or something else?"

166. On August 18, 2020 at 2:56 PM Williams sent an email to Dulberg stating:[3]

"The requests are attached again here so you can see what they are seeking. Again, they were issued on July 2, 2020. We sent them to you that same day. They were originally due on July 30, 2020. We obtained an extension to August 27, 2020. Best regards,"

167. On August 18, 2020 at 3:11 PM Dulberg sent an email to Williams stating:[4]

"Thanks again for resending those requests from George Flynn. At this point I will not be meeting their deadline of August 27th until I have new council and/or the Judge rules that I must divulge communications with my attorney Gooch from the current case. I'm not an attorney but I believe its common knowledge that what George Flynn is asking for is wrong and strikes at the heart of attorney/client privilege. Kindly let Mr Flynn know he will not be receiving those answers or files until I have new counsel or the Judge rules on our objection at my deposition and orders me to turn over privileged communications."

168. On September 10, 2020 Clinton and Williams withdrew as Dulberg's counsel.[5] [6]

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1 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 34)
2 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 37)
3 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 41)
4 Exhibit 139_Fwd PAUL DULBERG v THE LAW OFFICES OF THOMAS J POPOVICH PC et al Circuit Court of McHenry County IL No No 17 LA 377.pdf, (page 45)
5 Exhibit 223_2020-09-10_Order Clinton withdrawl.pdf
6 Exhibit 224_2020-09-10 ROP 17LA377.pdf

169. On Oct 16, 2020, at 10:38 AM, Paul Dulberg sent an email to Williams stating:[1]

> "... It looks like everything in the "Dulberg Documents to Be Produced 2020 June 25" is in the "Dulberg Docs Produced by Dulberg to OC" with the exception of "Dulberg JCW Notes re Discovery 2020 June 26.docx", which is your notes, and the "Dulberg Paul's Notes on Deposition and handwritten notes 2020 July 1" which is nothing more than a color duplicate of the black and white PDFs produced in the "Dulberg 7893-8551 .pdf"
>
> **Is it safe for me to assume that opposing counsel has been given all documents with the exception of the privileged gooch emails?** [Emphasis Added]
>
> Also, I see in the "Dulberg JCW Notes re Discovery 2020 June 26.docx" that you were worried about the waiver issue for Gooch. I don't agree, I answered those questions in the deposition under an objection and certainly didn't waive privilege.
>
> It appears the defense counsel is confused over when I should have known of an injury vs when I learned from an attorney that I had a case in an attempt to pry into privileged communications that cannot change the outcome for their stated goal of reopening the statute of limitations and deposing Gooch and myself for a second time.
>
> It seems to me to be simple math when calculating the statute of limitations
>
> 1. The malpractice happened between October 2013 and February 2014 in the underlying case
> 2. The earliest I could or should have known of the injury was December 12th, 2016 from the award in the underlying case
> 3. This case was filed on November 28, 2017
> 4. There is no conversation that could take place between myself and Gooch that could change the first two dates even in the slightest and the third date, the date we filed suit was the culmination of our work product in the current case, not the underlying case.
>
> One more question, Where do I find all the final answers we sent to opposing counsel for the interrogatories and supplemental interrogatories? ..."

170. On February 10, 2021 in court the following exchange took place. Note that opposing counsel Flynn uses the logic of focusing entirely on (a) while ignoring (b) throughout. Mr Talerico (Dulberg's new attorney) and and Dulberg tell both Flynn and Judge Meyer that they are ignoring (b), yet Judge Meyer doesn't recognize (b) as relevant:[2]

> MR. FLYNN: Sure. Thank you, Your Honor. **Mr. Dulberg has placed his communications with his prior lawyer, Thomas Gooch, at issue in this case.** Plaintiff has admitted that it filed its complaint -- I'm sorry, plaintiff has filed its complaint more than two years after my clients, his former lawyers, the Popovich firm, withdrew or were terminated from his representation. That's not at issue.

1 Exhibit 141_2020-10-16_1038 AM_SENT_PLEASE HELP WITH CASE FILE.pdf, (page 1)
2 Exhibit 142_2021-02-10 ROP.pdf

He has placed the discovery rule at issue in his complaint and his amended complaints. However, he has failed to answer initial discovery, he has failed to respond -- or answer properly questions at his deposition regarding discovery of his malpractice and his understanding of damages related to the Popovich's alleged malpractice. We served supplemental discovery, which is somewhat duplicative of what was previously served, and that was on July 2nd after his deposition. He hasn't even answered it.

The response does nothing to address those issues or object to the discovery that's been propounded, so I would request that he be forced at a minimum to answer this discovery, that any objection be overruled, and essentially **that the communications between Dulberg and Mr. Gooch be produced in whatever form.** And to the extent that a subpoena to The Gooch Firm would be necessary at a later date, I would rather take it one step at a time and analyze whatever it is that Mr. Dulberg produce. So, in a nutshell, that's the motion.

I didn't know that we'd have to have a hearing. I thought that these would be responded to or at least objected to, but here we are.

THE COURT: Okay. Plaintiff's counsel?

MR. TALARICO: Let's see, Your Honor, (indiscernible) to start with, I think this is a two-step analysis. I hope the court sees it the same way. **I think it should be looked upon as a 2-619 motion** and at the same time a -- the **question of whether there was a waiver of the attorney-client privilege under Rule of Evidence 502**. I believe that **if the 2-619 is decided -- I'm sorry. Yeah, the 2-619 motion is dismissed and decided against the defendants**, then the matter -- **the second step would be the waiver of attorney-client privilege which I think my client did not do under either 502(a) or 502(b)**.

THE COURT: When you -- are you saying that their statute of limitations motion, if I deny that, only in that instance do we get to the issue of the -- of the letter?

MR. TALARICO: No. I think what we're -- what I'm saying is that that clarifies part of the 502(a) section of the argument, what I perceive as 502(a).

THE COURT: Okay. Defense counsel?

MR. TALARICO: If I might --

THE COURT: Go ahead, plaintiff.

MR. TALARICO: -- expound a little bit. I wasn't aware that a 2-619 motion had been up. It was denied by this court, but denied with the ability to get -- to bring it again. All I've seen when I came into the case was a decision saying, you know, denied, so at that point in time I did not, let's say, approach the issues of the statute of limitations or the statute of repose. I think those two issues help clarify the 502 argument. The 502 argument is what -- what information can be gathered, and I think my responses to that would simply be 502(b) and 502(a) have been complied with.

THE COURT: Defense counsel?

MR. FLYNN: I'm a little confused, Judge. There is no pending 619 motion. That was ruled upon years ago. This is simply a motion to compel and, you know, again, looking back, I didn't attach every discovery answer that Mr. Dulberg provided because there were many and there were issues with signature pages throughout written discovery. But here, the overarching supplemental request, Exhibit E, I believe it is, that was served on July 2 has not been answered. It's not been objected to. It's untimely at this point, and, again, it's clear that the discovery of the malpractice and damages has been placed at issue. So we're entitled to explore that discovery. **The testimony of Mr. Dulberg at his deposition makes it clear that the only basis to toll any statute of limitations was the December 2016 communications with Tom Gooch and if he's not going to produce those, he has no other basis to toll the statute and, as such, the case should be dismissed.** We'll bring the appropriate motion. But you can't have it both ways using the privilege as a sword and a shield.

THE COURT: Plaintiff's counsel, with respect to the latter, your comment?

MR. TALARICO: I guess I'm not clear on what counsel was saying. I respectfully say that we have complied with the -- the 502(b) was inadvertent within the deposition and the attorney at the time, who was -- I think her name was Williams, Julia Williams, objected and objected on a continuing basis for any of the questions regarding that information. Counsel has not brought a motion to have this court decide whether or not that was appropriate, but he had answered under the continuing objection by Miss Williams that this was a protected attorney-client discussion. As to the 502(a), the intentional disclosure, that was, in my estimation -- and I hope the court agrees -- that was done in the pleadings, in the complaint, but it was done in the -- I wouldn't say in the alternative. **I would say it's additional information**.

THE COURT: What specifically are you referring to when you say it's additional nformation? What was additional information?

MR. TALARICO: The continued comments about when -- when he was aware of -- and when the statute would begin to run, the two-year statute of limitations, as to the filing of a complaint for malpractice. Within that section, I have each one numbered, but at first the comments -- **the situation was when the arbitration, the binding arbitration, matter was decided, and it was decided in such a way that my client lost close to over $200,000 because the only other person that was in the lawsuit had a maximum insurance policy of $300,000. At that point in time -- And he alleged that in the complaint, in the first amended complaint, and the second amended complaint, all of which I wasn't party to, but the words are in there, the allegations are in there. I believe that's when the statute of limitations begins to run.** Further --

THE COURT: He references -- he references in his complaint -- I assume we're talking about the allegations in the complaint.

