

1	STATE OF ILLINOIS	)	
		)	SS:
2	COUNTY OF MCHENRY	)	

3 IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT  
4 MCHENRY COUNTY, ILLINOIS

5 PAUL DULBERG, )  
6 )  
7 Plaintiff, )  
8 )  
9 -vs- ) No. 17 LA 377  
10 )  
THE LAW OFFICES OF THOMAS )  
POPOVICH and HANS MAST, )  
11 )  
12 Defendants. )  
13 )

12                   The remote videoconference deposition of  
13   HANS MAST, appearing remotely from McHenry County,  
14   Illinois, called by the Plaintiff for examination,  
15   pursuant to subpoena and pursuant to the Code of  
16   Civil Procedure of the State of Illinois, and the  
17   Rules of the Supreme Court thereof, pertaining to the  
18   taking of depositions, for the purpose of discovery,  
19   taken before Barbara G. Smith, appearing remotely  
20   from Will County, Illinois, Certified Shorthand  
21   Reporter and Notary Public within and for the County  
22   of Cook and State of Illinois, commencing at the hour  
23   of 10:00 a.m. on the 25th day of June, A.D., 2020.

REMOTE APPEARANCES:

THE CLINTON LAW FIRM, By  
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On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, By  
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On behalf of the Defendants.

ALSO PRESENT: Mr. Paul Dulberg

I N D E X

WITNESS EXAMINATION

HANS MAST

By Ms. Williams 5

By Mr. Flynn 76

E X H I B I T S

HANS MAST

DEPOSITION EXHIBIT MARKED FOR ID

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(All exhibits provided electronically  
to the reporter.)

1           THE REPORTER: The attorneys participating  
2           in this deposition acknowledge that I am not  
3           physically present in the deposition room and that I  
4           will be reporting this deposition remotely. They  
5           further acknowledge that, in lieu of an oath  
6           administered in person, the witness will verbally  
7           declare his testimony in this matter is under penalty  
8           of perjury. The parties and their counsel consent to  
9           this arrangement and waive any objections to this  
10          manner of reporting. Please indicate your agreement  
11          by stating your name and your agreement on the  
12          record.

13                 MS. WILLIAMS: Julia Williams. I agree.

14                 MR. FLYNN: George Flynn. I agree.

15           THE REPORTER: Will the witness kindly  
16          present his government-issued identification by  
17          holding it up to the camera for verification?

18                         (Witness presents  
19                         government-issued identification  
20                         and identity is verified.)

21           THE REPORTER: Thank you.

22                         HANS MAST,  
23          called as a witness herein, having been first duly  
24          sworn, was examined and testified as follows:

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EXAMINATION

BY MS. WILLIAMS:

MS. WILLIAMS: Okay, so this is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of Dulberg versus The Law Offices of Thomas Popovich, et al. This deposition is being taken for the purposes of discovery.

Q. Hans, can you state your name for the record, please?

A. Hans Mast.

Q. Have you had your deposition taken before?

A. Yes.

Q. And how many times?

A. I think two.

Q. And for what purpose?

A. Long, long time ago I think there was a malpractice case I was a witness on and a legal -- a medical malpractice case that turned into a legal malpractice case, not against me but against the office I was with.

Q. Okay. So you weren't named in the lawsuit as a defendant?

A. I might have been named. I might have been

1 named, but I was somebody that appeared on a motion.  
2 I think I got out eventually.

3 Q. Okay, and then -- And then -- Sorry. And  
4 then you said you think twice, so do you know  
5 approximately what year that medical malpractice case  
6 that turned into a legal malpractice case, do you  
7 know roughly what year that was?

8 A. '94 or something.

9 Q. Okay, and then the second time, what would  
10 have that been?

11 A. It's not coming to me. It was another legal  
12 case. I don't remember the details.

13 Q. Okay --

14 A. There -- Go ahead.

15 Q. More than 10 years? I'm sorry, I didn't  
16 mean to interrupt you.

17 A. Yes.

18 Q. We can go over the -- I'm going to try not  
19 to interrupt you, you're going to try not to  
20 interrupt me. You've taken depositions before, I'm  
21 sure we can get into that and appreciate you  
22 answering orally, all of those typical things that  
23 apply, and I'll try not to interrupt you too much.  
24 Have you ever -- Other than the one time you just

1 identified, have you ever been sued other than this  
2 suit for legal malpractice?

3 A. No.

4 Q. Do you recall any other details about that  
5 medical malpractice lawsuit that turned into a legal  
6 malpractice suit? Do you know what the basis of the  
7 suit was?

8 A. It was a medical malpractice case that I  
9 think lost on a summary judgment motion and they  
10 were -- the client was suing the office and I think I  
11 got involved in it because I was on a motion.

12 Q. Were you the one that drafted the summary  
13 judgment motion?

14 A. I don't think so. I don't really remember  
15 clearly back then, but I don't think I did.

16 Q. Okay.

17 A. I think I argued -- I might have argued it.  
18 I don't remember.

19 Q. Okay. Have you -- Have you taken  
20 depositions before?

21 A. Yes.

22 Q. Roughly how many depositions do you think  
23 you've taken in your legal career?

24 A. Lots. Lots.

1 Q. Hundreds?

2 A. Probably.

3 Q. Oh, I'm sorry, I forgot to do this, but I  
4 think we saw your room. It's just you and George  
5 Flynn in the room with you, correct?

6 A. Yes.

7 Q. And there's no one else in the room and if  
8 there were, you would identify them, correct?

9 A. Yes.

10 Q. And you don't have any devices or anything  
11 with you? You're not communicating with anyone  
12 during this deposition other than the attorney in the  
13 room with you, correct?

14 A. And you and who else is on this meeting.

15 Q. Okay. I'm sorry, let me rephrase. Is there  
16 anyone that I don't know that you are communicating  
17 with that I wouldn't know?

18 A. Not that I'm aware of.

19 Q. Okay. If you take any notes or otherwise  
20 communicate with people during the deposition, we  
21 just ask that those notes be produced. Okay. Did  
22 you do anything to prepare for the deposition today?

23 A. Well, I just saw some exhibits you sent  
24 George. I didn't really prepare them. I looked them



1 over briefly.

2 Q. Did you review any of the other files that  
3 have been produced in this case?

4 A. No.

5 Q. Did you review any notes?

6 A. No.

7 Q. Any other documents?

8 A. No.

9 Q. Did you meet with anyone --

10 A. Other than George?

11 Q. -- to prepare? Other than George.

12 A. No.

13 Q. And you did meet with George, I'm  
14 assuming. I don't want to know the contents of that  
15 meeting, but you met with George to prepare?

16 A. Not very long.

17 Q. Okay. Did you talk to anyone else about  
18 today's deposition prior to the deposition today?

19 A. No.

20 Q. Where did you go to law school?

21 A. Kent.

22 Q. And what year did you graduate?

23 A. '91.

24 Q. And were you admitted to practice in

1 Illinois that same year?

2 A. Yes.

3 Q. And have you -- Are you admitted to practice  
4 anywhere else?

5 A. No.

6 Q. Have you ever been reprimanded or  
7 disciplined by any courts?

8 A. No.

9 Q. Have you ever been publicly reprimanded or  
10 disciplined by any oversight body, such as the ARDC?

11 A. No.

12 Q. When did you start practicing?

13 A. '91.

14 Q. And where did you start?

15 A. In Rockford.

16 Q. With a firm?

17 A. Yeah, Cacciatore.

18 Q. And how long were you there?

19 A. About a year and a half.

20 Q. And what kind of work did you do there?

21 A. Personal injury, plaintiff.

22 Q. Have you done personal injury your entire  
23 career?

24 A. No, I did some defense work.

1 Q. Okay. So you were at Cacciatore for a year  
2 and a half and you were doing plaintiff's personal  
3 injury work. What did you do after that?

4 A. I went to the Loggans firm in Chicago for  
5 about 6 months.

6 Q. And what did you do there?

7 A. Plaintiff's.

8 Q. PI again, personal injury?

9 A. Yeah.

10 Q. And after that?

11 A. Judge and James in Park Ridge.

12 Q. And how long were you there?

13 A. 7 years, I think.

14 Q. Did you do plaintiff's personal injury there  
15 as well?

16 A. No, that was defense.

17 Q. What kind of defense work?

18 A. Lots -- All kinds, municipal, tort.

19 Q. Did you defend personal injury cases while  
20 you were there as well?

21 A. Yes.

22 Q. And then after that, where did you go?

23 A. Kemper, I think.

24 Q. And how long were you with Kemper?

1           A.    I think a couple years.  Maybe a little more  
2   than that.

3           Q.    And what kind of work did you do at Kemper?

4           A.    Defense.

5           Q.    Defense of what type of cases?

6           A.    Lots of different kinds, auto accidents,  
7   premises.

8           Q.    Mostly torts though, negligence-type cases?

9           A.    Yes.

10          Q.    And then after Kemper?

11          A.    I think Popovich was next.

12          Q.    And how long were you with the Popovich  
13   firm?

14          A.    About 18 years, I think.

15          Q.    And do you know what year you -- roughly  
16   what year you joined Popovich?

17          A.    2001 maybe.

18          Q.    And you were there for roughly 18 years you  
19   think?

20          A.    Yes.

21          Q.    So you left maybe just last year?

22          A.    In '18.

23          Q.    2018?

24          A.    Yeah.

1 Q. And why did you leave Popovich?

2 A. To start on my own.

3 Q. And where are you now?

4 A. With Compton Law Group.

5 Q. I'll give you just a second to come back.

6 A. Yeah.

7 Q. And what types of -- I'm sorry, I'm going to  
8 go back to the Popovich firm. What kind of cases did  
9 you handle at Popovich's firm?

