STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

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

PAUL DULBERG,)
)
Plaintiff,)
)
-vs-) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS)
POPOVICH and HANS MAST,)
)
Defendants.)
)

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

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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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150 South Wacker Drive, Suite 1700
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(312) 431-3622
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gflynn@karballaw.com

On behalf of the Defendants.

ALSO PRESENT: Mr. Paul Dulberg

I N D E X

E X H I B I T S

(All exhibits provided electronically to the reporter.)

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

MS. WILLIAMS: Julia Williams. I agree.

MR. FLYNN: George Flynn. I agree.

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

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

THE REPORTER: Thank you.

HANS MAST,

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

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

Page 6

named, but I was somebody that appeared on a motion. I think I got out eventually.
Q. Okay, and then -- And then -- Sorry. And then you said you think twice, so do you know approximately what year that medical malpractice case that turned into a legal malpractice case, do you know roughly what year that was?
A. '94 or something.
Q. Okay, and then the second time, what would have that been?
A. It's not coming to me. It was another legal case. I don't remember the details.
Q. Okay --
A. There -- Go ahead.
Q. More than 10 years? I'm sorry, I didn't mean to interrupt you.
A. Yes.
Q. We can go over the -- I'm going to try not to interrupt you, you're going to try not to interrupt me. You've taken depositions before, I'm sure we can get into that and appreciate you answering orally, all of those typical things that apply, and I'll try not to interrupt you too much. Have you ever -- Other than the one time you just

Page 7

identified, have you ever been sued other than this suit for legal malpractice?
A. No.
Q. Do you recall any other details about that medical malpractice lawsuit that turned into a legal malpractice suit? Do you know what the basis of the suit was?
A. It was a medical malpractice case that I think lost on a summary judgment motion and they were -- the client was suing the office and I think I got involved in it because I was on a motion.
Q. Were you the one that drafted the summary judgment motion?
A. I don't think so. I don't really remember clearly back then, but I don't think I did.
Q. Okay.
A. I think I argued -- I might have argued it. I don't remember.
Q. Okay. Have you -- Have you taken depositions before?
A. Yes.
Q. Roughly how many depositions do you think you've taken in your legal career?
A. Lots. Lots.

Page 8

Q. Hundreds?
A. Probably.
Q. Oh, I'm sorry, I forgot to do this, but I think we saw your room. It's just you and George Flynn in the room with you, correct?
A. Yes.
Q. And there's no one else in the room and if there were, you would identify them, correct?
A. Yes.
Q. And you don't have any devices or anything with you? You're not communicating with anyone during this deposition other than the attorney in the room with you, correct?
A. And you and who else is on this meeting.
Q. Okay. I'm sorry, let me rephrase. Is there anyone that I don't know that you are communicating with that I wouldn't know?
A. Not that I'm aware of.
Q. Okay. If you take any notes or otherwise communicate with people during the deposition, we just ask that those notes be produced. Okay. Did you do anything to prepare for the deposition today?
A. Well, I just saw some exhibits you sent George. I didn't really prepare them. I looked them

Page 9

over briefly.
Q. Did you review any of the other files that have been produced in this case?
A. No.
Q. Did you review any notes?
A. No.
Q. Any other documents?
A. No.
Q. Did you meet with anyone --
A. Other than George?
Q. -- to prepare? Other than George.
A. No.
Q. And you did meet with George, I'm assuming. I don't want to know the contents of that meeting, but you met with George to prepare?
A. Not very long.
Q. Okay. Did you talk to anyone else about today's deposition prior to the deposition today?
A. No.
Q. Where did you go to law school?
A. Kent.
Q. And what year did you graduate?
A. '91.
Q. And were you admitted to practice in

Page 10

Illinois that same year?
A. Yes.
Q. And have you -- Are you admitted to practice anywhere else?
A. No.
Q. Have you ever been reprimanded or disciplined by any courts?
A. No.
Q. Have you ever been publicly reprimanded or disciplined by any oversight body, such as the ARDC?
A. No.
Q. When did you start practicing?
A. '91.
Q. And where did you start?
A. In Rockford.
Q. With a firm?
A. Yeah, Cacciatore.
Q. And how long were you there?
A. About a year and a half.
Q. And what kind of work did you do there?
A. Personal injury, plaintiff.
Q. Have you done personal injury your entire career?
A. No, I did some defense work.

Page 11

Q. Okay. So you were at Cacciatore for a year and a half and you were doing plaintiff's personal injury work. What did you do after that?
A. I went to the Loggans firm in Chicago for about 6 months.
Q. And what did you do there?
A. Plaintiff's.
Q. PI again, personal injury?
A. Yeah.
Q. And after that?
A. Judge and James in Park Ridge.
Q. And how long were you there?
A. 7 years, I think.
Q. Did you do plaintiff's personal injury there as well?
A. No, that was defense.
Q. What kind of defense work?
A. Lots -- All kinds, municipal, tort.
Q. Did you defend personal injury cases while you were there as well?
A. Yes.
Q. And then after that, where did you go?
A. Kemper, I think.
Q. And how long were you with Kemper?

Page 12

A. I think a couple years. Maybe a little more than that.
Q. And what kind of work did you do at Kemper?
A. Defense.
Q. Defense of what type of cases?
A. Lots of different kinds, auto accidents, premises.
Q. Mostly torts though, negligence-type cases?
A. Yes.
Q. And then after Kemper?
A. I think Popovich was next.
Q. And how long were you with the Popovich firm?
A. About 18 years, I think.
Q. And do you know what year you -- roughly what year you joined Popovich?
A. 2001 maybe.
Q. And you were there for roughly 18 years you think?
A. Yes.
Q. So you left maybe just last year?
A. In '18.
Q. 2018?
A. Yeah.

Page 13

Q. And why did you leave Popovich?
A. To start on my own.
Q. And where are you now?
A. With Compton Law Group.
Q. I'll give you just a second to come back.
A. Yeah.
Q. And what types of -- I'm sorry, I'm going to go back to the Popovich firm. What kind of cases did you handle at Popovich's firm?
A. Plaintiff's personal injury, all kinds.
Q. And then at Compton, what kind of work do you do?
A. Same thing, same kind of cases, plaintiff's personal injury.
Q. So is it fair to say you've been doing plaintiff's personal injury cases steadily throughout your career?
A. Yeah, except for the time I was with the defense offices.
Q. Okay. But you were still doing personal injury, just on the defense side, not on the plaintiff side?
A. Right.
Q. Okay. Did you answer discovery in this

Page 14

case, in the malpractice case that we're -- the Dulberg versus Thomas Popovich case?
A. I think I did.
Q. Do you remember -- Did you review discovery in this case, do you recall?
A. Like I said, I think I answered some and signed off on some, I just don't remember. I haven't seen them recently.
Q. Okay. Okay. If you recall, do you remember reviewing the documents that were produced in this case?
A. I don't know what was produced.
Q. Okay.
A. I assume the file.
Q. Right. Okay, if I represented that the file was produced, would that make sense to you? Can we kind of agree that the file was produced?
A. Well, if you told me that.
Q. Okay. So when the file was produced, I don't know if you recall, there were black -- some black pages between the file. Do you remember any discussions about that?
A. I didn't produce anything so and I haven't reviewed what was produced, that wasn't my -- I was