MR. TALARICO: Yes.

THE COURT: And **he references in the complaint learning information from the expert**, if I've read this correctly. Is that a fair statement?

MR. TALARICO: That is one of the allegations, yes.

THE COURT: So why can't -- why isn't that report or communication going to be turned over?

MR. DULBERG: **It is. It already is.**

MR. TALARICO: **Judge, it's my position that that is not relevant to the question. The question is, when did -- when did he become aware, when does the statute start running. And the answer I believe under Illinois law is it begins running when he knows of his injury, and the injury took place with the binding arbitration award; not before, not after.** So I'm saying --

THE COURT: **And I guess I -- you're losing me because I -- I don't understand how a binding arbitration award is going to disclose to anybody whether or not malpractice had been -- had taken place.** The -- your client -- I don't know if you can see him. He keeps raising his hand. I'm ignoring him because he has an attorney. I'm going to -- I'm going to focus on you.

But whether or not there was an award for X dollars or no dollars, that doesn't tell me anything about whether -- whether he knew or should have known at that point. That just told him what those people --

MR. DULBERG: May I clarify on the record.

THE COURT: Mr. Dulberg, you have an attorney. You've elected to have your attorney speak for you.

MR. DULBERG: He's not not lead attorney (indiscernible).

THE COURT: I'm going to limit it to it. I recommend that you limit your conversation or comments to him out of fear that you may say something that could be harmful to your case.

MR. DULBERG: I understand.

THE COURT: In any event, the complaint identified something the expert said as establishing knowledge on behalf of Mr. Dulberg for the first time of the alleged malpractice. So the complaint by its very language tells me that that communication is relevant to the issue of the discovery rule. I don't have a problem with doing an in camera inspection of that particular communication, but I don't see how we avoid it being relevant.

MR. TALARICO: Judge, **I think in all three -- the original complaint, the first amended complaint and the second amended complaint, all three plead the injury happening with the -- I can't think of the word -- but with the binding arbitration statement. It thereafter talks about other matters and each time the drafter of that complaint, the first -- I'm sorry, the original, the first and the second, adds in different aspects which I believe are really irrelevant. I think the focus is on when the injury occurred. The injury I believe occurred when the binding arbitration award was granted and I think that's when the statute of limitations should run.**

THE COURT: **But he's entitled to discovery on that. If you're claiming a particular communication established knowledge for the first time, he gets to -- defense gets to see that, because you've linked it to a unique event and he gets to challenge whether that's plausible, so you don't get -- you don't get to make that decision for him.**

MR. DULBERG: If I may, I'm going -- I'm going to clarify here.

THE COURT: Mr. Dulberg, you have an attorney.

MR. DULBERG: Yes, I do. And I'm going to clarify.

THE COURT: I'm not asking you to clarify.

MR. DULBERG: The event -- the event, okay, was a series of events --

THE COURT: Counsel, --

MR. FLYNN: Judge, I'm going to object to this as well.

MR. DULBERG: -- (continuing) prior to meeting Mr. Gooch.

THE COURT: I'm ignoring what's being said. Mr. Talarico, do you have a comment?

MR. TALARICO: Yes, we -- Mr. Dulberg, I believe, and **our position is, the statute of limitations begins to run on the date of the arbitration -- the binding arbitration, award.**

THE COURT: And you could be right, but the discovery rule involves facts and the issue becomes whether you knew or should have known. You, by the complaint you've inherited, established that knowledge came as a result of a particular event and I think it -- by virtue of that allegation, you've made the facts surrounding that event relevant to the investigation of your claim of the discovery rule, its application, that I can't separate that out. **If you say that communication gave you knowledge for the first time, then the defendant gets to explore that**.

MR. DULBERG: That's not what it said.

THE COURT: Your subjective interpretations aren't going to be controlling.

MR. TALARICO: Judge, I'm not relying on that. All I'm saying is that, with all due respect, **that is when he had the knowledge, that is when the statute of limitations begins to run, and that information has been part of the court file long before it became part of this matter.**

THE COURT: My reading of the complaint referenced something regarding an expert report and perhaps a letter from former counsel.

MR. FLYNN: Judge, may I clarify that.

THE COURT: Go ahead. Yeah.

MR. FLYNN: Thank you. You know, **the plaintiff has attempted I think to use both, a report that he received from a chainsaw -- so-called chainsaw expert, so a liability expert, relative to the underlying case. There's been some confusion with respect to**

his pleading and reliance on that report. However, what I clarified at his deposition is that he relied on a legal opinion to toll the statute of limitations in this case. It's that legal opinion in December of 2016 which informed him of the malpractice. Again, he wasn't very specific. I tried to question him about each and every violation of the standard of care, breach of the standard of care, and when he found out about it; and you can read the whole deposition, but his answers are evasive. They've been evasive in his original interrogatory answers. We've covered the waterfront with every possible question and interrogatory and production request we could, but it's clear that he is relying on a legal opinion. Now, he's not very specific about what that legal opinion is, and maybe there isn't anything in Gooch's records or in the emails and whatnot to and from Gooch and Dulberg, but, in any event, that's what he testified to, and so it's our position we should be entitled to those legal opinions, whatever they are.

THE COURT: I thought -- and obviously I didn't read the entire deposition. **I thought there was one letter that really covered it**, based on what I read. Is that a fair statement?

MR. FLYNN: I'm not sure if that's accurate, Judge. I think that -- **I think he's pinpointed the time period to December of 2016**, but I think he also testified that there was regular email communication between Dulberg and Gooch, you know, --

THE COURT: In any event, **I am going to direct production of all those communications on which the plaintiff is basing his claim of the applicability of the discovery rule**; and that's a little broader than I first intended, but given the nature of this discussion, **it sounds like it's more than just a couple of documents**. It might be several of them. **I will also have those items produced to me for an in camera inspection** so that I can determine to what extent that they are disclosing information relevant to our investigation into the discovery rule, because while I agree the defendant should be allowed to investigate that issue, that doesn't mean he gets the benefit of prior counsel's work product outside of the discovery rule issue. Does that make sense?

MR. FLYNN: So I do understand your ruling. I would just ask that it be specified also, though, to the communications with Mr. Gooch because in anticipation of how this may be produced to Your Honor, if all they produce is this chainsaw expert report, then we haven't made any progress.

THE COURT: **There is definitely something from Mr. Gooch, and if I'm not given something from Mr. Gooch, that will be a red flag**.

MR. TALARICO: Judge, if I might.

THE COURT: I'm sorry?

MR. TALARICO: If I might speak.

THE COURT: Yeah.

MR. TALARICO: **Judge, my position is that the binding arbitration award document which has been part of the court file, we believe long before I was in this case, is the day that my client knew that he had an action and, before that, it was premature by Illinois law. At the time when the award was given**, and the --

THE COURT: **I'm not buying that.** The arbitrator's award gave you insight as to the value. Where you lose me is -- Well, let me rephrase that. It gave you their insight as to what they perceived the value of the case to be. It did not tell you whether or not you could have known that there was a viable cause of action against another defendant --

MR. DULBERG: (Indiscernible) that.

THE COURT: -- because, again, it's you knew or should have known whether --

MR. TALARICO: Of the injury, --

THE COURT: -- there was another cause of action against that --

MR. TALARICO: -- a financial injury.

THE COURT: And **I fail to understand how an arbitrator's award would explain that because I can't imagine -- I certainly don't -- I'm not an arbitrator, I don't know what they put in their decisions, but I would be surprised if they spend a lot of time telling you about people you could have sued but for malpractice, so the issue for me is knew or should have known, and I am going to direct production of those documents.**

MR. TALARICO: Judge, my one comment?

THE COURT: Yeah.

MR. TALARICO: **So it's Illinois law on that matter and a very recent case talked about specifically when the statute begins to run, but I will -- It's called Suburban Real Estate Services, Inc., versus Barus -- I'm sorry, and Barus versus William Carlson. The cite --**

THE COURT: **But that's a different argument. That's a rule -- that's an argument related to the applicability of -- or, in my analysis, of how the rule applies to the circumstances that we have. It doesn't address the issue of whether you should have known of the existence of the cause of action, and the information I have is that you did not and could not have known about the cause of action until the disclosure from the expert or from Mr. Gooch**, and if we're going to explore that issue, you've got to produce that. You've put those items into evidence or at issue, so defense has a right to see them.

MR. DULBERG: May I.

THE COURT: Anything else?

MR. DULBERG: Yeah, yeah. I'd like to comment. You're not going to let me comment?

THE COURT: Mr. Dulberg is attempting to speak. I'm not -- I'm neither listening nor inviting him to speak

MR. DULBERG: I will speak on the record.

THE COURT: So I will --

MR. DULBERG: It's not about when we knew or should have known of the cause of action.