10 A. Plaintiff's personal injury, all kinds.

11 Q. And then at Compton, what kind of work do  
12 you do?

13 A. Same thing, same kind of cases, plaintiff's  
14 personal injury.

15 Q. So is it fair to say you've been doing  
16 plaintiff's personal injury cases steadily throughout  
17 your career?

18 A. Yeah, except for the time I was with the  
19 defense offices.

20 Q. Okay. But you were still doing personal  
21 injury, just on the defense side, not on the  
22 plaintiff side?

23 A. Right.

24 Q. Okay. Did you answer discovery in this

1 case, in the malpractice case that we're -- the  
2 Dulberg versus Thomas Popovich case?

3 A. I think I did.

4 Q. Do you remember -- Did you review discovery  
5 in this case, do you recall?

6 A. Like I said, I think I answered some and  
7 signed off on some, I just don't remember. I haven't  
8 seen them recently.

9 Q. Okay. Okay. If you recall, do you remember  
10 reviewing the documents that were produced in this  
11 case?

12 A. I don't know what was produced.

13 Q. Okay.

14 A. I assume the file.

15 Q. Right. Okay, if I represented that the file  
16 was produced, would that make sense to you? Can we  
17 kind of agree that the file was produced?

18 A. Well, if you told me that.

19 Q. Okay. So when the file was produced, I  
20 don't know if you recall, there were black -- some  
21 black pages between the file. Do you remember any  
22 discussions about that?

23 A. I didn't produce anything so and I haven't  
24 reviewed what was produced, that wasn't my -- I was

1 in a different office when it was produced, I think.

2 Q. Okay. So Thomas Popovich would have had  
3 possession of the file?

4 A. Right.

5 Q. You did not have possession of any documents  
6 from the underlying case, from the Dulberg versus  
7 Gagnon-McGuire case?

8 A. I didn't.

9 Q. Okay. So you would not have had access to  
10 that file since you were with Thomas Popovich in  
11 2018?

12 A. Once I left the firm, I have not had the  
13 file.

14 Q. Okay. In this case did you produce emails  
15 that you possessed or did you not have access to  
16 those either?

17 A. I would -- I don't know what was produced,  
18 again, by the Popovich firm. I don't know if they  
19 had my emails, but I have a new email address. I  
20 don't think it's the same as it was back then.

21 Q. Okay.

22 A. So I didn't produce anything.

23 Q. So you didn't produce any emails or  
24 communications that -- in the -- from the underlying

1 case?

2 A. Not that I'm aware of. Unless I produced it  
3 to Popovich and he produced it. I don't know how  
4 that worked.

5 Q. Okay. When were you retained by Paul  
6 Dulberg?

7 A. I don't recall. I'm assuming there's  
8 paperwork that shows that.

9 Q. Yes. Let me upload a file here. Just give  
10 me a second.

11 A. I don't think he retained me. I think he  
12 retained Tom Popovich's office.

13 Q. Okay. I just uploaded a file that's titled  
14 Dulberg Mast Dep Exhibit 1, if you can -- And,  
15 George, you should have that as well -- and it should  
16 be the retainer contract.

17 A. Yeah, I see it.

18 Q. Okay. So it's a contract for legal services  
19 and it's marked POP, P O P, 000586 on the bottom,  
20 just for reference, so this will be the first exhibit  
21 in this deposition. Do you recognize this document?

22 A. I recognize what it looks like, yeah.

23 Q. Yeah, and it's the contract for legal  
24 services and it's undated, it looks like.



1           A.     That's what it looks like.

2           Q.     Okay. I'm going to upload another exhibit.  
3     So I'm uploading Exhibit 2, it's titled Dulberg Mast  
4     Dep Exhibit 2, and this should be the original  
5     complaint filed in the case of Dulberg versus Gagnon,  
6     et al., 12 LA 178, filed in McHenry County. Do you  
7     see that document?

8           A.     Yeah. What I'm going off are an email I got  
9     with all the exhibits attached, so I'm not -- that's  
10    what I'm looking at.

11          Q.     Okay.

12          A.     It's a complaint and it says Exhibit 2.

13          Q.     Right, okay. So our numbers may be a little  
14    off, but the description should be correct. In that  
15    complaint shows file stamp May 15, 2012?

16          A.     Yeah, that's what it says.

17          Q.     Okay, and so Mr. Dulberg would have hired  
18    you sometime -- hired the Popovich firm sometime  
19    prior to that, correct?

20          A.     I'm assuming. I --

21          Q.     Okay. Do you have any idea?

22          A.     I'm sorry.

23          Q.     I'm sorry, I didn't mean to interrupt you.  
24    Go ahead.

1           A.    Go ahead.

2           Q.    Do you have any idea about -- Do you have  
3 any idea about what timeframe he would have hired --  
4 retained you?

5           A.    I really, again, I don't have an independent  
6 recollection of it. I think there's probably a memo  
7 out there of me meeting with him, too.

8           Q.    Okay. Actually, I think there is. Okay, I  
9 just uploaded Dulberg Mast Dep Exhibit No. 3 and the  
10 top says -- it's titled, "Intake Memo." At the top  
11 it says, "Memorandum," it's Popovich, it says  
12 POP00961 and 000962. Do you recognize this document?

13          A.    I -- It looks familiar.

14          Q.    And it indicates that it's from you, so you  
15 would have drafted this document, correct?

16          A.    I would have dictated it, yeah.

17          Q.    Okay, and it looks like you had a new client  
18 meeting with Paul on December 1st of 2011?

19          A.    That's what it says.

20          Q.    Okay. Does that seem like that timeframe  
21 would have been roughly correct?

22          A.    I have no reason not to believe that's  
23 accurate.

24          Q.    Okay. So Paul retained you probably

1     sometime in December of 2011 and then you filed a  
2     complaint around May 15, 2012?

3             A.     That's what it appears.

4             Q.     Okay.  So can you just tell me what the case  
5     against Mr. -- I'm sorry.  Can you describe the case  
6     between Paul Dulberg and David Gagnon, Caroline and  
7     William McGuire?

8             A.     What do you mean describe it?  What it's  
9     about?

10            Q.     Yeah, basically what was it about?

11            A.     An injury, a chain saw injury.

12            Q.     Okay.  Was there anything about the case  
13     that was unique to you?

14            A.     Other than it was a chain saw injury.

15            Q.     Okay.  What was your theory of that case?  
16     What was your theory of liability in the case?

17            A.     I think the -- Paul had claimed Dave struck  
18     him with the chain saw.

19            Q.     So was it just a negligence theory or was it  
20     a strict liability or --

21            A.     I believe it was negligence, if I recall  
22     correct.

23            Q.     Negligence against Gagnon, David Gagnon?

24            A.     Yeah, and I think the McGuires actually were

1     named as well.

2           Q.     And what was the theory as to the McGuires?

3           A.     I think Paul had said that they were the  
4     ones that owned and looked over the work that was  
5     being done.

6           Q.     Okay.   So if they owned the chain saw and  
7     were overseeing the work, what's the legal theory for  
8     liability on that?   Why would they be liable?

9           A.     Under case law potentially there's liable --  
10    liability for people that oversee and direct the  
11    work.

12          Q.     Okay, and is that a strict liability or is  
13    it some other form of liability?

14          A.     It would be negligence.

15          Q.     So negligent oversight?

16          A.     Potentially.

17          Q.     Okay.   Were there any other theories that  
18    you were going to pursue or could be pursued?

19          A.     Not that I recall.

20          Q.     Okay.   So a negligence claim against Gagnon  
21    for negligently utilizing the chain saw and then a  
22    negligence claim against McGuires for not -- for not  
23    controlling his use of the chain saw, is that  
24    accurate?

1           A.    I don't recall the exact allegations, but I  
2           think in a general theme that was what we were going  
3           to try to prove.

4           Q.    Okay.  In the intake memo, do you want to go  
5           back to that?  There are some notes on this exhibit  
6           that state -- it looks to me like it says, "Hans BC  
7           the accident occurred on their premises, their HO med  
8           pay will cover the bills," and then it's signed.  Do  
9           you recognize that handwriting?

10          A.    Yeah, that would be Tom.

11          Q.    Okay, and what does that note mean?

12          A.    Medical coverage, medical payments coverage.

13          Q.    So there -- So the McGuires -- When he says  
14          their, is he referring to Caroline and Bill McGuire?

15          A.    Well, I don't know what he's referring to.  
16          I think what he's -- Well, he circled their names, so  
17          that probably indicates what he's referring to.

18          Q.    Okay.  Would their -- Would their insurance  
19          cover medical bills in an instance like this?

20          A.    Possibly.

21          Q.    Okay.  Did you reach out to their insurance  
22          company about covering any medical bills?

23          A.    I don't recall if that was applicable or I  
24          don't know -- I don't recall that issue.

1 Q. Okay.

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

3 MR. FLYNN: I got disconnected, too. It's  
4 the Wi-Fi.

5 BY MS. WILLIAMS:

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

7 A. I can hear you. I just can't see you.

8 Q. We'll wait a minute until you can get your  
9 video back on.

10 MR. FLYNN: Julia, we think the Wi-Fi may  
11 have dropped here in the office.

12 MS. WILLIAMS: Okay. Well, let's just give  
13 it a minute and see.

14 MR. FLYNN: Okay.

15 (Whereupon, a break was taken,  
16 after which the following  
17 proceedings were had:)

18 MS. WILLIAMS: Okay. I think we're back on  
19 the record. Barb, are you doing all right?

20 THE REPORTER: Yes.

21 BY MS. WILLIAMS:

22 Q. Okay. So we just went through the memo that  
23 Tom made a note about insurance and your testimony  
24 was that you don't recall whether you made any

1 requests to the McGuires' insurance to pay Paul's  
2 medical bills; is that correct?