Page 15

in a different office when it was produced, I think.
Q. Okay. So Thomas Popovich would have had possession of the file?
A. Right.
Q. You did not have possession of any documents from the underlying case, from the Dulberg versus Gagnon-McGuire case?
A. I didn't.
Q. Okay. So you would not have had access to that file since you were with Thomas Popovich in 2018?
A. Once I left the firm, I have not had the file.
Q. Okay. In this case did you produce emails that you possessed or did you not have access to those either?
A. I would -- I don't know what was produced, again, by the Popovich firm. I don't know if they had my emails, but I have a new email address. I don't think it's the same as it was back then.
Q. Okay.
A. So I didn't produce anything.
Q. So you didn't produce any emails or communications that -- in the -- from the underlying

Page 16

case?
A. Not that I'm aware of. Unless I produced it to Popovich and he produced it. I don't know how that worked.
Q. Okay. When were you retained by Paul Dulberg?
A. I don't recall. I'm assuming there's paperwork that shows that.
Q. Yes. Let me upload a file here. Just give me a second.
A. I don't think he retained me. I think he retained Tom Popovich's office.
Q. Okay. I just uploaded a file that's titled Dulberg Mast Dep Exhibit 1, if you can -- And, George, you should have that as well -- and it should be the retainer contract.
A. Yeah, I see it.
Q. Okay. So it's a contract for legal services and it's marked POP, P O P, 000586 on the bottom, just for reference, so this will be the first exhibit in this deposition. Do you recognize this document?
A. I recognize what it looks like, yeah.
Q. Yeah, and it's the contract for legal services and it's undated, it looks like.

Page 17

A. That's what it looks like.
Q. Okay. I'm going to upload another exhibit. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case of Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document?
A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not -- that's what I'm looking at.
Q. Okay.
A. It's a complaint and it says Exhibit 2.
Q. Right, okay. So our numbers may be a little off, but the description should be correct. In that complaint shows file stamp May 15, 2012?
A. Yeah, that's what it says.
Q. Okay, and so Mr. Dulberg would have hired you sometime -- hired the Popovich firm sometime prior to that, correct?
A. I'm assuming. I --
Q. Okay. Do you have any idea?
A. I'm sorry.
Q. I'm sorry, I didn't mean to interrupt you. Go ahead.

Page 18

A. Go ahead.
Q. Do you have any idea about -- Do you have any idea about what timeframe he would have hired -- retained you?
A. I really, again, I don't have an independent recollection of it. I think there's probably a memo out there of me meeting with him, too.
Q. Okay. Actually, I think there is. Okay, I just uploaded Dulberg Mast Dep Exhibit No. 3 and the top says -- it's titled, "Intake Memo." At the top it says, "Memorandum," it's Popovich, it says POP00961 and 000962. Do you recognize this document?
A. I -- It looks familiar.
Q. And it indicates that it's from you, so you would have drafted this document, correct?
A. I would have dictated it, yeah.
Q. Okay, and it looks like you had a new client meeting with Paul on December 1st of 2011?
A. That's what it says.
Q. Okay. Does that seem like that timeframe would have been roughly correct?
A. I have no reason not to believe that's accurate.
Q. Okay. So Paul retained you probably

Page 19

sometime in December of 2011 and then you filed a complaint around May 15, 2012?
A. That's what it appears.
Q. Okay. So can you just tell me what the case against Mr. -- I'm sorry. Can you describe the case between Paul Dulberg and David Gagnon, Caroline and William McGuire?
A. What do you mean describe it? What it's about?
Q. Yeah, basically what was it about?
A. An injury, a chain saw injury.
Q. Okay. Was there anything about the case that was unique to you?
A. Other than it was a chain saw injury.
Q. Okay. What was your theory of that case? What was your theory of liability in the case?
A. I think the -- Paul had claimed Dave struck him with the chain saw.
Q. So was it just a negligence theory or was it a strict liability or --
A. I believe it was negligence, if I recall correct.
Q. Negligence against Gagnon, David Gagnon?
A. Yeah, and I think the McGuires actually were

Page 20

named as well.
Q. And what was the theory as to the McGuires?
A. I think Paul had said that they were the ones that owned and looked over the work that was being done.
Q. Okay. So if they owned the chain saw and were overseeing the work, what's the legal theory for liability on that? Why would they be liable?
A. Under case law potentially there's liable -- liability for people that oversee and direct the work.
Q. Okay, and is that a strict liability or is it some other form of liability?
A. It would be negligence.
Q. So negligent oversight?
A. Potentially.
Q. Okay. Were there any other theories that you were going to pursue or could be pursued?
A. Not that I recall.
Q. Okay. So a negligence claim against Gagnon for negligently utilizing the chain saw and then a negligence claim against McGuires for not -- for not controlling his use of the chain saw, is that accurate?

Page 21

A. I don't recall the exact allegations, but I think in a general theme that was what we were going to try to prove.
Q. Okay. In the intake memo, do you want to go back to that? There are some notes on this exhibit that state -- it looks to me like it says, "Hans BC the accident occurred on their premises, their HO med pay will cover the bills," and then it's signed. Do you recognize that handwriting?
A. Yeah, that would be Tom.
Q. Okay, and what does that note mean?
A. Medical coverage, medical payments coverage.
Q. So there -- So the McGuires -- When he says their, is he referring to Caroline and Bill McGuire?
A. Well, I don't know what he's referring to. I think what he's -- Well, he circled their names, so that probably indicates what he's referring to.
Q. Okay. Would their -- Would their insurance cover medical bills in an instance like this?
A. Possibly.
Q. Okay. Did you reach out to their insurance company about covering any medical bills?
A. I don't recall if that was applicable or I don't know -- I don't recall that issue.

