Questions for Mast:

Swearing in of witness

Court Reporter will read a statement into the record regarding the remote nature of the proceeding. The court reporter will also request that the witness produce a government issued ID to verify his/her identify by holding it up to the camera before the commencement of proceedings.

This is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of *Dulberg v the Law Offices of Thomas Popovich et al*. This deposition is being taken for the purposes of discovery.

Opening Questions:

1. Please state your name for the record.
2. Have you had your deposition before? How many times?
3. Have you taken depositions before? How many?
4. You agree that if I ask you a question that you do not understand, you will tell me and I’ll rephrase it or clarify the question.
5. If you answer a question, I will assume that you understood the question.
6. If you need to take a break, please let us know and we will break; I just ask that you do not take a break while a question is pending.
7. Please answer questions orally, not with gestures or head nods as non-verbal communication cannot be recorded by the Court Reporter.
8. We’ll both do our best not to talk over each other.
9. Can you please confirm that you are the only person in the room with you?
10. Can you identify any other person in the room?
11. What electronic devises do you have with you? Can you please silence or turn off those devises and place them in a location that cannot be accessed during the deposition.
12. If at any time during the deposition you take notes or otherwise communicate with someone during the deposition (other than on agreed upon breaks), we ask those notes and communications be produced. If need be, we will issue further discovery for those notes and communications.

Professional History/preparation:

1. Did you do anything to prepare for this deposition today?
2. Review notes?
3. Review documents?
4. Met with counsel? (I don’t want to know the content of that meeting—just what you did to prepare)
5. Met with anyone else?
6. Talk with anyone else about the case prior to today’s deposition?
7. Where did you go to law school?
8. When did you graduate?
9. Where are you admitted to practice?
10. Have you ever been reprimanded or disciplined by any court?
11. Have you ever been publically reprimanded or disciplined by any oversight body?
12. When did you start practicing?
13. Where did you practice?
14. Job History?
15. When did you join the Law Offices of Thomas Popovich?
16. When did you leave the Law Offices of Thomas Popovich?
17. What was the reason for leaving?
18. What type of cases do you handle?
19. Is that reflective of your practice throughout the years?

Discovery in Malpractice Case:

1. You responded to discovery in this case correct?
2. You reviewed the responses and documents?
3. In the document response electronic files there were black pages, do you recall seeing that?
4. Can you explain why there were black pages between?
5. They were not redactions correct?
6. You produced all the document in your possession and control correct?
7. All the emails and electronic communications correct?

Personal Injury Case:

1. When were you retained by Dulberg?
2. What you retained to do?
   1. Retainer Agreement Pop 586 Exh 1
3. Did you file the initial complaint against David Gagnon, Caroline McGuire and William (Bill) McGuire on May 12, 2012?

Doc Pop 1163 Exh 2

1. What was the case about?
2. Dulberg was injured on June 28, 2011 according to the complaint correct?
3. What was your theory of the case against each defendant?
4. You completed an intake memo correct?
5. Here is a copy of the memo
   1. Doc Pop 961. Exh 3
6. There is a note on this memo, do you recognize it?
7. Can you tell me what it says?
8. Who wrote it?
9. To whom was it written?
10. What is the context of it?
11. What does it mean?
12. Did the homeowner’s policy pay for the medical treatment of Dulberg during the case?
13. Did you request it?
14. Do you have any documents showing that request?
15. What was the defense of each defendant as you understood it?
16. What was your opinion of the defense?
17. What was that based upon?
18. Was there anything in particular about the depositions that stood out to you?

Settlement Questions:

1. When was the first time you talked to Paul about settling the claims against the McGuire’s?
2. Do you have a memo, notes, or an email about that conversation?
3. October 22, 2013, Settlement offer of $7500?
   1. Pop Doc. 192 Exh 4
4. Do you have any memo, notes, email, or other information about the conversation you had with Dulberg prior to the Oct 22, 2013 settlement offer that show he consented to that settlement offer?
5. October 30, 2013, Mast informed Paul of issues with case--
   1. Pop Doc 195 Exh 5
6. Did you meet with Paul Dulberg in your office on or around November 4, 2013?
7. What was that meeting about? Who called the meeting? Why did you call meeting?
8. It was your opinion that William and Carolyn McGuire did not have any legal liablity in the case, correct?
   1. Pop 181-182 (email to Paul) Nov 18, 2013 Exh 6
9. You told Paul you didn’t think they had any liability correct?
   1. Pop Pop 181-182 (email to Paul) Nov 18, 2013 Exh 6
10. McGuire offer Paul $5K? November 18, 2013
    1. Pop 667. Letter from McGuire to Paul re $5K Exh 7
11. Did you ask for the Nov. 20, 2013 meeting? Paul and Mast meeting in office Nov. 20, 2013?
    1. Memo re meeting Pop 000003 Exh 8
    2. Emails re meeting Exh. 9
12. Memo to File re acceptance—
    1. Pop 884 Dec. 20, 2013—Paul and Hans spoke over phone and accepted. Exh 10
13. Paul accepted that offer? December 26, 2013
    1. Pop 670 Accpetance Letter Exh 11
14. What was that advice based upon?
15. Did you do any legal research re that opinion?
16. Did you draft a memo to the file?
17. Did you provide this legal research to Dulberg?
    1. Dulberg 301-305; 204-225. Exh 12
18. Did you talk to Paul about Gagnon claims?
19. When was the first time you advised about the Gagnon claims?
20. What did you advise?
21. Where there any memos about settling with Gagnon?
22. What about the liability of Gagnon prior to accepting the McGuire settlement?
23. McGuire Policy?
24. Did you ever advise Paul as to the limits of the McGuire policy?
    1. Dulberg 162-175 McGuire Answers to 213 Interrogs dated 8/6/2012 Ehx 13
    2. Paragraph 15 answers the insurance questions (but doesn’t provide the policy)
    3. $300K limit
25. Did you ever obtain a copy of the McGuire policy?
26. Did you request a copy of the Gagnon Insurance Policy?
27. Did you obtain a copy of the Gagnon policy?
28. Did you issue interrogatories to Gagnon?
29. Did he respond?
    1. Doc. Dulberg 176-177 Gagnon interrogatory answers from McGuire’s Exh 14
30. Did you provide Paul with a copy of the Gagnon policy?
    1. Dulberg 11-123 Exh 15
31. Did you provide him with the policy limits?

Bankruptcy

1. Did you advise Dulberg to file for bankruptcy?
2. What discussion did you have with Dulberg re bankruptcy?
3. You filed a Motion to Withdraw on March 13, 2015?

(Doc Pop 970) Exh 16

1. Was it granted that day?

William McGuire Deposition Exh 17/Memo re dep Exh 18

1. You took the deposition of William McGuire correct?
2. What was your impression of William McGuire at the time of the deposition?

(Doc Pop 933-934 Mast Memo to File re William McGuire Deposition)

Impression that William was pleasant and credible witness

1. Williams purchased the chainsaw at issue in the case between Paul Dulberg, David Gagnon, William McGuire and Caroline McGuire, correct?

Doc Pop 1437-1455 William McGuire Deposition

Doc. 1438 P.7-8 of the deposition. William testifies that he bought the chainsaw, but never used it himself. He did purchase it for his personal use.

Doc 1439 p 9. William bought it and would have allowed the kids to use it.

1. William testified that the chain saw was used by David Gagnon some time in 2011 prior to the accident that was the subject of the case between Dulberg, Gagnon, Mcguires?

Doc 1439 P. 11. William deposition

1. Williams testified that Paul helped Gagnon that earlier time too?

Doc 1439 P. 11-12 William’s Deposition

1. The day of the accident William testified that he was in the house correct?

Doc. 1443, p. 26-27

1. William testified that he did not see the accident correct?

Doc. 1445 P. 34-35

1. Was there anything in particular about William’s deposition that indicated to you that he may not be held responsible for Dulberg’s injury?

Caroline’s Deposition. Exh 19/Memo Exh 20

1. You took the deposition of Caroline McGuire on March 20, 2013 correct?
   1. Memo re Caroline Deposition
   2. Pop 936
2. What was your impression of Caroline McGuire at the time?
   1. Memo re Caroline Deposition
   2. Pop 936
   3. Credible
3. Carolyn asked Dave to cut down the branches correct?
   1. Dulberg 466. P. 26; Dulberg p. 463 p. 28 hire someone to cut down the tree

Gagnon Deposition Exh 22/ memo Exh 23

Paul’s Questions:

1) When did you first express doubts to Dulberg about whether McGuires were liable for Dulberg's injuries? What were those doubts?

2) When did you first inform Dulberg that you were unwilling to take the McGuire case to trial and that he should seek a settlement?

3) When did you first express doubts about whether Gagnon could be proven to be liable for Dulberg's injuries? What were those doubts?

4) When did you first inform Dulberg that you were unwilling to take the Gagnon case to trial?

5) If you felt that McGuires were not liable for Dulberg's injuries and you felt it would be difficult to prove Gagnon liable, why didn't you suggest Dulberg seek alternative counsel before accepting the $5,000 settlement (which wouldn't pay for 10% of Dulberg's medical bills) with the McGuires?

6) What new information did you receive between November of 2013 and April 14, 2014 that convinced you that you would be unwilling to take the Gagnon case to trial. If none, than why didn't you inform Dulberg you were unwilling to take the Gagnon case to trial before or while urging him to settle for $5,000 with the McGuires?