3 A. I don't remember, right.

4 Q. Okay. Back to the actual claims made. Do  
5 you remember -- Do you recall what the defense was  
6 for first Gagnon and then Bill -- William and  
7 Caroline McGuire?

8 A. What do you mean by defense?

9 Q. What was their theory of defense in the  
10 case, do you recall? As you understood it.

11 A. I mean, that's a big question. I mean,  
12 they, like every case, they were denying what we were  
13 alleging.

14 Q. Were they denying the facts? Did they  
15 dispute the facts of the case?

16 A. Definitely.

17 Q. Okay. Do you recall what they were alleging  
18 as far as the facts that were different from what you  
19 were alleging?

20 A. I mean, I can probably answer that for --  
21 with an hour -- an hour answer. There's a lot that  
22 they were denying. There was a lot that, you know, I  
23 mean, I'd have to -- I could look at their answer. I  
24 could look at their deposition testimony, but, I

1 mean, that brings up a lot of issues.

2 Q. Okay. Let's -- Let me narrow it down a  
3 little bit and try to get more to a point that will  
4 be useful for our discussion. At some point, you had  
5 recommended that Paul settle the case as to the  
6 McGuires; is that correct?

7 A. Yeah.

8 Q. And what was the reasoning for settling the  
9 case as to William and Bill McGuire?

10 A. Just risk, like you always discuss with any  
11 settlement.

12 Q. Can you be a little more specific about what  
13 type of risk?

14 A. Again, that's a long question but, I mean,  
15 it's like any settlement, you're taking a risk if you  
16 don't settle the case when you have issues that could  
17 be problematic.

18 Q. Okay. When you say issues that can be  
19 problematic, and I know it could be a very long  
20 answer, but as much as you can, can you summarize  
21 what you think those risks were?

22 A. Understanding it's a summary that, I mean, I  
23 could probably answer that in a couple hours, but the  
24 chance of recovery was in my view very slim if at all



1 because of lots of reasons, one, because of Paul's  
2 testimony, Gagnon's testimony, the McGuires'  
3 testimony. The evidence didn't seem to be something  
4 that was going to allow us to prove the case against  
5 the McGuires.

6 Q. Okay. What -- And, again, I understand this  
7 is -- these are very long questions, but just in  
8 summary, what were you going to need to prove the  
9 case against the McGuires?

10 A. Now, again, understanding I would have to  
11 put myself in my place where I was back at the time  
12 that I fully evaluated this with Paul, but if I'm  
13 just trying to come up with some thoughts now years  
14 later the case law, I think, was against us. The  
15 defense was going to file a motion for summary  
16 judgment if we didn't work out some sort of  
17 settlement that I felt they were going to win and the  
18 testimony from all parties was not helpful to us.

19 Q. Okay. I'm going to move forward and then we  
20 may come back to this a little bit. Do you recall  
21 when the first time was that you talked to Paul about  
22 settling the claims with the McGuires?

23 A. No, whenever -- You know, the defense  
24 attorney would have reached out to me to ask for some

1 sort of demand, I assume.

2 Q. Did you make a demand at some point?

3 A. I think -- I think some of your paperwork  
4 showed that I did.

5 Q. Okay. I just uploaded Dulberg Mast  
6 Exhibit 4 and it says letter -- it's "Letter Re  
7 Settlement," and that should be -- still be Exhibit 4  
8 that was emailed around to Counsel so that you would  
9 have it. And it is labeled POP192 and POP193. Do  
10 you recognize those documents?

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

15 MR. FLYNN: Yeah, here's the hard copy.

16 THE WITNESS: I'll look at the hard copy, so  
17 what are you asking?

18 BY MS. WILLIAMS:

19 Q. Great. So it should be the document it has  
20 letterhead on the top, Popovich letterhead on the  
21 top, and at the bottom it's POP000192 and  
22 POP000193.

23 A. Right.

24 Q. Do you recognize those documents?

1           A.    I mean, they look familiar. Documents from  
2 the Popovich firm, if that's what you're asking.

3           Q.    Is that your signature?

4           A.    Yes.

5           Q.    So you would have drafted or caused this  
6 letter to be drafted and sent?

7           A.    It appears that way, yeah.

8           Q.    And this is a demand letter where you make a  
9 demand of \$7,500; is that correct?

10          A.    Yes.

11          Q.    Do you recall making that demand?

12          A.    No.

13          Q.    Do you recall if you talked to Paul prior to  
14 making the demand?

15          A.    I'm sure I would have.

16          Q.    Okay. Do you recall -- Do you have any  
17 memos or notes regarding that conversation with Paul?

18          A.    I don't personally.

19          Q.    Okay. If there were memos and notes, would  
20 they be in Thomas Popovich's file?

21          A.    It should.

22          Q.    Okay. Do you recall any emails about the  
23 demand -- the 7,500 demand?

24          A.    I know there were lots of emails. I don't

1 know if this number is identified in those emails,  
2 but, again, it would have been something I would have  
3 talked to him about before making it.

4 Q. Okay. But at this time you don't know if  
5 there are any memos, notes or emails memorializing  
6 any conversation with Paul prior to sending the  
7 October 22, 2013 demand?

8 A. Not that I recall.

9 Q. Okay, and if they did exist, they would be  
10 in the possession of Thomas Popovich, correct?

11 A. I would think so.

12 Q. Okay, and if you had those in your  
13 possession, you would produce them in discovery,  
14 correct?

15 A. If I had them.

16 Q. Okay. Just uploaded Exhibit 5, and this is  
17 email dated October 30, 2013, and it's marked at the  
18 bottom POP000195.

19 A. Okay.

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

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

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

3 A. Oh, these aren't part of it? Just one page?

4 Q. The document that I have is just one page.  
5 Are we looking at the same thing?

6 A. Okay.

7 Q. It's POP00195 on the bottom.

8 A. Yeah, he had a couple other pages on it, but  
9 okay.

10 Q. Okay. I just want to make sure that I  
11 didn't -- Okay. And on the bottom there of the first  
12 sheet, if you have several, I've only published one  
13 sheet for the purposes of this deposition, it states,  
14 "Friday, October 25, 2013," do you see that?

15 A. Where does it say that?

16 Q. So about halfway down the page it looks like  
17 it says, "Original message from Paul"?

18 A. Yeah.

19 Q. Okay. So that looks like Paul reached out  
20 to you about medical deposition and then on the top  
21 it appears to be your reply of October 30, 2013.  
22 Does that seem like that's accurate?

23 A. That's what it shows.

24 Q. Okay. Okay. And here you first -- Am I

1 correct in summarizing this is an email where you  
2 talk to Paul about liability for Mr. Gagnon?

3 A. Look likes I did cover that issue.

4 Q. Okay, and do you recall at the time what  
5 your purpose was behind this email?

6 A. I mean, every purpose is just to have open  
7 communication. That's all the purpose --

8 Q. Okay. Would you have been trying to explain  
9 to Paul the liability issues in his case that you  
10 described earlier?

11 A. Yeah, I definitely was discussing several  
12 issues for him so he knows what's going on.

13 Q. Okay, and this email response is dated  
14 October 30th, so that was after you sent that initial  
15 letter. Do you recall whether there would have been  
16 anything prior to this?

17 A. Whether what was prior to this?

18 Q. Would there have been any communications  
19 about liability either to Gagnon or the McGuires  
20 prior to the October 30, 2013 email?

21 A. Every time we talked, there were issues  
22 about liability, I mean, for whatever I first -- he  
23 first came to the office I recall he was lots of  
24 questions and I gave him lots of answers as is

1 reflected in my emails.

2 Q. Okay. Did you meet with Paul after you sent  
3 that October 22nd demand letter?

4 A. Did I meet with him?

5 Q. Yes. In person.

6 A. I'm sure I did.

7 Q. Okay. Do you recall -- Do you recall  
8 meeting -- the dates of those meetings?

9 A. No, I don't recall the dates.

10 Q. Okay. So I'm going to upload another file  
11 here.

12 A. Yeah, our Internet is down. That's why I  
13 can't bring these up.

14 Q. Okay.

15 MR. FLYNN: Julia, just so you know, I've  
16 got hard copies of the majority of the exhibits you  
17 sent with the exception of the larger files, like the  
18 insurance policy and the dep transcripts.

19 MS. WILLIAMS: Okay. Okay, great.

20 MR. FLYNN: I've got some of the deposition  
21 transcripts, but I didn't want to waste a lot of  
22 paper and ink at home.

23 MS. WILLIAMS: Okay. I think we'll be --  
24 For the most part, I think we'll be fine and we'll

1 deal with it if and when we get to that point.

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

10 A. What exhibit is it?

11 Q. I think it might have been 5-A to George.  
12 It's now Exhibit 6 for the purposes of this  
13 deposition.

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

16 MR. FLYNN: Yeah, I don't think that was  
17 included.

18 THE WITNESS: What's the Bates stamp or  
19 what's the stamp?

20 MS. WILLIAMS: The Bates stamp is  
21 Dulberg001531.

22 THE WITNESS: Yeah, I don't recall --

23 MR. FLYNN: I don't recall seeing a 5-A on  
24 the download. I think it just went straight from



1 5 to 6.

2 MS. WILLIAMS: Okay, let me see if I can do  
3 something else. I'm going to try to share my screen.  
4 I don't know if I'm going to be able to do it. So  
5 bear with me. Okay. I can't -- I can't share the  
6 screen. Can I email -- George, can you pull up an  
7 email if I email it to you?