Page 22

Q. Okay.
A. Oh, uh, I think -- It just kicked me off.
MR. FLYNN: I got disconnected, too. It's the Wi-Fi.
BY MS. WILLIAMS:
Q. Okay, we'll just wait a minute here.
A. I can hear you. I just can't see you.
Q. We'll wait a minute until you can get your video back on.
MR. FLYNN: Julia, we think the Wi-Fi may have dropped here in the office.
MS. WILLIAMS: Okay. Well, let's just give it a minute and see.
MR. FLYNN: Okay.
(Whereupon, a break was taken, after which the following proceedings were had:)
MS. WILLIAMS: Okay. I think we're back on the record. Barb, are you doing all right?
THE REPORTER: Yes.
BY MS. WILLIAMS:
Q. Okay. So we just went through the memo that Tom made a note about insurance and your testimony was that you don't recall whether you made any

Page 23

requests to the McGuires' insurance to pay Paul's medical bills; is that correct?
A. I don't remember, right.
Q. Okay. Back to the actual claims made. Do you remember -- Do you recall what the defense was for first Gagnon and then Bill -- William and Caroline McGuire?
A. What do you mean by defense?
Q. What was their theory of defense in the case, do you recall? As you understood it.
A. I mean, that's a big question. I mean, they, like every case, they were denying what we were alleging.
Q. Were they denying the facts? Did they dispute the facts of the case?
A. Definitely.
Q. Okay. Do you recall what they were alleging as far as the facts that were different from what you were alleging?
A. I mean, I can probably answer that for -- with an hour -- an hour answer. There's a lot that they were denying. There was a lot that, you know, I mean, I'd have to -- I could look at their answer. I could look at their deposition testimony, but, I

Page 24

mean, that brings up a lot of issues.
Q. Okay. Let's -- Let me narrow it down a little bit and try to get more to a point that will be useful for our discussion. At some point, you had recommended that Paul settle the case as to the McGuires; is that correct?
A. Yeah.
Q. And what was the reasoning for settling the case as to William and Bill McGuire?
A. Just risk, like you always discuss with any settlement.
Q. Can you be a little more specific about what type of risk?
A. Again, that's a long question but, I mean, it's like any settlement, you're taking a risk if you don't settle the case when you have issues that could be problematic.
Q. Okay. When you say issues that can be problematic, and I know it could be a very long answer, but as much as you can, can you summarize what you think those risks were?
A. Understanding it's a summary that, I mean, I could probably answer that in a couple hours, but the chance of recovery was in my view very slim if at all

Page 25

because of lots of reasons, one, because of Paul's testimony, Gagnon's testimony, the McGuires' testimony. The evidence didn't seem to be something that was going to allow us to prove the case against the McGuires.
Q. Okay. What -- And, again, I understand this is -- these are very long questions, but just in summary, what were you going to need to prove the case against the McGuires?
A. Now, again, understanding I would have to put myself in my place where I was back at the time that I fully evaluated this with Paul, but if I'm just trying to come up with some thoughts now years later the case law, I think, was against us. The defense was going to file a motion for summary judgment if we didn't work out some sort of settlement that I felt they were going to win and the testimony from all parties was not helpful to us.
Q. Okay. I'm going to move forward and then we may come back to this a little bit. Do you recall when the first time was that you talked to Paul about settling the claims with the McGuires?
A. No, whenever -- You know, the defense attorney would have reached out to me to ask for some

Page 26

sort of demand, I assume.
Q. Did you make a demand at some point?
A. I think -- I think some of your paperwork showed that I did.
Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter -- it's "Letter Re Settlement," and that should be -- still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recognize those documents?
A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try it again? Do you have that, George?
MR. FLYNN: Yeah, here's the hard copy.
THE WITNESS: I'll look at the hard copy, so what are you asking?
BY MS. WILLIAMS:
Q. Great. So it should be the document it has letterhead on the top, Popovich letterhead on the top, and at the bottom it's POP000192 and POP000193.
A. Right.
Q. Do you recognize those documents?

Page 27

A. I mean, they look familiar. Documents from the Popovich firm, if that's what you're asking.
Q. Is that your signature?
A. Yes.
Q. So you would have drafted or caused this letter to be drafted and sent?
A. It appears that way, yeah.
Q. And this is a demand letter where you make a demand of $7,500; is that correct?
A. Yes.
Q. Do you recall making that demand?
A. No.
Q. Do you recall if you talked to Paul prior to making the demand?
A. I'm sure I would have.
Q. Okay. Do you recall -- Do you have any memos or notes regarding that conversation with Paul?
A. I don't personally.
Q. Okay. If there were memos and notes, would they be in Thomas Popovich's file?
A. It should.
Q. Okay. Do you recall any emails about the demand -- the 7,500 demand?
A. I know there were lots of emails. I don't

Page 28

know if this number is identified in those emails, but, again, it would have been something I would have talked to him about before making it.
Q. Okay. But at this time you don't know if there are any memos, notes or emails memorializing any conversation with Paul prior to sending the October 22, 2013 demand?
A. Not that I recall.
Q. Okay, and if they did exist, they would be in the possession of Thomas Popovich, correct?
A. I would think so.
Q. Okay, and if you had those in your possession, you would produce them in discovery, correct?
A. If I had them.
Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom POP000195.
A. Okay.
Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that?
A. It looks like there's a couple emails here. There's several pages. You just mean the first page?

Page 29

Q. I think -- It should only be, I believe it's only one page and it looks like --
A. Oh, these aren't part of it? Just one page?
Q. The document that I have is just one page. Are we looking at the same thing?
A. Okay.
Q. It's POP00195 on the bottom.
A. Yeah, he had a couple other pages on it, but okay.
Q. Okay. I just want to make sure that I didn't -- Okay. And on the bottom there of the first sheet, if you have several, I've only published one sheet for the purposes of this deposition, it states, "Friday, October 25, 2013," do you see that?
A. Where does it say that?
Q. So about halfway down the page it looks like it says, "Original message from Paul"?
A. Yeah.
Q. Okay. So that looks like Paul reached out to you about medical deposition and then on the top it appears to be your reply of October 30, 2013. Does that seem like that's accurate?
A. That's what it shows.
Q. Okay. Okay. And here you first -- Am I

Page 30

correct in summarizing this is an email where you talk to Paul about liability for Mr. Gagnon?
A. Look likes I did cover that issue.
Q. Okay, and do you recall at the time what your purpose was behind this email?
A. I mean, every purpose is just to have open communication. That's all the purpose --
Q. Okay. Would you have been trying to explain to Paul the liability issues in his case that you described earlier?
A. Yeah, I definitely was discussing several issues for him so he knows what's going on.
Q. Okay, and this email response is dated October 30th, so that was after you sent that initial letter. Do you recall whether there would have been anything prior to this?
A. Whether what was prior to this?
Q. Would there have been any communications about liability either to Gagnon or the McGuires prior to the October 30, 2013 email?
A. Every time we talked, there were issues about liability, I mean, for whatever I first -- he first came to the office I recall he was lots of questions and I gave him lots of answers as is

Page 31

reflected in my emails.
Q. Okay. Did you meet with Paul after you sent that October 22nd demand letter?
A. Did I meet with him?
Q. Yes. In person.
A. I'm sure I did.
Q. Okay. Do you recall -- Do you recall meeting -- the dates of those meetings?
A. No, I don't recall the dates.
Q. Okay. So I'm going to upload another file here.
A. Yeah, our Internet is down. That's why I can't bring these up.
Q. Okay.
MR. FLYNN: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.
MS. WILLIAMS: Okay. Okay, great.
MR. FLYNN: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.
MS. WILLIAMS: Okay. I think we'll be -- For the most part, I think we'll be fine and we'll