THE COURT: Sir, --

MR. DULBERG: We certainly knew or should have known --

THE COURT: Sir, --

MR. DULBERG: -- of the injury.

THE COURT: Mr. Dulberg, do not presume to tell me what the law is. All right? You understand your place.

MR. DULBERG: Yes.

THE COURT: Do not tell me what the law is. I will make that decision. I've instructed you numerous times not to talk, and yet you feel the need to express yourself. You have an attorney. Your attorney has ably represented you, but I get to make a decision regardless of what your personal thoughts are. So we will go back to my discussion. Forgive the outburst, but I have invited him not to speak and that wasn't acceptable to him. So, in any event, how long, Mr. Talarico, do you need to produce this information?

MR. TALARICO: Judge, I'm not absolutely sure. Whatever the court says I produce I'll produce within 28 days.

THE COURT: Okay. Twenty-eight days is fine with me. Mr. Flynn?

MR. FLYNN: Twenty-eight days is fine, Your Honor. I would also request that, in addition to the documents being produced, that the actual discovery request be responded to and any interrogatories be amended --

THE COURT: You need a privilege log certainly as to the documents, and so I'm going to direct that you be given a privilege log because they are claiming privilege as to these items. I assume there hasn't previously been one. Is that true?

MR. FLYNN: That is true.

THE COURT: All right. So you're entitled to the privilege log. As far as the other interrogatories are concerned, Mr. Talarico -- How many interrogatories do we have outstanding?

MR. FLYNN: The -- I think what we have is some interrogatories that weren't completely answered in the first place. It's probably a handful, Judge, but then there are seven or eight requests for production that simply weren't responded to. Those are the subject of this motion.

THE COURT: And are they covered by the privilege log, do you think?

MR. FLYNN: Well, I think that first we need to know whether there are responsive documents. They haven't even answered that, and then if they are withholding any and submitting them to the court, then the privilege log comes next, I guess, would be my request.

THE COURT: Okay. Mr. Talarico, can you provide a response in 28 days?

MR. TALARICO: Yes, Your Honor. I will respond.

THE COURT: All right. And if you don't have documents, you don't have documents. Just tell him. If you're claiming a privilege, identify -- provide some sort of an identification of the document and the privilege you're claiming. With respect to the interrogatories, which ones?

MR. FLYNN: These were the interrogatories propounded by Hans Mast, my other client, and that was Exhibit D, I believe, to the motion. I did not attach his answers, but Hans Mast's interrogatories which were propounded back on March 22 of 2019 -- one, two, three -- just four interrogatories. I do believe that we have a response, but it's incomplete. It doesn't -- it doesn't identify these communications with Mr. Gooch or the legal opinion that has been alleged in the complaint and placed at issue.

THE COURT: Yeah, and I -- my concern is -- and the answer, direct answer, to those is going to require my review of the documents, so I'm going to enter and continue that part of the motion until I make a decision with respect to the documents. Is there anything else?

MR. FLYNN: I think that covers it, Your Honor.

THE COURT: Okay. All right. So, Mr. Flynn, I'm

going to direct you to send me an order -- Do you have

our email address? You can take a picture if you like.

MR. FLYNN: I believe so. Okay.

THE COURT: Okay? And the order -- we'll pick a new date in a moment. The order will provide that the plaintiff will provide you with a privilege log for those -- provide you answers to the production request as well as a privilege log with respect to any documents that are withheld, and I'm entering and continuing your motion with respect to the interrogatories. Plaintiff will provide me with the documents withheld and identified in the privilege log within 28 days and then we'll come back perhaps two weeks after that. Twenty-eight days is March 10th; two weeks after that would be around March 24th, and I can provide you with my ruling then. So how's March 24th at 1:30?

MR. FLYNN: Judge, I actually have a deposition at 1:00 o'clock that day.

THE COURT: How about the 25th? Thursday.

MR. FLYNN: 25th works. 25th at 1:00 o'clock?

THE COURT: Yeah. Mr. Talarico?

MR. TALARICO: One second, Your Honor.

THE COURT: Okay.

MR. TALARICO: Fine.

THE COURT: Do we have agreement on the date or are we waiting?

MR. TALARICO: I said it was fine, Your Honor.

THE COURT: Oh, okay. I'm sorry, I missed that. So 1:30. Is there anything else we need covered in the order?

MR. FLYNN: Just may I be clear that the motion is granted in part as stated on the record.

THE COURT: Yes.

MR. FLYNN: And I would like to just include Mr. Gooch's name in the written order, that those be included in the production if they exist.

THE COURT: Yeah, I don't -- I don't want -- What I want to -- I guess -- And thank you for bringing that up.

My impression from reading the motion was it boiled down to -- I got the idea that it was a single document or a single communication that conveyed the information at issue. And you're indicating that it was more, it was a number of emails. Are you able to put a timeframe on it?

MR. FLYNN: Well, I think, again, the allegations in the various complaints, complaint and amended complaints, and the testimony, (indiscernible) to December of 2016, so --

THE COURT: Yeah. Say the communications of December of 2016, because I don't want it read as requiring that all communications from Mr. Gooch be produced.

MR. FLYNN: Okay.

THE COURT: Mr. Talarico, any questions or comments about that?

MR. TALARICO: No, Your Honor. I'll follow the court's order.

THE COURT: All right. Anything else then?

MR. FLYNN: No, Your Honor. I will send a draft of that order to Mr. Talarico for his review and then we will send it to your email address, Your Honor.

THE COURT: Okay. I'll wait to see that. I'll sign it as soon as it's in. Thank you.

MR. FLYNN: Thank you.

THE COURT: See you in March.

MR. FLYNN: Thank you, counsel.

THE COURT: All right. Bye.

171. On April 1st, 2021 the following exchange took place in court.[1]

MR. FLYNN: I guess the only thing going forward, we've got the objections in the

1 Exhibit 143_2021-04-01 ROP.pdf

deposition transcript. Does the court typically just rule on those when ruling on a summary judgment motion?

THE COURT: No, I -- let me -- I have not had to deal with ruling on objections in a discovery deposition related to a motion for summary judgment.

MR. FLYNN: Okay.

THE COURT: So I haven't done that before, but I do think that we have to address that and the only way to address it is to just walk through them, so perhaps if we set -- and I know this is putting it out, but I'm wondering -- and you know better -- whether any of the objections are going to become moot once you have responses to the written discovery. Is that going to fix anything?

MR. FLYNN: I think that a lot of them are already moot. I think that some of the rulings over the last month or so on these objections have probably covered those that are contained in the dep transcripts; however, I just want to make the summary judgment process as clean as possible. Maybe I can talk to Mr. Talarico and we can come up with an agreement on whether some of these objections in the dep are withdrawn, but, again, I just -- I don't want the summary judgment motion to bog down on objections in a dep transcript, so --

THE COURT: Okay. And I don't know.

MR. FLYNN: So -- Okay. I wanted to raise that issue in advance so the court's aware that that might be an issue.

THE COURT: Why don't we put the hearing at 1:30 on Monday, June 14th, and if you are unable to work out the issues on the discovery deposition, then we'll walk through the transcript. You'll need to give me a copy. And -- unless there is one in the court file already. You'll need -- and we'll walk through each one and I'll take argument at that time and --

MR. FLYNN: Okay.

THE COURT: -- I'll rule then. And that may get you where you want to go, and if there are none, great. Then we don't have to deal with it. Does that --

MR. FLYNN: Okay.

THE COURT: Does that resolve your concern for today at least?

MR. FLYNN: I think so.

THE COURT: All right. So, Mr. Flynn, if you could draft the order. Mr. Talarico, is there anything you want to add?

MR. TALARICO: Well, I've read -- I wasn't present at the deposition, so I'm just trying to get my brain wrapped around it. The objections were attorney-client privilege, sir, was that --

MR. FLYNN: Many of them, yes.

MR. TALARICO: Okay. That's all.

MR. FLYNN: And, again, **it goes to the discovery of the malpractice. I think that it's been placed at issue by virtue of the pleadings, so -- and, again, I think that there's been a ruling, at least in part, on some of these issues, but, --**

THE COURT: In the alternative --

MR. FLYNN: -- you know, why don't we --

THE COURT: -- if you agree that some of the questions could have been answered, can you do this by way of interrogatory rather than a supplemental deposition?

MR. FLYNN: I think that for the most part Mr. Dulberg answered over the objections.

THE COURT: Okay.

MR. FLYNN: And so the record was set there. The objections were made on the record. I think that it could probably be dealt with fairly swiftly.

172. On July 19, 2021 the following exchange took place in court.[1]

THE COURT: All right. Tell me -- we're moving on to the interrogatory.

MR. FLYNN: And again, this goes to the statute of limitations on a legal malpractice case. The plaintiff is claiming that he didn't discover it until after the 2 years --

THE COURT: Could you keep your voice up a little?