8 MR. FLYNN: I should be able to eventually.

9 MS. WILLIAMS: Okay, let me see if that  
10 will --

11 THE WITNESS: Let me run to the washroom  
12 real quick while you guys do --

13 MS. WILLIAMS: We'll take a quick break,  
14 that's fine, we'll try to work this out. If anybody  
15 else needs a break, obviously take a break now.

16 (Whereupon, a break was taken,  
17 after which the following  
18 proceedings were had:)

19 BY MS. WILLIAMS:

20 Q. Okay, back on the record. This is the  
21 Exhibit 6 for the deposition and it's marked at the  
22 bottom Dulberg001531 and it's an email chain between  
23 Paul Dulberg and Hans Mast dated November 4th through  
24 about November 5th, is that accurate, Hans?

1           A.     That's what it appears.

2           Q.     Okay, and it appears at the bottom that Paul  
3 is asking you if he should bring anything to a  
4 meeting.

5           A.     Okay.

6           Q.     And that meeting appears to be at 3:00 p.m.  
7 on November 4th of 2013.

8           A.     Okay.

9           Q.     Is that an accurate description?   Okay?   Do  
10 you recall having --

11          A.     Go ahead, I'm sorry.

12          Q.     Do you recall having a meeting on  
13 November 4th of 2013 with Paul Dulberg?

14          A.     I don't have an independent recollection.

15          Q.     Okay.   Okay.

16                 MR. FLYNN:   Julia, now I recall, this is a  
17 separate exhibit you sent a little bit later than the  
18 original download, so I did have this.

19                 MS. WILLIAMS:   Okay.   Okay.   We got it  
20 worked out.

21                 MR. FLYNN:   Yeah, okay.

22                 BY MS. WILLIAMS:

23                 Q.     Okay.   So you don't recall calling a meeting  
24 for November 4th?

1           A.    We had lots of meetings so --

2           Q.    Okay.

3           A.    -- I don't have an independent recollection  
4 of that one particular date.

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

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

14          Q.    Okay, but Barb needs them, so that's why I  
15 keep uploading them, otherwise she doesn't have them.  
16 Okay.  So Exhibit 7, and it's POP00181 and POP00182,  
17 and it's two pages of an email chain, November 15th,  
18 looks like on the second page it starts November 15th  
19 and ends November 19th, is that accurate?

20          A.    Yes.

21          Q.    Okay, great.  So here it looks like Paul  
22 started this email chain, but then on November 18th  
23 you note that, "The McGuires' attorney has offered  
24 us, you, \$5,000 in full settlement of the claim

1 against the McGuires only," do you see that?

2 A. Yes.

3 Q. Okay. Do you recall that offer being made?

4 A. I do have some recollection of having a  
5 conversation with them.

6 Q. Okay. So I'm going to upload another  
7 document and then we can keep going here. And then  
8 this is Exhibit 8 and for -- it is a letter from  
9 Ronald Barch to you, Hans, and it's POP000667. Do  
10 you have that?

11 A. What's it dated?

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

13 A. Yeah, I have that.

14 Q. Okay. And that's a settlement letter from  
15 Barch offering the settlement of \$5,000, correct?

16 A. Right.

17 Q. Do you recall receiving this letter?

18 A. I mean, I don't today recall getting the  
19 letter, but I'm familiar with the transaction, yes.

20 Q. Okay. Okay. So you would have received the  
21 \$5,000 offer from Barch and you communicated it to  
22 Paul via the email on November 18th?

23 A. As well as when we talked, yes.

24 Q. Okay. Okay. And when did you talk?

1           A.    Again, I don't know the dates.  I just know  
2           generally how this all transpired.

3           Q.    Would you have talked to Paul on the 18th  
4           when the letter came in?

5           A.    It's dated the 18th.  I doubt I got it on  
6           the 18th.  Whenever I got it, I would have told Paul.

7           Q.    Okay.  And it looks like the email you sent,  
8           which is Exhibit 7, communicated that offer?

9           A.    Okay.

10          Q.    Would you have talked to the McGuires'  
11          attorney prior to receiving the letter about the  
12          offer?

13          A.    I don't recall.  It might have -- that might  
14          have happened.

15          Q.    Okay.  Do you recall whether you met with  
16          Paul sometime after -- on or after November 18 to  
17          discuss the settlement offer?

18          A.    I'm sure we did.  I know we had several  
19          conversations and meetings about that.

20          Q.    Okay.  In this email chain that's  
21          Exhibit 7 about halfway down the page it says on  
22          November 18, 2013, at 7:40 p.m., Paul responds to  
23          your email.  Can you see that?

24          A.    Are we going back to the email now?

1 Q. Yep, it's POP00181.

2 A. What exhibit?

3 Q. It's Exhibit 7.

4 A. 7, that's the letter.

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

6 A. Let's take a look. What page is the email?

7 Q. The date at the top of the email chain is  
8 Tuesday, November 19, 2013.

9 A. Yeah, I have that.

10 Q. Okay. And then about maybe halfway down the  
11 page it's dated on November 18, 2013, at 7:40 p.m.,  
12 do you see that?

13 A. Yep.

14 Q. And there it says, "Only five? That's not  
15 much at all," do you see that?

16 A. That's his response, yes.

17 Q. Right. Right. Do you recall talking to  
18 Paul about the \$5,000 and that not being much?

19 A. Like I said, yes, we've had plenty of  
20 conversations and meetings on that.

21 Q. Okay. When you originally offered the  
22 7,500, did you talk about what the possible outcomes  
23 as far as counteroffers, what they may demand,  
24 something like that, did you talk about that prior to

1 making that \$7,500 offer?

2 A. I mean, I think I generally understand what  
3 you're asking. Did we just have general  
4 conversations of numbers? Yes.

5 Q. Okay. In this email and this is -- I  
6 understand this is speculation, but in this email it  
7 appears that Paul is surprised that it's \$5,000 was  
8 the offer, correct? Would that be fair to  
9 characterize it that way?

10 A. Is he surprised at it or is he surprised at  
11 the amount? It looks like he didn't think it was  
12 much.

13 Q. Right. So if you originally offered 7,500  
14 and they came back at 5,000, in your experience, does  
15 that seem like much of a difference when it comes to  
16 counteroffers?

17 MR. FLYNN: I'll object to the form.

18 THE WITNESS: Yeah, I'm not real sure what  
19 you mean by that.

20 BY MS. WILLIAMS:

21 Q. I guess let me rephrase because I don't  
22 think I'm getting to the point. Prior to making the  
23 \$7,500 offer, did you discuss with Paul that the  
24 McGuires may come back with an offer that was lower

1     than the 7,500?

2           A.     Again, I'm -- I understand the question.  
3     I'm just not trying to play games, but you're asking  
4     me do I recall specific words that are used or  
5     topics. All I can tell you about this is we talked  
6     about the whole gamut of options, that I didn't feel  
7     it was a strong case, that they were reaching out to  
8     us for \$5,000, and that balancing everything, the  
9     risks, costs, even though it wasn't much, it was  
10    something that would have been desirable for him if  
11    he wants to end up with money versus the McGuires.

12          Q.     I'm going to add another exhibit here.  
13    Okay, for the purposes of this deposition it's  
14    Deposition Exhibit 9. This is a memorandum. At the  
15    top it will say, "Memorandum," and the date is  
16    November 20, 2013, and at the bottom it's identified  
17    as POP and then 3 -- there's 000003, I believe. Do  
18    you have that?

19          A.     What exhibit is it?

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

23          A.     Okay.

24          Q.     And it's Dulberg Mast Memo,



1 2013 November 20.

2 A. Okay, yeah.

3 Q. Okay. It looks from this memo that you had  
4 a meeting with Paul and his friend on November 20th,  
5 is that accurately reflected what's stated in the  
6 memo?

7 A. Yes.

8 Q. Do you remember this document? Do you  
9 recall this?

10 A. As I said before, I understand what you're  
11 asking, but we've had lots of meetings. Do I  
12 remember that particular date, no, but I remember the  
13 meetings.

14 Q. Do you recognize this memorandum?

15 A. I recognize the discussion that's referenced  
16 in the memo. I haven't seen the memo for 7 years.

17 Q. Okay. Do you recall the advice that you  
18 gave in that meeting of November 20th?

19 A. Yeah, like I said, it's summarized a little  
20 bit in there. Yeah.

21 Q. Okay. And what was the -- Why don't -- What  
22 was the advice that you gave?

23 A. Do you want me to read the memo or you want  
24 me to just tell you generally what the topics were or

1     what?

2           Q.     Generally to the best that you can recall.

3           A.     Looks like on that day he brought his friend  
4     in because before he wanted to consider the offer, he  
5     wanted to have his friend come with him to talk about  
6     these issues with me.   So we went over --

7           Q.     So --

8           A.     Go ahead.

9           Q.     No, I'll let you finish.   Go ahead.   I'm  
10    sorry.

11          A.     Well, we went over all the issues, all the  
12    risks, all the money issues, all of the issues.

13          Q.     Do you recall who the friend was?

14          A.     Not as I sit here today.

15          Q.     From this memo it says, "Paul maintains the  
16    McGuire's controlled everything that they were doing  
17    and you told him that wasn't what the evidence seemed  
18    to show."   So can you expound on what -- This is  
19    really going to be a complicated question, but to the  
20    best of your ability, can you explain what the theory  
21    of your case was against the McGuire's and what the  
22    evidence was that was going to -- what evidence was  
23    your reason for believing that you couldn't prove  
24    your theory?

1           A.    We already talked a little bit about that  
2           earlier, but every time we met, we talked about this  
3           because this was a subject at the time with the  
4           McGuire's and given the testimony of the McGuire's,  
5           given Paul's testimony, given the lack of any  
6           evidence that they were controlling any work or even  
7           knew what Paul was doing, I felt it was a big, high  
8           risk of moving forward on that claim.