Page 32

deal with it if and when we get to that point.
Q. Okay. So the document that I'm looking at now is another email on the -- it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date on the email is November 5, 2013 email chain and it's -- at the bottom it's stamped Dulberg001531.
A. What exhibit is it?
Q. I think it might have been 5-A to George. It's now Exhibit 6 for the purposes of this deposition.
A. Yeah, that wasn't part of the download then. Do you have --
MR. FLYNN: Yeah, I don't think that was included.
THE WITNESS: What's the Bates stamp or what's the stamp?
MS. WILLIAMS: The Bates stamp is Dulberg001531.
THE WITNESS: Yeah, I don't recall --
MR. FLYNN: I don't recall seeing a 5-A on the download. I think it just went straight from

Page 33

5 to 6.
MS. WILLIAMS: Okay, let me see if I can do something else. I'm going to try to share my screen. I don't know if I'm going to be able to do it. So bear with me. Okay. I can't -- I can't share the screen. Can I email -- George, can you pull up an email if I email it to you?
MR. FLYNN: I should be able to eventually.
MS. WILLIAMS: Okay, let me see if that will --
THE WITNESS: Let me run to the washroom real quick while you guys do --
MS. WILLIAMS: We'll take a quick break, that's fine, we'll try to work this out. If anybody else needs a break, obviously take a break now.
(Whereupon, a break was taken, after which the following proceedings were had:)
BY MS. WILLIAMS:
Q. Okay, back on the record. This is the Exhibit 6 for the deposition and it's marked at the bottom Dulberg001531 and it's an email chain between Paul Dulberg and Hans Mast dated November 4th through about November 5th, is that accurate, Hans?

Page 34

A. That's what it appears.
Q. Okay, and it appears at the bottom that Paul is asking you if he should bring anything to a meeting.
A. Okay.
Q. And that meeting appears to be at 3:00 p.m. on November 4th of 2013.
A. Okay.
Q. Is that an accurate description? Okay? Do you recall having --
A. Go ahead, I'm sorry.
Q. Do you recall having a meeting on November 4th of 2013 with Paul Dulberg?
A. I don't have an independent recollection.
Q. Okay. Okay.
MR. FLYNN: Julia, now I recall, this is a separate exhibit you sent a little bit later than the original download, so I did have this.
MS. WILLIAMS: Okay. Okay. We got it worked out.
MR. FLYNN: Yeah, okay.
BY MS. WILLIAMS:
Q. Okay. So you don't recall calling a meeting for November 4th?

Page 35

A. We had lots of meetings so --
Q. Okay.
A. -- I don't have an independent recollection of that one particular date.
Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purposes of this deposition right now it's going to be 7 and it's an email chain dated --
A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.
Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182, and it's two pages of an email chain, November 15th, looks like on the second page it starts November 15th and ends November 19th, is that accurate?
A. Yes.
Q. Okay, great. So here it looks like Paul started this email chain, but then on November 18th you note that, "The McGuires' attorney has offered us, you, $5,000 in full settlement of the claim

Page 36

against the McGuires only," do you see that?
A. Yes.
Q. Okay. Do you recall that offer being made?
A. I do have some recollection of having a conversation with them.
Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for -- it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you have that?
A. What's it dated?
Q. I'm sorry, dated November 18, 2013.
A. Yeah, I have that.
Q. Okay. And that's a settlement letter from Barch offering the settlement of $5,000, correct?
A. Right.
Q. Do you recall receiving this letter?
A. I mean, I don't today recall getting the letter, but I'm familiar with the transaction, yes.
Q. Okay. Okay. So you would have received the $5,000 offer from Barch and you communicated it to Paul via the email on November 18th?
A. As well as when we talked, yes.
Q. Okay. Okay. And when did you talk?

Page 37

A. Again, I don't know the dates. I just know generally how this all transpired.
Q. Would you have talked to Paul on the 18th when the letter came in?
A. It's dated the 18th. I doubt I got it on the 18th. Whenever I got it, I would have told Paul.
Q. Okay. And it looks like the email you sent, which is Exhibit 7, communicated that offer?
A. Okay.
Q. Would you have talked to the McGuires' attorney prior to receiving the letter about the offer?
A. I don't recall. It might have -- that might have happened.
Q. Okay. Do you recall whether you met with Paul sometime after -- on or after November 18 to discuss the settlement offer?
A. I'm sure we did. I know we had several conversations and meetings about that.
Q. Okay. In this email chain that's Exhibit 7 about halfway down the page it says on November 18, 2013, at 7:40 p.m., Paul responds to your email. Can you see that?
A. Are we going back to the email now?

Page 38

Q. Yep, it's POP00181.
A. What exhibit?
Q. It's Exhibit 7.
A. 7, that's the letter.
Q. If may be 6 for you. It may be 6 for you.
A. Let's take a look. What page is the email?
Q. The date at the top of the email chain is Tuesday, November 19, 2013.
A. Yeah, I have that.
Q. Okay. And then about maybe halfway down the page it's dated on November 18, 2013, at 7:40 p.m., do you see that?
A. Yep.
Q. And there it says, "Only five? That's not much at all," do you see that?
A. That's his response, yes.
Q. Right. Right. Do you recall talking to Paul about the $5,000 and that not being much?
A. Like I said, yes, we've had plenty of conversations and meetings on that.
Q. Okay. When you originally offered the 7,500, did you talk about what the possible outcomes as far as counteroffers, what they may demand, something like that, did you talk about that prior to

Page 39

making that $7,500 offer?
A. I mean, I think I generally understand what you're asking. Did we just have general conversations of numbers? Yes.
Q. Okay. In this email and this is -- I understand this is speculation, but in this email it appears that Paul is surprised that it's $5,000 was the offer, correct? Would that be fair to characterize it that way?
A. Is he surprised at it or is he surprised at the amount? It looks like he didn't think it was much.
Q. Right. So if you originally offered 7,500 and they came back at 5,000, in your experience, does that seem like much of a difference when it comes to counteroffers?
MR. FLYNN: I'll object to the form.
THE WITNESS: Yeah, I'm not real sure what you mean by that.
BY MS. WILLIAMS:
Q. I guess let me rephrase because I don't think I'm getting to the point. Prior to making the $7,500 offer, did you discuss with Paul that the McGuires may come back with an offer that was lower

Page 40

than the 7,500?
A. Again, I'm -- I understand the question. I'm just not trying to play games, but you're asking me do I recall specific words that are used or topics. All I can tell you about this is we talked about the whole gamut of options, that I didn't feel it was a strong case, that they were reaching out to us for $5,000, and that balancing everything, the risks, costs, even though it wasn't much, it was something that would have been desirable for him if he wants to end up with money versus the McGuires.
Q. I'm going to add another exhibit here. Okay, for the purposes of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, "Memorandum," and the date is November 20, 2013, and at the bottom it's identified as POP and then 3 -- there's 000003, I believe. Do you have that?
A. What exhibit is it?
Q. I think you're probably going to have it as Exhibit 8, but for the purposes of this deposition it's actually going to be Exhibit 9.
A. Okay.
Q. And it's Dulberg Mast Memo,