MR. FLYNN: Sure. Plaintiff is arguing for a tolling of the statute of limitations on a legal malpractice case. He was asked in Interrogatory No. 1, Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. His response -- his amended additional response discusses his pecuniary injury, that only addresses damages. With respect to the breach of the standard of care and how he discovered it, he simply says he knew that the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

THE COURT: Okay.

MR. FLYNN: That describes the date. It doesn't describe how he became aware of it, what Gooch told him. Now, again, I know your Honor is aware of the deposition testimony in this case regarding that December 16 time period. If the answer is that Dulberg doesn't remember what Mr. Gooch told him, if Gooch said simply, You have a case, that's fine. That's what they should say. But I've already taken his deposition. There are no specifics that explain to me why Mr. Gooch crystallized this breach of the standard of care on December 16. But if this is all they have, then that's what he should say, is that I don't remember what Mr. Gooch told me.

THE COURT: I mean, he's -- I think he's complied. I'm not sure --

1 Exhibit 143_2021-07-19_ROP.pdf

MR. FLYNN: What is the breach of the standard of care?

THE COURT: I'm sorry?

MR. FLYNN: And what is the breach of the standard of care? That's what I've asked in the interrogatory. They don't say.

THE COURT: Well, I think that -- all right. I guess that is -- my reading on it, it's implied it's a statute of limitations. But --

MR. FLYNN: No, the statute of limitations is the issue in this case.

THE COURT: All right. What is the --

MR. FLYNN: The underlying personal injury case --

THE COURT: What is the breach? Did Mr. Gooch advise him what the breach was?

MR. TALARICO: Judge, all that Mr. Dulberg recalls was relayed in the responses. There were no recordings that were going on. Nothing was done in writing. I'm not sure how I can possibly respond anymore, to give anymore.

THE COURT: I have a representation that this is all there is.

MR. FLYNN: That's satisfactory to me. As long as when I file my summary judgment motion there's not some new discovery discussion as to --

MR. TALARICO: Judge --

MR. FLYNN: -- what the breach was and what --

MR. TALARICO: I'm sorry. I hate to interrupt. Judge?

THE COURT: Yeah.

MR. TALARICO: We -- again, we were -- our response, I believe is in total compliance with the Court order of June 6th and your instructions on that day from the court record. And I'd like to respond in writing to establish that we did that.

THE COURT: No. No. I mean, you're -- you only need to respond in writing if we're going to have a hearing. If you want to file a brief that -- just in the file, that's fine, but I think we have a resolution today and I don't want to spend more time reading briefs resolving an issue that's moot. So I think this is resolved. What else is outstanding?

MR. FLYNN: I think that does resolve -- the representation resolves both issues, so --

THE COURT: I have -- you have advised -- well, you've advised that's all there is, so I'm finding you in compliance.

MR. TALARICO: Thank you, your Honor.

THE COURT: Okay. Is there anything else we need to do?

173. Also on July 19, 2021, just after the above exchange, opposing counsel Flynn began to

pressure Dulberg about a meeting Dulberg had with Saul Ferris.[1] Issues around Saul Ferris were an invention designed **to further confuse the toll date of the Statute of Limitations**.

Chapter 2: HOW DULBERG'S OWN COUNSEL HELPED FLYNN ACCUSE DULBERG: FLYNN'S MOTION FOR SUMMARY JUDGMENT

174. On September 16, 2022 opposing counsel Flynn filed a Motion for Summary Judgement[2] based on a combination of all the messed up arguments Gooch and Clinton and Williams and opposing counsel Flynn have been placing in the Common Law Record and the Reports of Proceedings for the previous 5+ years about how to toll the Statute of Limitations.

175. The core of Flynns argument is reproduced below. In Table 6 (which follows) individual components of Flynn's arguments are analyzed.

p 3:

> In his First Amended Complaint, Dulberg modified his "discovery" allegations and alleged "it was not until the mediation in December 2016, based on the expert's opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit B, ¶29. In ¶30 he reiterates that "Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016." Exhibit B, ¶30.
>
> Dulberg's first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that "after accepting a $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that"I trust your judgment." Exhibit C, ¶48. He further alleges in ¶55 of Ex. C that "only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable." Exhibit C, ¶55. He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and opovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Exhibit C, ¶56. He alleged that it was not until the mediation in December 2016 based on the expert's opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit C, ¶57. Dulberg's allegations of Popovich' breaches of the standard of care are contained in Exhibit C, ¶58 as follows:
>
> > 58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:
> >
> > a) failed to fully and properly investigate the claims and/or basis for liability against

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2B

2 Exhibit 144_2022-09-16_MTD.pdf

the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;

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

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

f) Coerced Dulberg, verbally and 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." Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past. (Dulberg Deposition, Exhibit E, pp.8, 9).

p 5:

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

p 6:

The case continued against Gagnon through discovery and some of Dulberg's doctors were deposed. (Exhibit E, pp. 78, 79). Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw." Dulberg already started looking for new lawyers in the summer of 2014. Mast thought the case against David Gagnon was difficult. (Exhibit E, p.81). Mast told Dulberg that he did not make a good witness at his deposition. (Exhibit E, p.82). Dulberg and Gagnon were the only people who witnessed the accident. (Exhibit E, p.83). TI1ere were differences between the factual testimony provided by Gagnon and Dulberg in the underlying case. (Exhibit E, p.83). His relationship with Mast was deteriorating over the fall and winter of 2015, even long before that. (Exhibit E, p.86). On February 22, 2015, Dulberg wrote in an email to Mast "Now I'm left wondering ... how hard it is to sue an attorney?" (Exhibit F). When asked what the reference to suing an attorney meant he replied:

A. That was me being angry.

Q. With Hans?

A. Yes. I was seeing red.

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

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

Q. You, basically, made a threat, whether it be a veiled threat or an overt threat

to sue him, correct?

A. Yes.

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

A. Yes

On February 22, 2015, Mast wrote in an email to Dulberg "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case." (Exhibit E, p.91). Mast speculated that seven out of ten times he would lose the case outright. (Exhibit E, p.92). Dulberg filed for bankruptcy. He was ordered by the bankruptcy trustee to participate in binding mediation on December 8, 2016. (Exhibit E, p.96). Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake. (Exhibit E, p.103). Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters. (Exhibit E, p.108). The lawyer he received the legal opinion on December 16, 2016 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p.108). It was confirmed by Gooch on December 16 2016 that Dulberg had a valid case against Popovich. (Exhibit E, p.113). He did not file a lawsuit until nearly a year later because "Thomas Gooch had some health issues and that his wife had some health issues. It took a while." (Exhibit E, p.114). Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. I from Dulberg's answers to Mast's lnterrogatories. (Exhibit E, pp.125, 126). The

legal opinion Dulberg received from Gooch was verbal. (Exhibit E, p.130). Gooch simply stated, "You have a case here. You have a valid case." (Exhibit E, p.130). When asked did he tell you exactly what they did wrong in connection with your - their representation of you, Dulberg replied "He probably did. l 'm not recalling it right now. l 'm pulling a blank." (Exhibit E, p.131).

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

p10:

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

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

p 13:

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

p 14:

> Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 202 l transcript from hearing).
>
> Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015. Dulberg, no "babe in the woods" when it comes to experience with litigation retention, met with "hundreds" of attorneys and had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires). The many cases cited above establish the Plaintiffs duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. His contrived late discovery of his claims and damages should not be countenanced by this court. He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively. Nothing prevented him from seeking a second opinion. Likewise, nothing prevented him from inquiring of Mr. Balke or the Baudin finn whether his injury was wrongfully caused. Summary Judgment must be entered as his claims are barred by the two-year statute of limitations.

According to the quotes in paragraph 167 Flynn implied that all dates listed in Table 5A below could be used to toll Dulberg's statute of limitations.

TABLE 5A:[1] TOLL DATES GIVEN BY OPPOSING COUNSEL FLYNN

TABLE 5A: FLYNN CLAIMED THESE ARE VALID TOLL DATES:		
1	when settling with the McGuires in January, 2014	2014-1-22
2	when he questioned the appropriateness of settling with the McGuires	
3	(During Daley Disability Law Firm representation)	2012-09 to 2016-05
4	(when the statement about "suing attorney" was made)	2015-02-22
5	by the time Popovich withdrew	2015-03-15
6	(During Balke's representation)	2015-03 to 2015-06
7	(while communicating with "hundreds" of attorneys)	2015-6 to 2015-09
8	when being represented by the Baudins	2015-03 to 2016-12
9	February 27, 2016 after Lanford sent his opinion to the Baudins	2016-02-27
10	July 2016 (after reading Dr Lanford's findings)	2016-07

According to Table 4A and 4B Dulberg's own attorneys implied that the dates listed in Table 5B below should be used to toll Dulberg's statute of limitations.