9           Q.    So I'm going to try to summarize this.  
10          Maybe in parts. So in order for the McGuire's to be  
11          liable for Gagnon's work, Paul would have to prove in  
12          his case that the McGuire's controlled Gagnon's work,  
13          is that accurate?

14          A.    Are you asking me if that's an accurate  
15          statement of the law?

16          Q.    Yes.

17          A.    I think that's partially right. There's a  
18          lot more to it. It's different branches and elements  
19          that you have to prove, control was a factual matter,  
20          and he would have to be able to establish there was  
21          some oversight. It goes down into some factual  
22          issues that you have to be able to show.

23          Q.    Okay. So can you -- To the best of your  
24          ability, can you kind of walk me through for the

1 negligence claim against the McGuires what the legal  
2 elements were that you would have to show?

3 A. I haven't brushed up recently on that area,  
4 but I can tell you that under the case law they have  
5 to have some oversight and control over what was  
6 going on and some involvement in the work and some  
7 knowledge higher and above what Paul was doing, and  
8 if you look at their testimony, they were not out  
9 there, they were not looking at it, they didn't even  
10 really know what Paul was doing frankly.

11 Q. And what about David? Did they have to  
12 control what David was doing as well?

13 A. I meant David, I'm sorry.

14 Q. Okay. So the McGuires would have to have  
15 oversight and control over David Gagnon?

16 A. Over the work.

17 Q. Okay. Over the work. Okay. So William and  
18 Caroline did buy the chain saw, correct?

19 A. I believe that is true.

20 Q. Okay. But then David Gagnon was the one  
21 operating the chain saw?

22 A. Right.

23 Q. And you would have to show in Paul's case  
24 that Bill and Caroline, one or the other, had control

1 over David's operation of the chain saw?

2 A. Control could mean a lot of things. They  
3 would have to be in a position to instruct him, tell  
4 him what to do, be aware of the work that was being  
5 done and have some control over what he was doing.

6 Q. Okay. So in your -- Your opinion of the  
7 case was that it was insufficient for them to have  
8 simply purchased the chain saw and provided it to  
9 Gagnon?

10 A. Yeah.

11 Q. And what about if they were paying him?  
12 Would that make any difference?

13 A. No.

14 Q. I'm sorry, I don't know or no?

15 A. No.

16 Q. Just bear with me for a second here. And  
17 you informed Paul -- I'm sorry, let me back up. In  
18 exhibit -- Deposition Exhibit 7, so it's probably  
19 6 for you, the email chain between you and Paul,  
20 roughly November 18th through the 19th, Popovich  
21 000181, on the bottom of that first page,  
22 November 18, 2013, at 1:28 p.m. there's an email from  
23 you. Do you see that?

24 A. Yes.

1           Q.    "In addition, the McGuires' attorney," so  
2   it's ATTY, "has offered us, you, 5,000 in full  
3   settlement of the claim against the McGuires only.  
4   As we discussed, they have no liability in the case  
5   for what Dave did as property owners so they likely  
6   will get out of the case on a motion." Did I read  
7   that correctly?

8           A.    Yes.

9           Q.    So this is where you told Paul that you  
10   didn't believe the McGuires had any liabilities for  
11   the reasons -- in part for the reasons we just  
12   discussed?

13          A.    Right.

14          Q.    Ultimately Paul accepted that \$5,000 offer,  
15   correct?

16          A.    Yes.

17          Q.    And you communicated that to the other side  
18   later in 2013, does that sound correct to you?

19          A.    Yes.

20          Q.    I'm uploading Exhibit 10, and it should be  
21   Exhibit 10 for you as well, and it's a memorandum  
22   dated December 20, 2013, and at the bottom it's  
23   POP000884, do you see that?

24          A.    Yes.

1 Q. And that's a memorandum that you wrote to  
2 the legal file; is that correct?

3 A. It looks like that.

4 Q. I think I already said this, it's dated  
5 December 20, 2013?

6 A. Yes.

7 Q. Okay. And the substance of it, it appears  
8 that you had a conversation on December 18th with  
9 Paul and that he was authorizing you to accept the  
10 \$5,000 settlement?

11 A. Yes.

12 Q. Okay. Do you recall that conversation of  
13 December 18?

14 A. I recall having lots of conversations, this  
15 is one of them, and generally I do recall the  
16 conversations in a general sense, not the exact  
17 dates.

18 Q. Okay. So you don't remember anything  
19 specific to this December 18th call what you would  
20 have discussed?

21 A. Not other than what I've already said we  
22 discussed over the time.

23 Q. Okay.

24 A. Paul was weighing his options. He knew the

1 risk and he had -- he wanted some time to think about  
2 it and consider it.

3 Q. Okay. All right, just bear with me here.  
4 Okay, I just uploaded Deposition Exhibit 11, it's a  
5 settlement acceptance letter, letterhead from Thomas  
6 Popovich's office dated December 26, 2013. Hans,  
7 your signature appears on there and it's POP00670.  
8 Do you recognize this document?

9 A. That appears to be a letter from Popovich's  
10 office to defense counsel.

11 Q. Do you recognize your signature on here?

12 A. Yes.

13 Q. And this is the letter where you accepted  
14 the offer on behalf of Paul, is that accurate?

15 A. It appears, yeah.

16 Q. Okay. So the Defendants made the original  
17 offer around November 18 and Paul --  
18 November 18, 2013, and Paul accepted it around  
19 December 20, 2013. Is that statement accurate?

20 A. I don't have, like I said, independent  
21 recollection of the dates. I would just have to go  
22 off the documents.

23 Q. Okay. Was there -- If that timeframe is  
24 roughly correct, was there anything that occurred



1 during that timeframe that indicated to you, you  
2 know, why Paul changed his mind from originally  
3 thinking it was too little to now accepting it. Was  
4 there anything that stuck out in your mind about  
5 that?

6 A. Yeah.

7 Q. Can you expound on that?

8 A. Well, he had his friend with him during our  
9 meeting and he reviewed the depositions.

10 Q. Okay. Did he not have the depositions prior  
11 to that?

12 A. I remember he asked for copies of them, so I  
13 provided them to him.

14 Q. Okay, and when you say the depositions, do  
15 you mean just the party depositions, the McGuires and  
16 the Gagnon?

17 A. I don't remember if I gave him the doctors.  
18 I don't remember which ones I gave him, but I know  
19 specifically it was Gagnon and the McGuires.

20 Q. Okay, I'm uploading Dulberg Mast Dep  
21 Exhibit 12. This is titled, "Legal Research." And  
22 this is hard because there's -- it's 27 pages. Some  
23 of them have Bates numbers, but some of them are  
24 black on the bottom, so I think the Bates numbers

1 didn't -- didn't take, but it's roughly -- looks like  
2 roughly 204, maybe 205, Dulberg204, 205 through  
3 roughly Dulberg00304 -- Actually, I'm sorry, these  
4 aren't going to be continuous. But do you have that  
5 packet of legal research in front of you? It appears  
6 to be copies out of a -- copies of case law out of  
7 the Northeastern Digest.

8 A. I just have the one case here.

9 Q. Just one case? Which -- What's the case  
10 title?

11 A. The first one, it's L A J A T O.

12 Q. Okay. Do you -- Did you copy this case law?

13 A. I don't know.

14 Q. Do you recall providing any case law to  
15 Paul?

16 A. I don't know if I did or didn't. I don't  
17 know if he asked.

18 Q. Okay. Do you recall doing case law  
19 research?

20 A. I'm sure I did, yeah.

21 Q. Would have there been a memo or something  
22 regarding that research?

23 A. Not necessarily. I was familiar with the  
24 law.

1 Q. Okay. Okay. Was there any -- Was there any  
2 case law that stuck out to you, any particular cases  
3 that stuck out to you?

4 MR. FLYNN: Object to the form.

5 THE WITNESS: You mean stuck out to me with  
6 regard to Paul and his case?

7 BY MS. WILLIAMS:

8 Q. No. Were there any applicable cases that  
9 stuck out to you one way or the other as to whether  
10 the McGuires would be liable? Was there any specific  
11 cases that made you think that the McGuires may not  
12 be liable given the facts in Paul's case?

13 A. I mean, you deal with this issue a lot and I  
14 can't think of one particular name of a case, but  
15 these cases all go along the same line, so there were  
16 lots of cases on this one particular issue. It  
17 wasn't a complicated issue.

18 Q. So particularly the issue of control of  
19 Gagnon.

20 A. Of a premises owner's liability for an  
21 independent contractor.

22 Q. Okay. So can you explain generally what an  
23 independent contractor is?

24 A. I'll give you have an answer if you want,

1 but just, I mean, we're talking now, what is it,  
2 7 years later? I haven't been asked to do any  
3 research before today's deposition, but so, I mean,  
4 if you're asking me for what the case law says, I'd  
5 have to look at the case law, if that's what you're  
6 asking.

7 Q. I'm asking based on your -- on your  
8 experience and knowledge as a personal injury  
9 attorney and not necessarily related to Dulberg's  
10 case specifically.

11 A. Okay.

12 Q. But based on your knowledge and experience  
13 in premises liability cases, what is an independent  
14 contractor?

15 A. Someone that works on their own.

16 Q. And can you explain what you mean by on  
17 their own?

18 A. Somebody that's hired, like, somebody that's  
19 hired to paint the house.

20 Q. Okay. So somebody that's hired by a  
21 homeowner or maybe a business?

22 A. Yes.

23 Q. But someone that's hired by a homeowner but  
24 the homeowner doesn't -- doesn't tell them how to do

1 their job?