Page 41

2013 November 20.
A. Okay, yeah.
Q. Okay. It looks from this memo that you had a meeting with Paul and his friend on November 20th, is that accurately reflected what's stated in the memo?
A. Yes.
Q. Do you remember this document? Do you recall this?
A. As I said before, I understand what you're asking, but we've had lots of meetings. Do I remember that particular date, no, but I remember the meetings.
Q. Do you recognize this memorandum?
A. I recognize the discussion that's referenced in the memo. I haven't seen the memo for 7 years.
Q. Okay. Do you recall the advice that you gave in that meeting of November 20th?
A. Yeah, like I said, it's summarized a little bit in there. Yeah.
Q. Okay. And what was the -- Why don't -- What was the advice that you gave?
A. Do you want me to read the memo or you want me to just tell you generally what the topics were or

Page 42

what?
Q. Generally to the best that you can recall.
A. Looks like on that day he brought his friend in because before he wanted to consider the offer, he wanted to have his friend come with him to talk about these issues with me. So we went over --
Q. So --
A. Go ahead.
Q. No, I'll let you finish. Go ahead. I'm sorry.
A. Well, we went over all the issues, all the risks, all the money issues, all of the issues.
Q. Do you recall who the friend was?
A. Not as I sit here today.
Q. From this memo it says, "Paul maintains the McGuires controlled everything that they were doing and you told him that wasn't what the evidence seemed to show." So can you expound on what -- This is really going to be a complicated question, but to the best of your ability, can you explain what the theory of your case was against the McGuires and what the evidence was that was going to -- what evidence was your reason for believing that you couldn't prove your theory?

Page 43

A. We already talked a little bit about that earlier, but every time we met, we talked about this because this was a subject at the time with the McGuires and given the testimony of the McGuires, given Paul's testimony, given the lack of any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk of moving forward on that claim.
Q. So I'm going to try to summarize this. Maybe in parts. So in order for the McGuires to be liable for Gagnon's work, Paul would have to prove in his case that the McGuires controlled Gagnon's work, is that accurate?
A. Are you asking me if that's an accurate statement of the law?
Q. Yes.
A. I think that's partially right. There's a lot more to it. It's different branches and elements that you have to prove, control was a factual matter, and he would have to be able to establish there was some oversight. It goes down into some factual issues that you have to be able to show.
Q. Okay. So can you -- To the best of your ability, can you kind of walk me through for the

Page 44

negligence claim against the McGuires what the legal elements were that you would have to show?
A. I haven't brushed up recently on that area, but I can tell you that under the case law they have to have some oversight and control over what was going on and some involvement in the work and some knowledge higher and above what Paul was doing, and if you look at their testimony, they were not out there, they were not looking at it, they didn't even really know what Paul was doing frankly.
Q. And what about David? Did they have to control what David was doing as well?
A. I meant David, I'm sorry.
Q. Okay. So the McGuires would have to have oversight and control over David Gagnon?
A. Over the work.
Q. Okay. Over the work. Okay. So William and Caroline did buy the chain saw, correct?
A. I believe that is true.
Q. Okay. But then David Gagnon was the one operating the chain saw?
A. Right.
Q. And you would have to show in Paul's case that Bill and Caroline, one or the other, had control

Page 45

over David's operation of the chain saw?
A. Control could mean a lot of things. They would have to be in a position to instruct him, tell him what to do, be aware of the work that was being done and have some control over what he was doing.
Q. Okay. So in your -- Your opinion of the case was that it was insufficient for them to have simply purchased the chain saw and provided it to Gagnon?
A. Yeah.
Q. And what about if they were paying him? Would that make any difference?
A. No.
Q. I'm sorry, I don't know or no?
A. No.
Q. Just bear with me for a second here. And you informed Paul -- I'm sorry, let me back up. In exhibit -- Deposition Exhibit 7, so it's probably 6 for you, the email chain between you and Paul, roughly November 18th through the 19th, Popovich 000181, on the bottom of that first page, November 18, 2013, at 1:28 p.m. there's an email from you. Do you see that?
A. Yes.

Page 46

Q. "In addition, the McGuires' attorney," so it's ATTY, "has offered us, you, 5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners so they likely will get out of the case on a motion." Did I read that correctly?
A. Yes.
Q. So this is where you told Paul that you didn't believe the McGuires had any liabilities for the reasons -- in part for the reasons we just discussed?
A. Right.
Q. Ultimately Paul accepted that $5,000 offer, correct?
A. Yes.
Q. And you communicated that to the other side later in 2013, does that sound correct to you?
A. Yes.
Q. I'm uploading Exhibit 10, and it should be Exhibit 10 for you as well, and it's a memorandum dated December 20, 2013, and at the bottom it's POP000884, do you see that?
A. Yes.

Page 47

Q. And that's a memorandum that you wrote to the legal file; is that correct?
A. It looks like that.
Q. I think I already said this, it's dated December 20, 2013?
A. Yes.
Q. Okay. And the substance of it, it appears that you had a conversation on December 18th with Paul and that he was authorizing you to accept the $5,000 settlement?
A. Yes.
Q. Okay. Do you recall that conversation of December 18?
A. I recall having lots of conversations, this is one of them, and generally I do recall the conversations in a general sense, not the exact dates.
Q. Okay. So you don't remember anything specific to this December 18th call what you would have discussed?
A. Not other than what I've already said we discussed over the time.
Q. Okay.
A. Paul was weighing his options. He knew the

Page 48

risk and he had -- he wanted some time to think about it and consider it.
Q. Okay. All right, just bear with me here. Okay, I just uploaded Deposition Exhibit 11, it's a settlement acceptance letter, letterhead from Thomas Popovich's office dated December 26, 2013. Hans, your signature appears on there and it's POP00670. Do you recognize this document?
A. That appears to be a letter from Popovich's office to defense counsel.
Q. Do you recognize your signature on here?
A. Yes.
Q. And this is the letter where you accepted the offer on behalf of Paul, is that accurate?
A. It appears, yeah.
Q. Okay. So the Defendants made the original offer around November 18 and Paul -- November 18, 2013, and Paul accepted it around December 20, 2013. Is that statement accurate?
A. I don't have, like I said, independent recollection of the dates. I would just have to go off the documents.
Q. Okay. Was there -- If that timeframe is roughly correct, was there anything that occurred

Page 49

during that timeframe that indicated to you, you know, why Paul changed his mind from originally thinking it was too little to now accepting it. Was there anything that stuck out in your mind about that?
A. Yeah.
Q. Can you expound on that?
A. Well, he had his friend with him during our meeting and he reviewed the depositions.
Q. Okay. Did he not have the depositions prior to that?
A. I remember he asked for copies of them, so I provided them to him.
Q. Okay, and when you say the depositions, do you mean just the party depositions, the McGuires and the Gagnon?
A. I don't remember if I gave him the doctors. I don't remember which ones I gave him, but I know specifically it was Gagnon and the McGuires.
Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. This is titled, "Legal Research." And this is hard because there's -- it's 27 pages. Some of them have Bates numbers, but some of them are black on the bottom, so I think the Bates numbers

Page 50

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

A. I just have the one case here.

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

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

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

A. I don't know.

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

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

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

A. I'm sure I did, yeah.

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

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

Page 51

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

MR. FLYNN: Object to the form.