1 Statements in parethesis are Flynn's implications

TABLE 5B: TOLL DATES GIVEN BY DULBERG'S OWN ATTORNEYS GOOCH, CLINTON AND WILLIAMS

TABLE 5B:	DULBERG'S OWN COUNSEL CLAIMED THESE TOLL DATES:	
1	December 12, 2016 (after binding medation award)	2016-12-12
2	December 16, 2016 (after speaking with Gooch)	2016-12-16
3	December 8, 2016 (after reading Lanford's findings)	2016-12-08

176. Every one of Flynn's dates (Table 5A) and reasons ignores the McGuire's Vicarious Liability for the agent's negligent actions. Flynn claims the "injury" is the McGuire settlement.

177. Dulberg's attorneys Gooch, Clinton and Williams (Table 5B) also ignores the McGuire's Vicarious Liability for it's agent's negligent actions. Gooch, Clinton and Williams claim the "injury" is also the McGuire settlement.

178. Both (Table 5A and Table 5B) omit and ignore that the Vicarious Liability aspect makes it impossible to quantify a pecuniary injury attributable to the principal before the amount is awarded for its agent's negligent actions.

179. In simple terms:

a. If the agent paid the whole award for its negligent actions then the principal wouldn't owe the plaintiff anything because the amount owed is zero and there is nothing left to quantify or realize as a pecuniary loss or injury.

b. If the agent cannot pay the whole award for its negligent actions then the principal would owe the plaintiff greater than zero and the amount can be quantified and realized as a pecuniary loss or injury.

c. If the plaintiff was found to be greater than 50% at fault then neither the agent nor its principal would owe the plaintiff and there is nothing left to quantify or realize as a pecuniary loss or injury.

In any scenario above the plaintiff's pecuniary injury attributable to a principal vicariously liable for its agent's negligent actions cannot be calculated, quantified or realized until an award is issued for the agent's negligent actions.

180. Illinois law on this issue states that toll cannot begin until pecuniary injury is received as explained in ***Suburban Real Estate Servs. v. Carlson, 2020 Ill. App. 191953 (Ill. App. Ct. 2020).***

181. Vicarious Liability and exactly when the statute of limitations begins in 735 ILCS 5/13-214.3(b) is well founded in Illinois law.

182. In a recent opinion handed down on April 21, 2022, the Illinois Supreme Court now allows direct and vicarious liability actions against employers. If the decision (***McQueen v. Green, 2022 IL 126666***) was available in the years 2012-2014 then and only then could the McGuires be held directly liable separate from their agent. That may have changed when a

pecuniary injury could have been realized for a principal independent of its agent and perhaps have changed when the statute of limitations begins in 735 ILCS 5/13-214.3 (b) when it pertains to Principals sued directly for their agent's negligence.

183. Dulberg could not use ***McQueen v. Green, 2022 IL 126666*** to bring suite 'direct' against McGuire in the years 2012-2014 for the negligent actions of McGuire's agent Gagnon.

184. All entries in Table 5A and Table 5B were inventions of Flynn and Dulberg's attorneys to give false impressions of Dulberg claiming late discovery of an "injury" that occurred in January, 2014. Dulberg never used the discovery rule since according to ***Suburban*** Dulberg filed within 1 year of the final judgment in 12LA178. None of the reasons given in Table 5A and 5B are founded in Illinois law (***Suburban Real Estate v Carlson*** and cited cases).

185. All entries in Tables 4A and 4B were inventions of Dulberg's attorneys to give the false impression of a late discovery of an "injury' while ignoring ***Suburban Real Estate v Carlson*** and McGuire's Vicarious Liability for its agent's negligent actions as the first time Dulberg could realize a pecuniary injury.

186. Dulberg's own attorneys set him up with the toll dates and reasons listed in Tables 4A, 4B and 5B which are not founded in Illinois law. Flynn gave his own toll dates and reasons (in Table 5A) which are also not founded in Illinois law.

187. The reasons given in Tables 4A, 4B, 5A and 5B ignore ***Suburban Real Estate v Carlson*** and its cited cases. Dulberg never used the discovery rule since according to Suburban. Dulberg filed within 1 year of the final judgment in 12LA178 and McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time.

188. All 5 Versions in Table 3 are inventions created by Dulberg's attorneys to conceal the true origin of the 'upper cap'. None of them are accurate. Dulberg was described as the source of all 5 versions.

189. In Table 6 below Flynn's key accusations against Dulberg in his 2022 Summary Judgment are listed in Column 1. Column 2 shows how most every Flynn's accusation made by Flynn against Dulberg in 2022 were set up and reinforced years earlier by Dulberg's own counsel (acting in collaboration with opposing counsel) to sabotage Dulberg's claims.

TABLE 6: HOW OPPOSING COUNSEL'S SUMMARY JUDGMENT ARGUMENTS IN 2022 WERE SET UP BY DULBERG'S OWN ATTORNEYS SINCE 2016

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
1	In his First Amended Complaint, Dulberg modified his "discovery" allegations and alleged "it was not until the mediation in December 2016, based on the expert's opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis.	Accusation 1 was set up by Gooch. Gooch filed Version 1 (COMPLAINT[1]) of when Dulberg "first knew" of his "injury". About 7 months later Gooch filed Version 2 which is different than Version 1. Accusation 1 quotes Version 2 (AMENDED COMPLAINT[2]) Gooch identified his first meeting with Dulberg as the date from which the toll runs. Gooch expressed this opinion clearly at his first meeting with Dulberg and never expressed any doubt about this to Dulberg. 18 months later Gooch changed his opinion on when to toll the statute of limitations when Gooch filed Version 2. (See Table 4A and Table 4B for summary of Gooch statements)
2	Dulberg's first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that "after accepting a $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that "I trust your judgment."	Accusation 2 was set up by Williams and Clinton. They filed a third version (Version 3, Table 4A and Table 4B) in SECOND AMENDED COMPLAINT[3].
3	Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past.	
4	He further alleges in ¶55 of Ex. C that "only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable."	Accusation 4 was set up by Gooch and reinforced by Clinton and Williams.

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 Exhibit 132_2018-12-06_Second Amended Complaint.pdf

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
5	He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and Popovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake.	Accusation 5 was set up by Gooch and reinforced by Clinton and Williams by making an identical statement in Version 3.
6	He alleged that it was not until the mediation in December 2016 based on the expert's opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis.	Accusation 6 was set up by Gooch in AMENDED COMPLAINT[1] (Version 2 in Tables 4A and Table 4B) Accusation 6 was reinforced by Clinton and Williams in SECOND AMENDED COMPLAINT[2] where they repeated the statement. (Version 3 in Table 4A and Table 4B) Flynns accusations 1 to 6 all claim that Dulberg made each statement. Neither Version 1, 2 or 3 (in Table 4A and Table 4B) are what Dulberg told his attorneys. None of the 3 versions are accurate. It was Gooch that told Dulberg Version 1 on December 16, 2016. Gooch wrote Version 1 on November 28, 2017. It was also Gooch that chose to change from Version 1 to Version 2 on June 6, 2018. In each case it was the attorney that told their client how to toll the statute. Dulberg is then accused of changing his statement. Dulberg is being made to appear "evasive". Version 1 changes to Version 2 (by Gooch) and then changes to Version 3 (by Clinton and Williams) as Dulberg is accused of "fiddling with" a "contrived" toll date and "changing his theory".

1 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
2 Exhibit 132_2018-12-06_Second Amended Complaint.pdf

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
7	Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted.	Accusation 7 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing admissions of negligence and fault from ones own client.
8	Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. While Brad Balke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate.	Accusation 8 was set up by Williams and Clinton. They suppressed around 40 email documents between Balke and Dulberg.[1] The emails included Balke waiting for a package of documents seemingly in the possession of attorney Saul Ferris for about 2 months.[2] [3] Flynn also attempted to accuse Dulberg of receiving a letter by mail at Dulberg's home.[4] The letter was actually in the possession of his client Popovich for about 2 months and had the address of Popovich at the top of the letter.
9	Dulberg wrote in an email to Mast "Now I'm left wondering ... how hard it is to sue an attorney?"	Accusation 9 was set up by Popovich and Mast. was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing admissions of negligence and fault from ones own client. With this concealed from Dulberg, Flynn claimed the 2 year toll begins to run when Dulberg states dissatisfaction with how he was treated or makes negative comments about Popovich or Mast. Accusation 9 was reinforced by Clinton and Williams who suppressed email documents around the quote and the event.[5]