2 A. Right.

3 Q. Did you ever obtain a copy of the McGuires'  
4 insurance policy, do you recall?

5 A. I don't have an independent recollection.

6 Q. Did you ever advise Paul as to the limits of  
7 the McGuires' policy?

8 A. I'm sure we talked about it.

9 Q. Okay. I just uploaded Dulberg Mast  
10 Deposition Exhibit 13 McGuire Interrogatory Answers  
11 and they're Bates stamped Dulberg000162 is the first  
12 page and there's roughly 14 pages. Do you see that  
13 document?

14 A. Yes.

15 MR. FLYNN: This is 14?

16 MS. WILLIAMS: It should be Exhibit 13 --  
17 13 or 14. I think I have it as 13. Yes, okay. And  
18 this -- I'm looking at paragraph 15 or at least I'm  
19 trying to look at paragraph 15.

20 Q. Okay. In paragraph 15 it looks like there  
21 was a question about the homeowner's insurance and  
22 the McGuires respond with their personal liability  
23 and their medical liability, do you see that?

24 A. Yes.

1 Q. Okay. Now that you see that, do you recall  
2 whether you ever got a copy of that policy?

3 A. I don't -- You mean the dec pages or the  
4 whole policy?

5 Q. Either. Did you get a copy of the dec  
6 pages?

7 A. I have no idea.

8 Q. And you have no idea whether you got a copy  
9 of the whole policy?

10 A. Yeah, don't know.

11 Q. But they are representing what their  
12 insurance was and the liability there, correct, or  
13 their liability coverage there?

14 A. That's what it appears.

15 Q. Okay. And these -- This was -- looks like  
16 this was responded to based on the McGuires'  
17 signature on roughly the 12th page of the document.  
18 It looks like it was August 6th of 2012.

19 A. That's what it appears.

20 Q. Yeah. So prior to when they would have made  
21 the settlement offers, correct?

22 A. That's what it appears.

23 Q. Okay. Did you ever talk to Paul about  
24 those -- the limits of the insurance policy and how

1 that may be important in his case?

2 A. I suspect we talked about the policy, yeah.

3 Q. Okay. Prior to any settlement discussions?

4 A. Yeah.

5 Q. Okay. But you've already testified you  
6 didn't -- You don't know if you -- You don't know if  
7 you obtained a copy. What about Gagnon's insurance  
8 policy, did you ever obtain a copy of that?

9 A. I don't know. I don't know.

10 Q. Okay. Did you issue interrogatories to  
11 Mr. Gagnon?

12 A. I'm sure I did.

13 Q. Let me upload this. Would they have been in  
14 Popovich's file if you --

15 A. Yes.

16 Q. Okay. So I can tell you, I don't recall  
17 seeing any documents issued by you. I'm going to  
18 upload a document that appears to be interrogatories  
19 issued by McGuires' counsel in the case. I'm going  
20 to upload it right now. It's Exhibit 14 and Answers  
21 to Co-Defendant Interrogatories and it is stamped  
22 Dulberg00178. Do you see that document?

23 A. Yes.

24 Q. It appears that these were issued by

1 Co-Defendants, in other words, the McGuires, does  
2 that seem accurate to you?

3 A. Yes.

4 Q. So would you have issued interrogatories in  
5 addition to what the McGuires' counsel issued?

6 A. It's probable.

7 Q. Okay. Do you recall one way or the other  
8 today as we sit here?

9 A. Not other than it's probable I did.

10 Q. I have not seen those in discovery, so if  
11 they exist, we'd ask that they be produced. Do you  
12 ever recall talking to Paul about the policy limits  
13 of the Gagnon insurance policy?

14 A. It's a topic that frequently comes up. I  
15 don't have an independent recollection.

16 Q. Would you have any memos or notes on that?

17 A. I could. I may. I don't have an  
18 independent recollection of that.

19 Q. Okay. And, again, that would have been in  
20 the file that -- in Thomas Popovich's file?

21 A. Correct.

22 Q. In your knowledge and experience not related  
23 to the Dulberg case but just in your general  
24 knowledge and experience, are there any situations



1 where a homeowner may be strictly liable for someone  
2 doing work on their property?

3 MR. FLYNN: I'm just going to object to the  
4 hypothetical being inaccurate and incomplete, also  
5 calls for an expert opinion. While this witness is a  
6 lawyer, I won't necessarily -- I don't expect to call  
7 him as an F-2 or F-3 witness in the case.

8 THE WITNESS: So you're asking if a  
9 homeowner can be strictly liable for an injury?

10 BY MS. WILLIAMS:

11 Q. Right.

12 A. In general terms, not with regard to this  
13 case?

14 Q. No, in general terms. I'm just asking in  
15 general terms in your -- based on your experience and  
16 knowledge of injury cases.

17 A. I mean, I think -- Not in Paul's case, but I  
18 think I could probably think of something that maybe  
19 could be -- as products strict liability, there's  
20 hazardous materials strict liability, there's  
21 different issues that potentially factually if  
22 they're applicable could apply, but not in Paul's  
23 case.

24 Q. Okay. Just in general, what kind of

1 hazardous -- When you say hazardous, are you talking  
2 about hazardous chemical-type cases?

3 A. There's a string of cases when you're  
4 dealing with hazardous chemicals and hazardous  
5 materials, like a bomb or something like that, things  
6 like that.

7 Q. Okay. Okay. Are there any, like, hazardous  
8 actions? Could something be considered, like, some  
9 type of action be considered hazardous?

10 A. What do you mean by action? Activity?

11 Q. Yeah, like, I'm trying to give you an  
12 example because I'm just trying to understand it more  
13 than anything else. Yeah, is there an activity that  
14 you could be doing on your property, I don't know,  
15 like, what about tearing down your home, would that  
16 be considered -- would that be something that could  
17 be hazardous?

18 A. There would have to be statutory authority  
19 for that and there isn't.

20 Q. Okay. Okay. Okay. So generally for strict  
21 liability there has to be some type of statutory  
22 authority for that?

23 A. Or common law. Yeah. They have a  
24 particular fact pattern.

1           Q.    Okay.  But this case particularly is simply  
2           a negligence case.  Paul's case against the McGuires  
3           was a simple negligent failure to control case in  
4           your opinion?

5           A.    That's what was pled.

6           Q.    Okay.  Did you ever make any -- ever  
7           consider pleading any other allegations?

8           MR. FLYNN:  Object to the form.

9           THE WITNESS:  I don't -- No.  Not that I  
10          recall.

11          MS. WILLIAMS:  Okay.  Can we take about a  
12          4-minute break?

13          MR. FLYNN:  Sure.

14          MS. WILLIAMS:  Let's just take -- I just  
15          want to take a quick break and review my notes and I  
16          want to give everybody an opportunity to kind of  
17          stretch for a second.  I'm going to go on mute.

18          MR. FLYNN:  Okay.

19                               (Whereupon, a break was taken,  
20                               after which the following  
21                               proceedings were had:)

22          MS. WILLIAMS:  Let's go back on the record.  
23          Okay, thank you everyone.  Okay, just a little bit  
24          more here.

1           Q.    On -- When you were talking to Paul about  
2   settlement in the general timeframe of  
3   November-December 2013, did you ever suggest at that  
4   time that he seek alternative counsel or any  
5   recommendation related to that?

6           A.    I think that did come up.

7           Q.    Do you recall what your advice to him was or  
8   what the discussion was?

9           A.    I think, you know, we always talk about the  
10   risks of not settling and further down the road what,  
11   you know, having to try the case and having to try  
12   prove the case or getting a motion for summary  
13   judgment, having the costs exceed the benefits and  
14   all that, and I think my position with Paul, since he  
15   didn't give a relatively very good deposition, my  
16   thought was we were going to have a tough time, an  
17   uphill battle, and he can always seek other counsel  
18   if he doesn't agree with me.

19          Q.    And you just stated that you thought Paul  
20   didn't give a very good deposition, that may not have  
21   been your exact language, but roughly that the  
22   deposition wasn't great. Can you explain what -- as  
23   you recall it, what about the deposition was  
24   problematic?

1           A.     I mean, he even agreed with me, but he just  
2 doesn't do a very good job.

3           Q.     You mean -- Can you expand on that a little  
4 bit?

5           A.     As a witness, as I recall, again, it's been  
6 quite some time, as I recall he was -- his testimony  
7 wasn't given -- wasn't strong, it wasn't definite, it  
8 didn't have credible points and some points were  
9 incredible when compared to other -- other testimony.  
10 I mean, there's just a lot -- there was a lot of  
11 problems with his testimony.

12          Q.     Okay. Do you recall the circumstances that  
13 Paul described as to why he came to the McGuires'?

14          A.     I think he was either going to pick up  
15 something or drop something off.

16          Q.     Okay.

17          A.     I don't really recall. I'm just thinking  
18 back now.

19          Q.     Okay. Do you recall whether he was asked to  
20 come over to help with the tree, to help take down  
21 the tree? Was that the purpose of his visit?

22          A.     I don't recall that.

23          Q.     Would it matter as for liability whether it  
24 was or wasn't?

1 A. As by who? As to whose liability?

2 Q. I'm sorry, his and McGuires' liability.

3 A. As to how he got there?

4 Q. Whether he was -- Whether he was invited for  
5 the purpose of assisting with the removal of the  
6 tree.

7 MR. FLYNN: Object to the form. Just  
8 invited by whom?

9 THE WITNESS: Yeah, that's a complicated  
10 question, but I don't think --

11 BY MS. WILLIAMS:

12 Q. Let me clarify if I can. Okay. So my  
13 question was does it matter if the McGuires invited  
14 Paul to their residence to remove the tree on that --  
15 on the June -- roughly June, I believe, 2011 date?