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

BY MS. WILLIAMS:

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

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

Q. So particularly the issue of control of Gagnon.

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

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

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

Page 52

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

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

A. Okay.

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

A. Someone that works on their own.

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

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

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

A. Yes.

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

Page 53

their job?

A. Right.

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

A. I don't have an independent recollection.

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

A. I'm sure we talked about it.

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

A. Yes.

MR. FLYNN: This is 14?

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

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

A. Yes.

Page 54

Q. Okay. Now that you see that, do you recall whether you ever got a copy of that policy?
A. I don't -- You mean the dec pages or the whole policy?
Q. Either. Did you get a copy of the dec pages?
A. I have no idea.
Q. And you have no idea whether you got a copy of the whole policy?
A. Yeah, don't know.
Q. But they are representing what their insurance was and the liability there, correct, or their liability coverage there?
A. That's what it appears.
Q. Okay. And these -- This was -- looks like this was responded to based on the McGuires' signature on roughly the 12th page of the document. It looks like it was August 6th of 2012.
A. That's what it appears.
Q. Yeah. So prior to when they would have made the settlement offers, correct?
A. That's what it appears.
Q. Okay. Did you ever talk to Paul about those -- the limits of the insurance policy and how

Page 55

that may be important in his case?
A. I suspect we talked about the policy, yeah.
Q. Okay. Prior to any settlement discussions?
A. Yeah.
Q. Okay. But you've already testified you didn't -- You don't know if you -- You don't know if you obtained a copy. What about Gagnon's insurance policy, did you ever obtain a copy of that?
A. I don't know. I don't know.
Q. Okay. Did you issue interrogatories to Mr. Gagnon?
A. I'm sure I did.
Q. Let me upload this. Would they have been in Popovich's file if you --
A. Yes.
Q. Okay. So I can tell you, I don't recall seeing any documents issued by you. I'm going to upload a document that appears to be interrogatories issued by McGuires' counsel in the case. I'm going to upload it right now. It's Exhibit 14 and Answers to Co-Defendant Interrogatories and it is stamped Dulberg00178. Do you see that document?
A. Yes.
Q. It appears that these were issued by

Page 56

Co-Defendants, in other words, the McGuires, does that seem accurate to you?
A. Yes.
Q. So would you have issued interrogatories in addition to what the McGuires' counsel issued?
A. It's probable.
Q. Okay. Do you recall one way or the other today as we sit here?
A. Not other than it's probable I did.
Q. I have not seen those in discovery, so if they exist, we'd ask that they be produced. Do you ever recall talking to Paul about the policy limits of the Gagnon insurance policy?
A. It's a topic that frequently comes up. I don't have an independent recollection.
Q. Would you have any memos or notes on that?
A. I could. I may. I don't have an independent recollection of that.
Q. Okay. And, again, that would have been in the file that -- in Thomas Popovich's file?
A. Correct.
Q. In your knowledge and experience not related to the Dulberg case but just in your general knowledge and experience, are there any situations

Page 57

where a homeowner may be strictly liable for someone doing work on their property?
MR. FLYNN: I'm just going to object to the hypothetical being inaccurate and incomplete, also calls for an expert opinion. While this witness is a lawyer, I won't necessarily -- I don't expect to call him as an F-2 or F-3 witness in the case.
THE WITNESS: So you're asking if a homeowner can be strictly liable for an injury?
BY MS. WILLIAMS:
Q. Right.
A. In general terms, not with regard to this case?
Q. No, in general terms. I'm just asking in general terms in your -- based on your experience and knowledge of injury cases.
A. I mean, I think -- Not in Paul's case, but I think I could probably think of something that maybe could be -- as products strict liability, there's hazardous materials strict liability, there's different issues that potentially factually if they're applicable could apply, but not in Paul's case.
Q. Okay. Just in general, what kind of

Page 58

hazardous -- When you say hazardous, are you talking about hazardous chemical-type cases?
A. There's a string of cases when you're dealing with hazardous chemicals and hazardous materials, like a bomb or something like that, things like that.
Q. Okay. Okay. Are there any, like, hazardous actions? Could something be considered, like, some type of action be considered hazardous?
A. What do you mean by action? Activity?
Q. Yeah, like, I'm trying to give you an example because I'm just trying to understand it more than anything else. Yeah, is there an activity that you could be doing on your property, I don't know, like, what about tearing down your home, would that be considered -- would that be something that could be hazardous?
A. There would have to be statutory authority for that and there isn't.
Q. Okay. Okay. Okay. So generally for strict liability there has to be some type of statutory authority for that?
A. Or common law. Yeah. They have a particular fact pattern.

Page 59

Q. Okay. But this case particularly is simply a negligence case. Paul's case against the McGuires was a simple negligent failure to control case in your opinion?
A. That's what was pled.
Q. Okay. Did you ever make any -- ever consider pleading any other allegations?
MR. FLYNN: Object to the form.
THE WITNESS: I don't -- No. Not that I recall.
MS. WILLIAMS: Okay. Can we take about a 4-minute break?
MR. FLYNN: Sure.
MS. WILLIAMS: Let's just take -- I just want to take a quick break and review my notes and I want to give everybody an opportunity to kind of stretch for a second. I'm going to go on mute.
MR. FLYNN: Okay.
(Whereupon, a break was taken, after which the following proceedings were had:)
MS. WILLIAMS: Let's go back on the record. Okay, thank you everyone. Okay, just a little bit more here.

Page 60

Q. On -- When you were talking to Paul about settlement in the general timeframe of November-December 2013, did you ever suggest at that time that he seek alternative counsel or any recommendation related to that?
A. I think that did come up.
Q. Do you recall what your advice to him was or what the discussion was?
A. I think, you know, we always talk about the risks of not settling and further down the road what, you know, having to try the case and having to try prove the case or getting a motion for summary judgment, having the costs exceed the benefits and all that, and I think my position with Paul, since he didn't give a relatively very good deposition, my thought was we were going to have a tough time, an uphill battle, and he can always seek other counsel if he doesn't agree with me.
Q. And you just stated that you thought Paul didn't give a very good deposition, that may not have been your exact language, but roughly that the deposition wasn't great. Can you explain what -- as you recall it, what about the deposition was problematic?

Page 61

A. I mean, he even agreed with me, but he just doesn't do a very good job.
Q. You mean -- Can you expand on that a little bit?
A. As a witness, as I recall, again, it's been quite some time, as I recall he was -- his testimony wasn't given -- wasn't strong, it wasn't definite, it didn't have credible points and some points were incredible when compared to other -- other testimony. I mean, there's just a lot -- there was a lot of problems with his testimony.
Q. Okay. Do you recall the circumstances that Paul described as to why he came to the McGuires'?
A. I think he was either going to pick up something or drop something off.
Q. Okay.
A. I don't really recall. I'm just thinking back now.
Q. Okay. Do you recall whether he was asked to come over to help with the tree, to help take down the tree? Was that the purpose of his visit?
A. I don't recall that.
Q. Would it matter as for liability whether it was or wasn't?