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1 and Chapter 2, Section 2D
2 Exhibit 1_"Evidence of Fraud on the Court in 17LA178 During Popovich-Mast Representation", paragraph 1-252 to 1-264
3 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2B
4 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2B
5 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
10	Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw."	Accusation 10 was set up by Popovich and Mast. See answer to accusation #7 and #9 (column 2). Accusation 10 was reinforced by Clinton and Williams when they suppressed email documents around the quote and the event.[1]
11	Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake.	Accusation 11 was set up by Gooch. He created 3 different versions of how the 'upper cap' of $300,000 was placed on the value of PI case 12LA178 (Table 3, Versions 1, 2 and 3). None of the versions were true. Gooch also suppressed all information about Dulberg's bankruptcy from court records as explained in "TEAM-WORK" Example 3 Accusation 11 was reinforced by Clinton and Williams when they created 2 more (untrue) versions of how the 'upper cap' was placed on the value of PI case 12LA178 (Table 3, versions 4 and 5). Clinton and Williams also suppressed information which would connect a "high/low" agreement with bankruptcy.[2] Dulberg's counsel is on record stating (at least) 5 different versions of the source of the 'upper cap placed on the value of PI case 12LA178 (see Table 3). Dulberg is assumed to be the source of all 5 versions. None of the 5 versions are accurate. Dulberg never told his attorneys any of the 5 versions. The true source of the 'upper cap' was available in 17LA377 Reports of Proceedings 2016-06-13 to 2016-08-10. All 5 versions in Table 3 were intentionally invented by Dulberg's own counsel to leave Dulberg vulnerable to accusation 11. The true origin of the "high-low agreement" is shown in "TEAM-WORK" EXAMPLE 4.
12	Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters.	Dulberg asked Baudin if he wanted to pursue Popovich and Mast. Baudin answered, "I can't I have to work here and we do business with Popovich."[paraphrasing] Baudin recommended Gooch as a legal malpratice attorney on 2016-12-12.

1 Exhibit 5 "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation". Chapter 1
2 Exhibit 5 "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Section 2A

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
13	The lawyer he received the legal opinion on December 16, 20l6 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p. 108). It was confirmed by Gooch on December 16 2016 that Dulberg had a valid case against Popovich.	Accusation 13 was set up by Gooch. On December 16, 2016 Gooch told Dulberg that Gooch is considered an "expert" in legal malpractice and since Gooch as "expert" informed Dulberg he has a valid case on December 16, 2016 (at their first meeting), Gooch told Dulberg the Statute of Limitations starts from the day of Dulberg's first meeting with Gooch. Gooch wrote the same in the COMPLAINT[1]. Gooch must have known that this is not how the statute of limitations starts in Dulberg's case. Gooch then changed his opinion about 18 months later and filed Version 2 in AMENDED COMPLAINT[2]. Defendant's Popovich and Mast then claim Dulberg is responsible for making all the statements.
14	He did not file a lawsuit until nearly a year later because "Thomas Gooch had some health issues and that his wife had some health issues. It took a while."	Accusation 14 was set up by Gooch. Gooch sent a letter to Popovich in December 16, 2016 claiming he intended to file suit within 7 days.[3] Gooch did not even scan Dulberg's documents at his office for about 6 months[4] and did not file a complaint for about 11 months. Gooch used excuses such as health issues and needing to contact an expert witness. Gooch filed about 330 days from the time he claimed he would file within 7 days. Dulberg was set up by Gooch to be left vulnerable to accusation 14.

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf
2 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf
3 See paragraph 29
4 See paragraph 31

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
15	Dulberg alleged that Popovich concealed his malpractice and coerced him to settle with the McGuires, but his own testimony does not bear out any such concealment	Accusation 15 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing Defendant's admissions of negligence and fault from ones own client. Accusation 15 was reinforced by Gooch, Clinton and Williams when they successfully suppressed the certified slip ruling of Tilschner v Spangler that Mast gave to Dulberg for over 6 years.[1] [2]
16	He also attempts to plead that he did not discover the malpractice and his injury until December 12, 2016, but his anticipatory pleading is not supported by his own testimony.	Accusation 16 was set up by Gooch, Clinton and Williams. They created 3 incorrect versions of how Dulberg "first knew" of the "injury" (in Tables 4A and 4B). Each of the 3 versions inexplicably gives multiple times when Dulberg "first knew" of his "injury". Table 5B lists 3 different toll dates which Dulberg's own attorneys claimed and attributed to Dulberg.
17	Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. 1 from Dulberg's answers to Mast's lnterrogatories.	Accusation 17 was set up by Gooch. Gooch told Dulberg this with conviction at their first meeting and Dulberg simply repeated what Gooch told Dulberg at their first meeting. Gooch changed his own claim 18 months later and wrote it in AMENDED COMPLAINT[3].
18	Dulberg has fiddled with his "discovery" allegations, going back and forth as to when and how he became aware of his malpractice claim and damages.	Accusation 18 was set up by Gooch, Clinton and Williams. 3 different versions (each with multiple toll dates listed) were designed to produce the appearance of Dulberg "fiddling with" and "contriving" a "late toll date". (Table 4A and Table 4B)

1 See "TEAM-WORK" Example 1: Concealing key evidence (Tilschner v Spangler)
2 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 2, Sections 2C and 2K
3 Exhibit 117_2018-06-07_FIRST AMENDED COMPLAINT AT LAW.pdf

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
19	First, he plead that he sought a legal opinion. and received that opinion on December 16, 2016. The legal opinion was supplied by the same attorney who filed his first two pleadings in this case.	Accusation 19 was set up by Gooch. This is what Gooch told Dulberg during their first meeting. This is what Gooch claimed to Dulberg and what Gooch wrote in the COMPLAINT[1].
20	Then he changed his pleading and theory and attempted to rely on discovery by virtue of the report of a "chainsaw expert" he read in connection with the December 2016 mediation.	Accusation 20 was set up by Gooch on June 13, 2018 (Version 2, Tables 4A and 4B). Gooch created Version 1 on November 28, 2017. Gooch created Version 2 on June 7, 2018. Flynn accuses: "Then he changed his pleading and theory..". Gooch, an experienced legal malpractice attorney, first claimed with confidence the toll of the statute of limitations begins when Dulberg first met Gooch. Gooch created Version 1 without telling Dulberg. Gooch then created Version 2 without telling Dulberg. Gooch waited 11 months to file a complaint and 18 months after Gooch first met Dulberg Gooch changed his mind on when the toll begins. Accusation 20 can then claim Dulberg "changed his pleading and theory".
21	he actually received the opinion (Exhibit I) in July 2016 but "you don't catch everything the first time you read it." Notably the report from Dr. Lanford is dated much earlier, February 27, 2016 and was addressed to Dulberg's then attorney, Randy Baudin.	Accusation 21 was set up by Gooch. Gooch told Dulberg at their first meeting that the statute tolls from when Dulberg first talked to Gooch since Gooch is considered an 'expert'. In Version 1 (Table 4A and 4B) Gooch claimed the "independent opinion" came from Gooch. In Version 2 Gooch claimed that the "Expert opinion" came from Lanford. (Table 4A and 4B). Once Gooch changed Version 1 into Version 2, the further confusion allowed Flynn to make accusation 21 and 22 in an attempt to move the toll date yet again. Each of these "changes of pleadings" is then blamed on Dulberg.

1 Exhibit 111_2017-11-28_COMPLAINT AT LAW.pdf

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
22	Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 2021 transcript from hearing).	Acccusation 22 was set up by Gooch when Gooch changed from Version 1 to Version 2 (in Tables 4A and 4B) and reinforced by Clinton and Williams when they wrote Version 3. Clinton and Williams intentionally 'flooded' their permanently disabled client (Dulberg) with over 6000 documents[1] (concealing many documents they suppressed up to that time just before they withdrew as counsel). Dulberg was left with no attorney. Defendants Popovich and Mast then claim Dulberg was "evasive" of supplimental interrogatories issued one week before Dulberg's counsel released over 6000 documents and withdrew as counsel.
23	Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015.	Accusation 23 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing Defendant's admissions of negligence and fault from ones own client.