16 MR. FLYNN: Object to the hypothetical.

17 THE WITNESS: I don't think it matters.

18 BY MS. WILLIAMS:

19 Q. Okay. Would it matter if they were paying  
20 Paul?

21 A. That's not the issue. The issue is Dave.

22 Q. Okay. So the relationship between the  
23 McGuires and Paul is somewhat irrelevant?

24 A. I'm just saying the issue really that --

1 about liability is Dave's relationship with them.

2 Q. Because Dave is the one that controlled the  
3 chain saw that injured Paul, is that accurate?

4 A. He was the one hired to do the work or asked  
5 to do the work, however, whatever that background  
6 was.

7 Q. And Caroline and William McGuire both  
8 testified that they had never used a chain saw; is  
9 that correct?

10 A. I think that's accurate. I'd have to  
11 refresh my memory, but that sounds right.

12 Q. Okay. Do you remember discussing bankruptcy  
13 with Paul?

14 A. I don't remember that.

15 Q. Do you remember that Paul filed for  
16 bankruptcy? Do you recall that?

17 A. I saw a -- Maybe I didn't see one. I  
18 remember there was some sort of bankruptcy matter. I  
19 don't know the dates or when it came up.

20 Q. Okay. Do you recall if you advised Paul to  
21 file for bankruptcy?

22 A. I don't advise people to file for  
23 bankruptcy.

24 Q. All right. So you would not have advised

1 Paul to file for bankruptcy?

2 A. Would not.

3 Q. Okay. And then sometime after the McGuire  
4 settlement but before the -- but while the Gagnon --  
5 the claims against David Gagnon were still pending  
6 you withdrew from the case; is that correct?

7 A. The law firm did. I -- Again, he hired the  
8 law firm.

9 Q. Sure. Sure. I'm sorry. The Popovich firm  
10 withdrew?

11 A. Right.

12 Q. And I -- Let's see -- I think we're on  
13 Exhibit 14.

14 THE REPORTER: 15.

15 MS. WILLIAMS: 15, okay.

16 Q. I have, I think, one more and then -- Okay,  
17 I am uploading Exhibit 15, Dulberg Mast Dep  
18 Exhibit 15. It's a motion to withdraw and it's four  
19 pages and on the first page it has a Dulberg versus  
20 Gagnon case caption and file stamped March 13, 2015.  
21 Do you have that document?

22 A. Yeah.

23 Q. And this is the Popovich's firm motion to  
24 withdraw as counsel for Paul Dulberg in the Dulberg



1 versus Gagnon-McGuire case, correct?

2 A. Yes.

3 Q. And you drafted or caused this motion to be  
4 drafted and filed?

5 A. Yes.

6 Q. And was it granted that same day it was  
7 filed?

8 A. I'm sure it had to be noticed up.

9 Q. Okay. On the notice of motion it looks like  
10 it was noticed for March 13, filed on March 13, but  
11 sent to the service list on March 5th, does that seem  
12 accurate?

13 A. That's what it says.

14 Q. But at any rate, you withdrew sometime in  
15 roughly March of 2015?

16 A. It appears that way. Again, I don't have an  
17 independent recollection of the date.

18 Q. Okay. Okay. That's fine. And I didn't see  
19 it -- an order actually showing the exact date of  
20 when you withdrew. Can you explain why you withdrew  
21 from the case?

22 A. The short version is just we had a  
23 difference of opinion.

24 Q. Can you give me the long version or slightly

1 longer?

2 A. Well, we have difference of opinion but Paul  
3 was a bit difficult, so I just had to -- there were a  
4 couple times that I told him I was going to withdraw  
5 and then he begged me not to and so I didn't, but  
6 then ultimately he -- it got pretty -- it got pretty  
7 tough. He was saying some unfavorable, unflattering  
8 things and I just decided we're not going to get  
9 anywhere, I'm going to move on.

10 Q. Okay, so you -- the client relationship  
11 broke down and you withdrew?

12 A. Yes.

13 Q. Okay. Was there anything about Gagnon's  
14 liability or your thoughts on his liability that  
15 would have caused you to withdraw?

16 A. That was another aspect of it. Paul was  
17 looking for the stars and the moon and I didn't see  
18 it.

19 Q. And when you say Paul was looking for the  
20 stars and the moon, you mean -- Well, what do you  
21 mean by that?

22 A. He was looking for a lot of money.

23 Q. Okay, and what was your opinion as to David  
24 Gagnon's liability in the case?

1           A.    I didn't think much of the liability issue.  
2    I thought it was going to be a long, tough haul given  
3    that --

4           Q.    And --

5           A.    -- Paul was going to be our only witness on  
6    our side pretty much.

7           Q.    Okay, and there were no other witnesses  
8    other than Paul and David; is that correct?

9           A.    Correct.

10          Q.    And what about -- Anything related to, like,  
11   the actual injury, the doctors' depositions or  
12   anything like that?

13          A.    That all -- It was the whole ball of wax.  
14   The doctors weren't supporting his claim. Dave was  
15   saying he's a liar, he tried to bribe him. There was  
16   just a lot of -- a lot of bad stuff, not enough good  
17   stuff.

18          Q.    Okay, and then at that point you and Paul  
19   disagreed and Paul retained alternative counsel?

20          A.    Right.

21          Q.    Okay. Was there anything else about the  
22   case that you can recall right now that gave you  
23   pause as to the liability either to the McGuires or  
24   David Gagnon?

1           A.     Anything other than what?  Pretty much  
2 everything was not good.

3           Q.     Okay.  I mean, anything that we haven't  
4 really discussed here today.  We've talked about  
5 Paul's testimony, Gagnon's testimony a little bit,  
6 the McGuires, the premises liability.  We talked --  
7 You mentioned the doctors' depositions.  Is that sort  
8 of the general gamut of it?

9           A.     That's the whole case.

10          Q.     Okay.  Have you ever had any other chain saw  
11 liability cases other than this particular case?

12          A.     I'm sure I have.  I don't -- If you're going  
13 to ask me to name a date, I don't know.  I mean, it's  
14 not a common issue, but it comes up from time to  
15 time.

16          Q.     Okay.  Did you state -- Did you seek out a  
17 liability expert, a chain saw liability expert,  
18 during the time you were representing Paul?

19          A.     No.

20          Q.     Is there a reason for that?

21          A.     That's always a possibility.  It's always a  
22 consideration, but I had to consider even more  
23 whether we could even get to prove a credible case  
24 and that was my first object, my first -- my first

1 tier. It doesn't do any good to hire an expert if  
2 you don't have a good case.

3 Q. Okay. Okay. If you were going to take the  
4 case to trial, at that point would you have hired an  
5 expert, chain saw expert?

6 A. For this case, I don't know. I'd have to  
7 look at it again and see what we need to prove, what  
8 they're arguing. There's -- As I recall, they  
9 weren't arguing the chain saw -- They weren't  
10 arguing. He didn't get hit with the chain saw. So  
11 I'm not real sure. I'd have to think whether we need  
12 to prove -- what we need to prove, anything more than  
13 that.

14 Q. Okay.

15 A. It was more what happened, who caused it to  
16 happen, not that it happened.

17 Q. Okay. Is there a difference between an  
18 independent contractor and an employee?

19 A. In terms of what? In terms of duty or what?

20 Q. Right. In terms of the supervisor's duty.  
21 So if the Gagnons -- If Gagnon was, and this is a  
22 hypothetical, if Gagnon was an employee of his  
23 parents as opposed to an independent contractor,  
24 would there be a liability difference?

1           MR. FLYNN: Object to the hypothetical.  
2           It's inaccurate and incomplete.

3           THE WITNESS: That's a very complicated  
4           question, even though it doesn't sound like one. It  
5           depends on lots of things.

6           BY MS. WILLIAMS:

7           Q. Okay. We've already talked about an  
8           independent contractor. So just in your experience  
9           and knowledge, what is a supervisor's duty as to an  
10          employee? That's actually a really terrible  
11          question. Let's strike that question.

12          Is there a difference -- Is there a  
13          difference between the control aspect of -- Would  
14          an -- Let me start again. This is a complicated  
15          question, more complicated than I'm anticipating  
16          right now. Okay.

17          We've generally established that in order  
18          for an -- someone who hires an independent contractor  
19          to be liable for the actions of that independent  
20          contractor, they would have to control the work. In  
21          a situation, an employer-employee situation, is that  
22          control element also present when considering  
23          liability? Does the employer have to control the  
24          work of the employee in the same way?

1           A.    I think there are --

2                   MR. FLYNN:  I just want to raise an  
3   objection for the record.  I object to the form.  I  
4   think that the premise of the question indicated that  
5   we already established some legal precedent.  I don't  
6   think that's the case.  I don't think that he's  
7   testified to that, so, again, I'll just object to the  
8   form.  But if you can --

9                   THE WITNESS:  You're asking me to compare  
10  two different theories without a fact pattern, but  
11  there's a lot to each issue and it's hard to just  
12  say, well, if you have this, then you have that.  
13  There's a lot of different facts that apply, but now  
14  I'm forgetting what you asked initially about the  
15  employer-employee question.

16  BY MS. WILLIAMS:

17           Q.    So I guess my question to the point of is an  
18  employer liable for their employees in a different  
19  way than a homeowner would be liable for an  
20  independent contractor?

21           A.    I think --

22           Q.    Based on -- You go ahead.

23           A.    I think under the law there are different  
24  elements to those actions.

1 Q. And there are --

2 A. Go ahead.

3 Q. So there would be different elements if  
4 something was an employer-employee situation, that  
5 would be different law, different case law?