Page 62

A. As by who? As to whose liability?
Q. I'm sorry, his and McGuires' liability.
A. As to how he got there?
Q. Whether he was -- Whether he was invited for the purpose of assisting with the removal of the tree.
MR. FLYNN: Object to the form. Just invited by whom?
THE WITNESS: Yeah, that's a complicated question, but I don't think --
BY MS. WILLIAMS:
Q. Let me clarify if I can. Okay. So my question was does it matter if the McGuires invited Paul to their residence to remove the tree on that -- on the June -- roughly June, I believe, 2011 date?
MR. FLYNN: Object to the hypothetical.
THE WITNESS: I don't think it matters.
BY MS. WILLIAMS:
Q. Okay. Would it matter if they were paying Paul?
A. That's not the issue. The issue is Dave.
Q. Okay. So the relationship between the McGuires and Paul is somewhat irrelevant?
A. I'm just saying the issue really that --

Page 63

about liability is Dave's relationship with them.
Q. Because Dave is the one that controlled the chain saw that injured Paul, is that accurate?
A. He was the one hired to do the work or asked to do the work, however, whatever that background was.
Q. And Caroline and William McGuire both testified that they had never used a chain saw; is that correct?
A. I think that's accurate. I'd have to refresh my memory, but that sounds right.
Q. Okay. Do you remember discussing bankruptcy with Paul?
A. I don't remember that.
Q. Do you remember that Paul filed for bankruptcy? Do you recall that?
A. I saw a -- Maybe I didn't see one. I remember there was some sort of bankruptcy matter. I don't know the dates or when it came up.
Q. Okay. Do you recall if you advised Paul to file for bankruptcy?
A. I don't advise people to file for bankruptcy.
Q. All right. So you would not have advised

Page 64

Paul to file for bankruptcy?
A. Would not.
Q. Okay. And then sometime after the McGuire settlement but before the -- but while the Gagnon -- the claims against David Gagnon were still pending you withdrew from the case; is that correct?
A. The law firm did. I -- Again, he hired the law firm.
Q. Sure. Sure. I'm sorry. The Popovich firm withdrew?
A. Right.
Q. And I -- Let's see -- I think we're on Exhibit 14.
THE REPORTER: 15.
MS. WILLIAMS: 15, okay.
Q. I have, I think, one more and then -- Okay, I am uploading Exhibit 15, Dulberg Mast Dep Exhibit 15. It's a motion to withdraw and it's four pages and on the first page it has a Dulberg versus Gagnon case caption and file stamped March 13, 2015. Do you have that document?
A. Yeah.
Q. And this is the Popovich's firm motion to withdraw as counsel for Paul Dulberg in the Dulberg

Page 65

versus Gagnon-McGuire case, correct?
A. Yes.
Q. And you drafted or caused this motion to be drafted and filed?
A. Yes.
Q. And was it granted that same day it was filed?
A. I'm sure it had to be noticed up.
Q. Okay. On the notice of motion it looks like it was noticed for March 13, filed on March 13, but sent to the service list on March 5th, does that seem accurate?
A. That's what it says.
Q. But at any rate, you withdrew sometime in roughly March of 2015?
A. It appears that way. Again, I don't have an independent recollection of the date.
Q. Okay. Okay. That's fine. And I didn't see it -- an order actually showing the exact date of when you withdrew. Can you explain why you withdrew from the case?
A. The short version is just we had a difference of opinion.
Q. Can you give me the long version or slightly

Page 66

longer?
A. Well, we have difference of opinion but Paul was a bit difficult, so I just had to -- there were a couple times that I told him I was going to withdraw and then he begged me not to and so I didn't, but then ultimately he -- it got pretty -- it got pretty tough. He was saying some unfavorable, unflattering things and I just decided we're not going to get anywhere, I'm going to move on.
Q. Okay, so you -- the client relationship broke down and you withdrew?
A. Yes.
Q. Okay. Was there anything about Gagnon's liability or your thoughts on his liability that would have caused you to withdraw?
A. That was another aspect of it. Paul was looking for the stars and the moon and I didn't see it.
Q. And when you say Paul was looking for the stars and the moon, you mean -- Well, what do you mean by that?
A. He was looking for a lot of money.
Q. Okay, and what was your opinion as to David Gagnon's liability in the case?

Page 67

A. I didn't think much of the liability issue. I thought it was going to be a long, tough haul given that --
Q. And --
A. -- Paul was going to be our only witness on our side pretty much.
Q. Okay, and there were no other witnesses other than Paul and David; is that correct?
A. Correct.
Q. And what about -- Anything related to, like, the actual injury, the doctors' depositions or anything like that?
A. That all -- It was the whole ball of wax. The doctors weren't supporting his claim. Dave was saying he's a liar, he tried to bribe him. There was just a lot of -- a lot of bad stuff, not enough good stuff.
Q. Okay, and then at that point you and Paul disagreed and Paul retained alternative counsel?
A. Right.
Q. Okay. Was there anything else about the case that you can recall right now that gave you pause as to the liability either to the McGuires or David Gagnon?

Page 68

A. Anything other than what? Pretty much everything was not good.
Q. Okay. I mean, anything that we haven't really discussed here today. We've talked about Paul's testimony, Gagnon's testimony a little bit, the McGuires, the premises liability. We talked -- You mentioned the doctors' depositions. Is that sort of the general gamut of it?
A. That's the whole case.
Q. Okay. Have you ever had any other chain saw liability cases other than this particular case?
A. I'm sure I have. I don't -- If you're going to ask me to name a date, I don't know. I mean, it's not a common issue, but it comes up from time to time.
Q. Okay. Did you state -- Did you seek out a liability expert, a chain saw liability expert, during the time you were representing Paul?
A. No.
Q. Is there a reason for that?
A. That's always a possibility. It's always a consideration, but I had to consider even more whether we could even get to prove a credible case and that was my first object, my first -- my first

Page 69

tier. It doesn't do any good to hire an expert if you don't have a good case.
Q. Okay. Okay. If you were going to take the case to trial, at that point would you have hired an expert, chain saw expert?
A. For this case, I don't know. I'd have to look at it again and see what we need to prove, what they're arguing. There's -- As I recall, they weren't arguing the chain saw -- They weren't arguing. He didn't get hit with the chain saw. So I'm not real sure. I'd have to think whether we need to prove -- what we need to prove, anything more than that.
Q. Okay.
A. It was more what happened, who caused it to happen, not that it happened.
Q. Okay. Is there a difference between an independent contractor and an employee?
A. In terms of what? In terms of duty or what?
Q. Right. In terms of the supervisor's duty. So if the Gagnons -- If Gagnon was, and this is a hypothetical, if Gagnon was an employee of his parents as opposed to an independent contractor, would there be a liability difference?