1 See "TEAM-WORK" Example 5 and Exhibit 5_"Evidence of Fraud on the Court During Clinton-Williams Representation", Chapter 1 starting paragraph 35 and Chapter 2, Section 2E

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
24	Dulberg, no "babe in the woods" when it comes to experience with litigation retention, had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires).	Accusation 24 was set up through the "team-work" of Popovich, Mast, Gooch, Clinton and Williams. All 3 Law Firms targeted their permanently disabled client from basically the first time they met and stripped Dulberg of key evidence he needed to defend himself.[1] [2] [3] Popovich and Mast then claimed Dulberg had experience and knowledge in litigation and access to attorneys.
25	The many cases cited above establish the Plaintiffs duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire.	Accusation 25 was set up through the 'team-work' of Popovich, Mast, Gooch, Clinton and Williams. This document, in addition to "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) and "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation" (Exhibit 5) demonstrates that Dulberg's own attorneys systematically stripped Dulberg of the tools, the information and opportunity to inquire into their fraudulant actions. Defendants Popovich and Mast then claim Dulberg had "duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. "

1 Exhibit 1 "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (the entire document)
2 The contents of this document
3 Exhibit 5 "Evidence of Fraud on the Court in 17A377 During Clinton-Williams Representation" (the entire document)

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
26	His contrived late discovery of his claims and damages should not be countenanced by this court.	Accusation 26 of Dulberg "contriving" a "late discovery" was set up by Gooch at his first meeting with Dulberg on December 16, 2016. Accusation 26 was reinforced by Gooch on November 28, 2017 (Version 1, Tables 4A and 4B). Accusation 26 was reinforced again by Gooch on June 7, 2018 (Version 2, Tables 4A and 4B). Accusation 26 was further reinforced by Williams and Clinton on December 6, 2018 (Version 3, Tables 4A and 4B).
27	He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively.	Accusation 27 was set up by suppressing 2 key documents: (1) Walgreens RX receipts with timestamps[1] and (2) certified slip ruling of Tilschner v Spangler[2]. Accusation 27 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing Defendant's admissions of negligence and fault from ones own client. Accusation 27 was then reinforced by Gooch and Clinton and Williams by suppressing key evidence[3] of a certified slip ruling of Tilschner v Spangler which Mast gave to Dulberg as justification for why the McGuires were not liable for Dulberg's injury.[4]

1 Exhibit 1_"Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", starting paragraph 1-96

2 Exhibit 5_"Evidence of Fraud on the Court in 17A377 During Clinton-Williams Representation"and see TEAM-WORK Example 1: Concealing key evidence (Tilschner v Spangler)

3 Exhibit 5_"Evidence of Fraud on the Court in 17A377 During Clinton-Williams Representation", Chapter 2, Sections 2C and 2K and see TEAM-WORK Example 1: Concealing key evidence (Tilschner v Spangler)

4 Exhibit 1_"Evidence of Fraud on the Court in 12LA178 During popovich-Mast Representation", starting paragraph 1-166

	TABLE 6 FLYNN'S ACCUSATIONS:	HOW DULBERG'S OWN COUNSEL SET UP DULBERG TO BE ACCUSED:
28	Nothing prevented him from seeking a second opinion.	Accusation 28 was set up by Popovich and Mast. "Evidence of Fraud on the Court in 12LA178 During popovich-Mast Representation" (Exhibit 1) gives detailed descriptions and evidence of Popovich and Mast forging and manipulating many documents, destroying evidence, leading witnesses to commit perjury, suppressing Defendant's admissions of negligence and fault from ones own client. a) Dulberg's key evidence[1] (Walgreens RX receipts with timestamps) was being actively suppressed by Popovich and Mast. b) Mast released an extremely disorganized version of the case file on March 23 or 24, 2015.[2] c) Mast and Popovich kept a packet of depositions in their office that Dulberg needed for about 2 months without Dulberg being aware of it.[3] All these acts are concealed from Dulberg so Defendants Popovich and Mast can later claim "Nothing prevented him from seeking a second opinion."
29	nothing prevented him from inquiring of Mr. Balke or the Baudin firm whether his injury was wrongfully caused.	Accusation 29 was set up by Clinton and Williams. They suppressed around 40 email documents between Dulberg and Balke.[4] The suppression of Dulberg's actual exchanges with Balke is concealed so Defendants Popovich and Mast can later claim "nothing prevented him from inquiring of Mr. Balke".

190. Table 6 shows there is a direct one-on-one relation between Flynn's accusations in the 2022 MSJ and how Dulberg's own attorneys intentionally left Dulberg vulnerable to Flynn's accusations. In fact, most every accusation Flynn made against Dulberg in his Summary Judgment (on left) can be shown to have been originally set up by Dulberg's own attorneys (on right):

*Gooch was setting Dulberg up to be accused by Flynn of items in Column 1, Table 6 from the first time they met.

1 Exhibit 1_ "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", starting paragraph 1-95

2 Exhibit 1_ "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", starting paragraph 1-254

3 Exhibit 1_ "Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", starting paragraph 1-240

4 Exhibit 5_ "Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1, Chapter 2, Section 2D

*Dulberg was set up by Clinton and Williams within days of their first meeting[1].

*Dulberg was set up by Popovich and Mast within days of their first meeting.[2]

All 3 Law Firms targeted their own permanently disabled client basically from the moment Dulberg first met them. The Baudins and Balke also targeted Dulberg from about their first meeting.

191. On February 1, 2023, Judge Berg, in his first day as Judge in the case, granted[3] the opposing counsel's arguments in support of an Motion for Summary Judgment based on statute of limitation arguments Flynn gave. Judge Berg tolled the statute of limitations this way:

> Dulberg's 'injury" was the settlement with the McGuires (receiving $5,000)
>
> The settlement with the McGuires took place in January, 2014
>
> Dulberg "knew or should have known" of his "injury" since January, 2014 (because it was public information).
>
> Dulberg may have experienced another "injury" on December 12, 2016 due to an 'upper cap' limit that was placed on the value of PI case12LA178 but that injury happened way after Popovich and Mast were "out of Dodge".

192. On February 1, 2023 Flynn made the following claims against Dulberg in court.

> So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

193. Gooch misled Dulberg into believing a false claim that the toll starts on December 16, 2016 because Dulberg met with Gooch and Gooch is an expert in such matters.:The quote in paragraph 184 by opposing counsel Flynn shows how a permanently disabled client was set up through collaboration between opposing attorneys and was intentionally misinformed by his own attorney from the first meeting. Gooch was playing with his permanently disabled client by setting Dulberg up in December, 2016 so that Flynn could make the above accusations against Dulberg on February, 2023.

194. As Flynn implied in the quote (long after Gooch resigned, was fired or changed his claim) Dulberg is left hanging as if it was ***Dulberg's idea*** that the toll starts when he met Gooch

1 Exhibit 5_"Evidence of Fraud on the Court in 17LA377 During Clinton-Williams Representation", Chapter 1
2 Exhibit 1_"Evidence of Fraud on the Court in 12LA178 During Popovich-Mast Representation", Chapter 1
3 Exhibit 145_2023-02-01_ROP dismissal of case.pdf

for the first time. Then Dulberg is pressed, "why does the toll start when you first met Gooch?" "What happened during the first meeting to toll the statute? Gooch must have known from his first meeting with Dulberg that Gooch was setting Dulberg up to later be accused like Flynn does in paragraph 184.

195. Flynn again used the way Gooch set up Dulberg to make the following claim:[1]

> Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. **I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics.** He has a burden of proving the -- a late discovery. He cannot meet it. He will never be able to meet it.

196. The only notions of an "injury" Dulberg received from Gooch, Clinton and Williams is included in Tables 4A and 4B. The only notions by Gooch, Clinton and Williams of how Dulberg "first discovered" his "injury" and when are in Tables 4A, 4B and Table 5B. The only reason both Gooch and Clinton and Williams gave for tolling from December 8, 2016 is because Dulberg "read Lanford's letter". At no time over 6 years did Gooch, Clinton or Williams claim, write or inform Dulberg that December 12, 2016 tolls Dulberg's financial injury. Gooch, Clinton and Williams all omit or ignore that McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time on December 12, 2016 as a financial or pecuniary injury for when the statute of limitations begins in 735 ILCS 5/13-214.3 (b).

197. Over a period of 6 years Gooch, Clinton and Williams never referred to pecuniary injury as cited in ***Suburban Real Estate v Carlson*** or the related cases[2] cited within and they all omited or ignored that McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time on December 12, 2016 as a pecuniary injury. Neither Judge Meyer nor Judge Berg could see any relevance in ***Suburban Real Estate v Carlson*** or the notion of receiving a 'financial injury' on December 12, 2016. Judge Meyer "didn't buy" the claim. Judge Berg found no relevance in the claim of a 'financial injury' that was received on December 12, 2016.

198. On ***Suburban Real Estate v Carlson*** opposing counsel Flynn also found no relevance and stated:

> The **only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter.** I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of settlement, judgment or dismissal.

The above quote is the only comment opposing counsel Flynn made concerning a claim of 'financial injury' on December 12, 2016 over a period of about 6 years.

1 Exhibit 145_2023-02-01_ROP dismissal of case.pdf
2 See paragraph 209

199. About the 'upper cap' Judge Berg stated:

> So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

Judge Berg referred to "a change of strategy" as if Dulberg changed his story to try to make Popovich and Mast responsible for the effect of an 'upper cap' that took place on August 10, 2016 in 12LA178 in violation of the bankruptcy courts automatic stay and was executed on December 8, 2016.

> Mr. Talarico, and please correct me if I'm wrong because this is where I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case? But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

Judge Berg claimed that the 'upper cap' is Dulberg's "injury". Judge Berg doesn't know how the 'upper cap' came into being, doesn't care and doesn't care if Dulberg signed the agreement. The simple point according to Judge Berg is that it has nothing to do with Popovich and Mast so none of it matters in this case.