6 A. Yeah, there's a different cause of action.

7 Q. Okay.

8 A. Different elements potentially have to be  
9 pled and proved.

10 Q. Okay. But in this case you were trying to  
11 prove -- In Dulberg's case against the McGuires and  
12 Gagnon you were trying to show that -- The theory of  
13 the case was that Gagnon was not an employee, but an  
14 independent contractor, and the McGuires had to  
15 control him in order to be liable?

16 A. Well, that's ultimately what it appeared.  
17 You followed the evidence, you follow the facts, so  
18 if it turned out it was employee-employer-employee  
19 relationship, that's a different evaluation.

20 Q. Okay. So but, for the most part, you  
21 were -- your evaluations of the liability were based  
22 on an independent contractor analysis?

23 A. Well, that's where it went because of the  
24 evidence.



1 MS. WILLIAMS: Okay. I'm going to go on  
2 mute for just a second so you guys don't hear me  
3 shuffling papers, but I think I'm almost finished  
4 here or may be finished.

5 MR. FLYNN: Okay.

6 BY MS. WILLIAMS:

7 Q. Okay. Just a couple more questions and then  
8 we'll wrap things up here. When did you first advise  
9 Paul that you didn't think the claims against Gagnon  
10 were going to be very strong?

11 A. Probably day one.

12 Q. Before the settlement with the McGuires?

13 A. Yeah.

14 Q. And did you discuss that several times prior  
15 to that McGuire settlement?

16 A. Like I said, we discussed those issues every  
17 time we'd meet, liability issues, damages issues.

18 Q. Do you recall any particular instances, like  
19 maybe after Paul's deposition, after David's  
20 deposition, did that stick out in your mind at all?

21 A. Discussing what, the issues of liability  
22 against Gagnon?

23 Q. Yes.

24 A. Those are probably something we talked about

1 every visit.

2 Q. Okay. So we discussed this a little bit  
3 before, but I believe the testimony was that the  
4 McGuires testified that they purchased the chain saw  
5 and I believe you said yes, that was your  
6 recollection as well; is that correct?

7 A. That sounds right. I just don't have an  
8 independent recollection at this point.

9 Q. Okay. If the McGuires -- Let's assume  
10 that -- Just for the purposes of this, let's assume  
11 that the McGuires did -- it was their chain saw, they  
12 purchased it and let Gagnon use it on their property.  
13 Would they have any duties to share the manual of  
14 that chain saw with Gagnon or provide any other  
15 education as to the use of the chain saw to Gagnon?

16 A. All right, so you're asking me to make a  
17 judicial decision whether they had a duty or not?

18 Q. No, I'm asking you in your experience with  
19 these types of cases is there any duty there for  
20 them.

21 A. All right, so a legal duty?

22 Q. Right. Right. And -- Go ahead, George.

23 MR. FLYNN: Yeah, I'll just object. I mean,  
24 there isn't any evidence that Gagnon asked for a

1 manual, for one, but as far as him providing legal  
2 opinions not based on the facts of this case, I'm  
3 just going to caution him not to provide what could  
4 be considered an expert opinion.

5 THE WITNESS: You don't want me to answer?

6 MR. FLYNN: It's up to you. I don't know if  
7 you can.

8 THE WITNESS: I don't remember the question.  
9 You're asking me should the McGuires have given  
10 Gagnon the manual to the chain saw?

11 BY MS. WILLIAMS:

12 Q. Yes.

13 A. Sure, if he asked for it or if they wanted  
14 to give it to him.

15 Q. Are there any other warnings that they  
16 should have provided?

17 A. See, I mean, you're asking me to -- I get  
18 the question, but I'm saying you're asking me to  
19 evaluate the conduct of both parties and interpret  
20 something and I don't know that that's my position as  
21 a witness, but should they have warned him? You  
22 know, sure, go ahead and warn him, but obviously when  
23 you take on a piece of equipment that you're skilled  
24 and experienced in operating, you should be able to

1 operate it effectively yourself safely.

2 Q. Sure. Okay. And --

3 A. So I mean --

4 Q. Okay. But today you're not giving an  
5 opinion one way or the other whether they had a duty  
6 to provide warnings, whether they had a duty to  
7 provide the manual, fair enough?

8 A. Yeah, legal wise, no, I'm not giving you a  
9 legal opinion on that.

10 MS. WILLIAMS: Okay. Okay, I don't think I  
11 have anything further.

12 MR. FLYNN: I actually have just a few  
13 follow-ups to that.

14 MS. WILLIAMS: Sure.

15 EXAMINATION

16 BY MR. FLYNN:

17 Q. Hans, is your understanding based on the  
18 evidence that there were only two eyewitnesses to  
19 Mr. Dulberg's accident, correct?

20 A. Correct.

21 Q. That was Mr. Dulberg himself and David  
22 Gagnon?

23 A. Correct.

24 Q. And did you have an understanding as to how

1 the evidence and testimony shook out as to each  
2 gentleman's version of the accident and how it  
3 occurred?

4 A. Well, as I said before, I thought Paul's  
5 case was going to be very difficult to prove based on  
6 the testimony of everybody, credibility issues, and  
7 the lack of evidence to support and prove.

8 Q. David Gagnon's testimony regarding the facts  
9 surrounding the accident differed from Paul Dulberg's  
10 version of the facts, correct?

11 A. Correct.

12 Q. You took that into account in your  
13 evaluation and analysis of the case?

14 A. Definitely.

15 Q. Did you also take into account your  
16 professional analysis of Paul Dulberg's performance  
17 as a witness at his discovery deposition?

18 A. Definitely.

19 Q. You didn't think he made a very good witness  
20 for himself, did he?

21 A. He even admits he didn't and I don't think  
22 he -- I think -- that was one of the worst -- that  
23 was one of my worst fears with this case. I had lots  
24 of cases and on a scale of weak witnesses, he's

1 probably up at the top, and I'm not putting him down,  
2 that's just a reality and I think he even  
3 acknowledged that reality.

4 Q. Okay. Not everyone is a professional  
5 witness?

6 A. Right.

7 Q. Okay. Generally speaking, your evaluation  
8 of the case hinged in part on whether the McGuires  
9 controlled the manner and method of the use of the  
10 chain saw, correct?

11 A. Right.

12 Q. Do you have any recollection as to what the  
13 McGuires were doing while the work was being done?

14 A. They were inside the house, just another day  
15 to them. They weren't even -- I don't think even  
16 paying attention to what was going on outside.

17 Q. Did Mr. McGuire testify that he was watching  
18 television inside the house while David was working  
19 on the tree?

20 A. They were both inside as I recall.

21 Q. Your recommendation or suggestion that  
22 Mr. Dulberg settle the case for \$5,000 was based on  
23 your analysis of the entire case, including the risks  
24 and benefits of going forward and potentially losing

1 the case at trial, correct?

2 A. Yes.

3 Q. Did you have any way to predict whether the  
4 case would result in a verdict on behalf of the  
5 plaintiff in the case against the McGuires?

6 A. I'm sorry?

7 Q. Did you have any -- Did you have any  
8 certainty as to whether Mr. Dulberg could prevail at  
9 trial on liability against the McGuires?

10 A. I would have staked a lot that we would not  
11 have recovered in the case and just something that  
12 didn't come up with the direct is they didn't offer  
13 the arbitrator to me. That was something that was  
14 later decided. I talked to them about that. They  
15 did not offer that to me, so that was not an option  
16 to me.

17 Q. So you were -- Based on your professional  
18 judgment, you suggested that you attempt to settle  
19 the matter as opposed to taking it to trial versus  
20 the McGuires, correct?

21 A. Right.

22 MR. FLYNN: Okay. That's all I have.

23 MS. WILLIAMS: I have no follow-up.

24 THE REPORTER: Signature?

1 THE WITNESS: I'll waive signature.

2 MS. WILLIAMS: We'll order the original,

3 E-tran.

4 MR. FLYNN: I'll take a regular and a mini

5 copy.

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DECLARATION UNDER PENALTY OF PERJURY

I, HANS MAST, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 25, 2020; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_, Illinois.

\_\_\_\_\_  
HANS MAST

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )

4 I, Barbara G. Smith, Certified Shorthand  
5 Reporter and Notary Public in and for the County of  
6 Cook, State of Illinois, do hereby certify that on  
7 the 25th of June, A.D., 2020, the deposition of the  
8 witness, HANS MAST, called by the Defendants, was  
9 taken remotely before me, reported stenographically  
10 and was thereafter reduced to typewriting through  
11 computer-aided transcription.

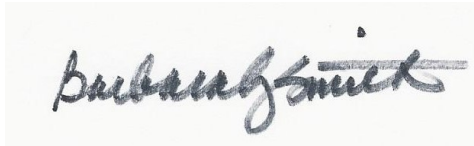
12 The said witness, HANS MAST, was first duly  
13 sworn to tell the truth, the whole truth, and nothing  
14 but the truth, and was then examined upon oral  
15 interrogatories.

16 I further certify that the foregoing is a  
17 true, accurate and complete record of the questions  
18 asked of and answers made by the said witness, at the  
19 time and place hereinabove referred to.

20 The signature of the witness was waived by  
21 agreement.

22 The undersigned is not interested in the  
23 within case, nor of kin or counsel to any of the  
24 parties.

1                   Witness my official signature and seal as  
2   Notary Public, in and for Cook County, Illinois on  
3   this 7th day of July, A.D., 2020.

4  
5  
6                     
7

8                   Barbara G. Smith, CSR, RPR  
9                   Notary Public  
10                  200 West Jackson Boulevard, Suite 600  
                    Chicago, Illinois 60606

11                  License No. 084-002753  
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