Page 70

MR. FLYNN: Object to the hypothetical. It's inaccurate and incomplete.
THE WITNESS: That's a very complicated question, even though it doesn't sound like one. It depends on lots of things.
BY MS. WILLIAMS:
Q. Okay. We've already talked about an independent contractor. So just in your experience and knowledge, what is a supervisor's duty as to an employee? That's actually a really terrible question. Let's strike that question.
Is there a difference -- Is there a difference between the control aspect of -- Would an -- Let me start again. This is a complicated question, more complicated than I'm anticipating right now. Okay.
We've generally established that in order for an -- someone who hires an independent contractor to be liable for the actions of that independent contractor, they would have to control the work. In a situation, an employer-employee situation, is that control element also present when considering liability? Does the employer have to control the work of the employee in the same way?

Page 71

A. I think there are --
MR. FLYNN: I just want to raise an objection for the record. I object to the form. I think that the premise of the question indicated that we already established some legal precedent. I don't think that's the case. I don't think that he's testified to that, so, again, I'll just object to the form. But if you can --
THE WITNESS: You're asking me to compare two different theories without a fact pattern, but there's a lot to each issue and it's hard to just say, well, if you have this, then you have that. There's a lot of different facts that apply, but now I'm forgetting what you asked initially about the employer-employee question.
BY MS. WILLIAMS:
Q. So I guess my question to the point of is an employer liable for their employees in a different way than a homeowner would be liable for an independent contractor?
A. I think --
Q. Based on -- You go ahead.
A. I think under the law there are different elements to those actions.

Page 72

Q. And there are --
A. Go ahead.
Q. So there would be different elements if something was an employer-employee situation, that would be different law, different case law?
A. Yeah, there's a different cause of action.
Q. Okay.
A. Different elements potentially have to be pled and proved.
Q. Okay. But in this case you were trying to prove -- In Dulberg's case against the McGuires and Gagnon you were trying to show that -- The theory of the case was that Gagnon was not an employee, but an independent contractor, and the McGuires had to control him in order to be liable?
A. Well, that's ultimately what it appeared. You followed the evidence, you follow the facts, so if it turned out it was employee-employer-employee relationship, that's a different evaluation.
Q. Okay. So but, for the most part, you were -- your evaluations of the liability were based on an independent contractor analysis?
A. Well, that's where it went because of the evidence.

Page 73

MS. WILLIAMS: Okay. I'm going to go on mute for just a second so you guys don't hear me shuffling papers, but I think I'm almost finished here or may be finished.
MR. FLYNN: Okay.
BY MS. WILLIAMS:
Q. Okay. Just a couple more questions and then we'll wrap things up here. When did you first advise Paul that you didn't think the claims against Gagnon were going to be very strong?
A. Probably day one.
Q. Before the settlement with the McGuires?
A. Yeah.
Q. And did you discuss that several times prior to that McGuire settlement?
A. Like I said, we discussed those issues every time we'd meet, liability issues, damages issues.
Q. Do you recall any particular instances, like maybe after Paul's deposition, after David's deposition, did that stick out in your mind at all?
A. Discussing what, the issues of liability against Gagnon?
Q. Yes.
A. Those are probably something we talked about

Page 74

every visit.
Q. Okay. So we discussed this a little bit before, but I believe the testimony was that the McGuires testified that they purchased the chain saw and I believe you said yes, that was your recollection as well; is that correct?
A. That sounds right. I just don't have an independent recollection at this point.
Q. Okay. If the McGuires -- Let's assume that -- Just for the purposes of this, let's assume that the McGuires did -- it was their chain saw, they purchased it and let Gagnon use it on their property. Would they have any duties to share the manual of that chain saw with Gagnon or provide any other education as to the use of the chain saw to Gagnon?
A. All right, so you're asking me to make a judicial decision whether they had a duty or not?
Q. No, I'm asking you in your experience with these types of cases is there any duty there for them.
A. All right, so a legal duty?
Q. Right. Right. And -- Go ahead, George.
MR. FLYNN: Yeah, I'll just object. I mean, there isn't any evidence that Gagnon asked for a

Page 75

manual, for one, but as far as him providing legal opinions not based on the facts of this case, I'm just going to caution him not to provide what could be considered an expert opinion.
THE WITNESS: You don't want me to answer?
MR. FLYNN: It's up to you. I don't know if you can.
THE WITNESS: I don't remember the question. You're asking me should the McGuires have given Gagnon the manual to the chain saw?
BY MS. WILLIAMS:
Q. Yes.
A. Sure, if he asked for it or if they wanted to give it to him.
Q. Are there any other warnings that they should have provided?
A. See, I mean, you're asking me to -- I get the question, but I'm saying you're asking me to evaluate the conduct of both parties and interpret something and I don't know that that's my position as a witness, but should they have warned him? You know, sure, go ahead and warn him, but obviously when you take on a piece of equipment that you're skilled and experienced in operating, you should be able to

Page 76

operate it effectively yourself safely.
Q. Sure. Okay. And --
A. So I mean --
Q. Okay. But today you're not giving an opinion one way or the other whether they had a duty to provide warnings, whether they had a duty to provide the manual, fair enough?
A. Yeah, legal wise, no, I'm not giving you a legal opinion on that.
MS. WILLIAMS: Okay. Okay, I don't think I have anything further.
MR. FLYNN: I actually have just a few follow-ups to that.
MS. WILLIAMS: Sure.
EXAMINATION
BY MR. FLYNN:
Q. Hans, is your understanding based on the evidence that there were only two eyewitnesses to Mr. Dulberg's accident, correct?
A. Correct.
Q. That was Mr. Dulberg himself and David Gagnon?
A. Correct.
Q. And did you have an understanding as to how

Page 77

the evidence and testimony shook out as to each gentleman's version of the accident and how it occurred?
A. Well, as I said before, I thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove.
Q. David Gagnon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts, correct?
A. Correct.
Q. You took that into account in your evaluation and analysis of the case?
A. Definitely.
Q. Did you also take into account your professional analysis of Paul Dulberg's performance as a witness at his discovery deposition?
A. Definitely.
Q. You didn't think he made a very good witness for himself, did he?
A. He even admits he didn't and I don't think he -- I think -- that was one of the worst -- that was one of my worst fears with this case. I had lots of cases and on a scale of weak witnesses, he's

Page 78

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

Q. Okay. Not everyone is a professional witness?

A. Right.

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

A. Right.

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

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

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

A. They were both inside as I recall.

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

Page 79

the case at trial, correct?

A. Yes.

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

A. I'm sorry?

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

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

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

A. Right.

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

MS. WILLIAMS: I have no follow-up.

THE REPORTER: Signature?

Page 80

THE WITNESS: I'll waive signature.

MS. WILLIAMS: We'll order the original, E-tran.

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

Page 81

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

Page 82

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

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

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

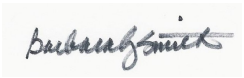
I further certify that the foregoing is a true, accurate and complete record of the questions asked of and answers made by the said witness, at the time and place hereinabove referred to.

The signature of the witness was waived by agreement.

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

Page 83

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



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