200. According to Judge Berg, a financial transaction that took place in December 12, 2018 cannot be connected to Popovich and Mast, who ended their contract with Dulberg in March 2015 and are accused of "injuring" Dulberg during a settlement in January. 2014. Judge Berg cannot "wrap his mind around" Mr Talerico citing ***Suburban Real Estate v Carlson*** since (to Judge Berg) the claim seems so outrageous and quite a stretch. This is also what Judge Meyer "won't buy". Judge Berg also perceived this claim as Dulberg making a "change in strategy" implying Dulberg earlier had a "different strategy" ("injury" being settlement with the McGuires in January, 2014) and then made a "change in strategy" ("injury being capped award on December 12, 2016). This is the impression that Versions 1, 2 and 3 in Table 4A and 4B and Versions 1, 2, 3, 4 and 5 in Table 3 crafted by Gooch, Clinton and Williams were intended to create: That Dulberg somehow ***changed his claim and legal strategy*** since first filing his suit. Judge Berg, just like Defendants Popovich and Mast, are accusing Dulberg of changing his legal theory well after he filed his complaint.

201. According to Judge Berg, Dulberg was "injured" by an 'upper cap' on a settlement judgment on December 12, 2016. Popovich and Mast never signed an 'upper cap' so they have no relation to the 'upper cap' as Dulberg's "injury". Dulberg's only other "injury" was during the McGuire settlement in January, 2014 which is now subject to the statute of limitations.

202. On how and when Dulberg "knew or should have known" about his "injury" Judge Berg stated:

> He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue.
>
> Met with hundreds of attorneys. He was clearly alerted. **When did the pecuniary loss occur?** Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, **I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation**. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge
>
> But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? **The pecuniary loss occurred when he only got $5,000.** I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

203. Judge Berg identified Dulberg's "injury" with a "pecuniary loss" that occurred when Dulberg received $5,000 from the McGuires. Judge Berg identified a different "injury" to Dulberg on December 12, 2016 which Judge Berg identifed as the 'upper cap' placed on the award.

204. Judge Berg knew nothing about where the cap came from or why. Judge Berg didn't know if the 'upper cap' was legal or illegal or whether it was fraudulent. Judge Berg didn't care because the "injury" of the 'upper cap' "occurred well after they [Popovich and Mast] were out of Dodge".

205. About the true origin of the 'upper cap' Judge Berg stated: "that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that **somebody entered into. We don't know who that**

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

206. By this statement Judge Berg implied that Popovich and Mast were so distant from the 'upper cap' that they couldn't have anything to do with an "injury" that happened on December 12, 2016 through an 'upper cap'. Nobody seems to know where the 'upper cap' came from and Dulberg claimed he refused to agree and refused to sign any agreement. But in this case none of it matters because any limit from an 'upper cap' cannot be connected to Popovich and Mast since the "**agreement occurred well after they were out of Dodge".**

207. Dulberg's current attorney Mr Talerico is on the record since February 10, 2021 (Mr Talerico was retained on October 23, 2020) explaining the application of ***Suburban Real Estate v Carlson*** to Dulberg's case in order to claim that the statute is counted from December 12, 2016. Mr Talerico explained that ***Suburban Real Estate v Carlson*** makes clear that if Dulberg filed a legal malpractice suit against Popovich and Mast at any time before December 12, 2016 his filing would have been ruled premature. Mr Talerico explained Illinois law is clear that the first day that Dulberg had standing to file a legal malpractice suit against Popovich and Mast was December 12, 2016 and not one day sooner.

208. This notion of a "financial injury" on December 12, 2016 consistent with Illinois law in ***Suburban Real Estate v Carlson*** was never explained to Dulberg by Gooch, Clinton, or Williams, not even as a suggestion or possibility. Opposing counsel Flynn found no relevance in ***Suburban Real Estate v Carlson***. It was not used or referenced in any of the 14 items in Table 5A and 5B. There is no notion of financial injury or application of Illinois law ***Suburban Real Estate v Carlson*** in any of the versions in Table 4A nd 4B. Neither Judge Meyer or Judge Berg saw any relevance in ***Suburban Real Estate v Carlson*** and did not recognize any notion of a 'financial injury' occurring on December 12, 2016 consistent with ***Suburban Real Estate v Carlson*** in Dulberg's case. The views of each of these officers of the court are summarized in Table 7 below:

TABLE 7: 12LA178 OFFICERS OF THE COURT APPLYING CURRENT ILLINOIS LAW AND DULBERG'S CASE

TABLE 7: Judge Meyer Describing the Relation between *Suburban Real Estate v Carlson* and Dulberg's case:
I'm not buying that. The arbitrator's award gave you insight as to the value. Where you lose me is -- Well, let me rephrase that. It gave you their insight as to what they perceived the value of the case to be. It did not tell you whether or not you could have known that there was a viable cause of action against another defendant --
I fail to understand how an arbitrator's award would explain that because I can't imagine -- I certainly don't -- I'm not an arbitrator, I don't know what they put in their decisions, but I would be surprised if they spend a lot of time telling you about people you could have sued but for malpractice, so the issue for me is knew or should have known, and I am going to direct production of those documents.

TABLE 7: Judge Meyer Describing the Relation between *Suburban Real Estate v Carlson* and Dulberg's case:
But that's a different argument. That's a rule -- that's an argument related to the applicability of -- or, in my analysis, of how the rule applies to the circumstances that we have. It doesn't address the issue of whether you should have known of the existence of the cause of action, and the information I have is that you did not and could not have known about the cause of action until the disclosure from the expert or from Mr. Gooch, and if we're going to explore that issue, you've got to produce that. You've put those items into evidence or at issue, so defense has a right to see them.

TABLE 7: Judge Berg describing the relation of *Suburban Real Estate v Carlson* to Dulberg's case:
He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue.
Met with hundreds of attorneys. He was clearly alerted. **When did the pecuniary loss occur?** Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, **I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation**. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge
But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? **The pecuniary loss occurred when he only got $5,000.** I agree with defense counsel.

TABLE 7: Defendants Popovich and Mast (Flynn) describing relation of *Suburban Real Estate v Carlson* to Dulberg's case:
The **only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter.** I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of settlement, judgment or dismissal.

TABLE 7: Legal Malpractice Attorney Gooch applying Illinois law to Dulberg's case:
Following the execution of the mediation agreement with the"high-low agreement" contained therein, and the final mediation award
based on the expert's opinions that DULBERG retained for the mediation
received independent opinion from a legal malpractice attorney on or about December 16, 2016.

TABLE 7: Legal Malpractice Attorneys Clinton and Williams applying Illinois law to Dulberg's case:
Only after Dulberg obtained an award against Gagnon...
Following the execution of the mediation agreement and the final mediation award...in December of 2016
based on the expert's opinions that DULBERG retained for the mediation

209. The arguments in ***Suburban Real Estate Servs. v. Carlson, 2020 Ill. App. 191953 (Ill. App. Ct. 2020)*** reference 5 other key cases:

Successful Appellant ***Suburban Real Estate*** relied on ***Lucey***[1] and ***Warnock***[2] (and ***Northern Illinois Emergency Physicians***[3])

Unsuccessful Appellee ***Carlson*** relied on ***FagelHaber***[4] and ***Nelson***[5] (and ***Goran***[6])

210. None of the statements in Table 7 made by Judge Meyer, Judge Berg, Defendants Popovich and Mast, Dulberg's former attorneys Gooch, Clinton and Williams reference or are based on any of the case law cited in paragraph 201 (which is current Illinois law applicable to Dulberg's case).

211. None of the statements made in Table 3 are accurate though Dulberg's attorneys entered them into the record on behalf of Dulberg. None of the entries in Table 4A and Table 4B are in accordance with Illinois law cited in paragraph 201. None of the entries of Table 5A or Table 5B are in accordance with Illinois law cited in paragraph 201.

212. Even if taking Flynn's dates of discovering the pecuniary injury as true, Popovich and Mast's fraudlent concealment of the initial offer to Barch/McGuire on October 22, 2013 (which remained concealed until May 30, 2018) is a legitimate legal justification for Dulberg to toll the statute of limitations.

1 Lucey v. Law Offices of Pretzel & Stouffer, Chartered, 301 Ill. App. 3d 349 (1998)
2 Warnock v. Karm Winand & Patterson, 376 Ill. App. 3d 364 (2007)
3 Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd., 216 Ill. 2d 294, 306 (2005)
4 Construction Systems, Inc. v. FagelHaber, LLC, 2019 IL App (1st) 172430
5 Nelson v. Padgitt, 2016 IL App (1st) 160571
6 Goran v. Glieberman, 276 Ill. App. 3d 590, 595-96 (1995)