7) Did you send interrogatory questions to Gagnon?

8) Did you send a request to produce to Gagnon?

8) Did you ever receive Gagnon's answers to interrogatory questions submitted by you? If yes, why were they not included in Dulberg's case file that you gave to him when you withdrew from counsel? If yes, why were they not included in the documents produced in this lawsuit? If yes, then why do this date does nobody seem to have a copy of them?

9) In the documents turned over to Dulberg when you withdrew from counsel, there is a request to produce for Gagnon prepared by you but there is no evidence that Gagnon ever turned over any of the documents requested. One of the documents you requested of Gagnon was a certified copy of his insurance policy. Did you ever receive any of the documents which you requested Gagnon to produce? Did you ever receive a certified copy of Gagnon's insurance policy? If yes, why were they not included in the documents you gave to Dulberg when you withdrew from counsel?

10) In an email from you to Dulberg dated Febuary 26, 2015 about the case file you handed over to Dulberg you wrote, "I don't think I have any insurance policies in the file." Since you requested both the McGuires and Gagnon to produce certified copies of their insurance policies, why didn't you have a certified copy of either insurance policy in Dulberg's case file?

11) Why did you repeatedly inform Dulberg that Gagnon's insurance limit was $100,000?

12) How did you obtain information that the Gagnon policy limit was $100,000?

13) Did you make an offer to settle the McGuire case for $7,500 to Ronald Barch on October 22, 2013? If yes, did Dulberg authorize you to make that offer?

14) Do you have any documented evidence that Dulberg authorized you to make that offer? Do you have any evidence Dulberg authorized you to seek a settlement with the McGuires on or before October 22, 2013?

15) When Ron Barch made an offer of $5,000 to settle the McGuire case on November 18, 2013, Dulberg's response was that he was unhappy with the amount offered. Do you believe that Dulberg was aware that the offer of $5,000 was actually a counter-offer to your proposal of $7,500 made on October 22, 2013? Do you have any evidence that Dulberg was aware that the McGuire offer of $5,000 was actually a counter-offer to the offer you initiated on October 22, 2013?

16) Dulberg's email reply to the $5,000 offer of November 18, 2013, dated November 19, 2013, states:

"When you advised me to seek a settlement with the McGuire's insurance, I agreed to look at it only because they did not have their hands directly on the trigger of the chainsaw and that you would get at the least the medical bills paid for out of it. I thought that was made clear in your office."

Did you advise Dulberg to seek a settlement with the McGuires as he stated? Was it first discussed during meeting in your office as he stated? During which office visit was that discussed? Was it at the November 4th meeting or at an office visit that happened earlier?

17) If looking into a settlement was first discussed with Dulberg at the meeting of November 4, 2013, how could you make the $7,500 offer on October 22, 2013 and claim that Dulberg agreed to it?

18) There was a second meeting between you and Dulberg in your office on November 20, 2013. What was the purpose of the meeting?

19) Did you hand Dulberg documents of case laws at the meeting of November 20, 2013? What case laws were in those documents? Did you discuss cases at the meeting? Which cases were cited? In what way are those cases applicable to the situation with the McGuires?

20) Did you send a request to produce to the McGuires? If yes, why was it not included in the documents you handed over in relation to this lawsuit so far?

21) In a request to produce which you gave to the McGuires, you asked for a certified copy of their insurance policy. They answered that they will give it to you when they receive it. Did you ever receive it? A certified copy of the McGuires insurance policy was not included in the case documents that you turned over to Dulberg when you withdrew from counsel. It was also not included in the documents you turned over in this present lawsuit. Why not?

22) If Dr Levin diagnosed Dulberg with dystonia in August of 2013 and Dr Kajawa diagnosed Dulberg with task specific focal dystonia definitely caused by trauma to his right arm in September of 2013, why did you feel that injury due to Dulberg's chainsaw accident was difficult to prove?

23) Did you read Gagnon's and Dulberg's depositions in order to compare the detailed differences in their version of the days events and the accident?

24) Did you note that Gagnon's description of the accident given to you by phone was very different from how it is described in his deposition? In his description over the telephone he never mentioned anything about Dulberg moving his arm. Later in the deposition he claimed Dulberg moved his right arm into the chainsaw blade. How do you account for this difference?

25) Did you notice that the decription of the chainsaw accident given by Dulberg was completely different from the description of the accident given by Gagnon? For example, Dulberg describes the branch being cut to be about 15 feet long while Gagnon describes it as about 5 feet long. Dulberg describes holding the base of the branch with one hand while Gagnon describes Dulberg holding a 5 foot branch vertically with his left hand above the place where Gagnon was cutting and his right hand holding the same branch below the place where Gagnon was cutting. How do you account for such a large descrepency?

26) Can you please describe how it is physically possible, using Gagnon's description of the accident given in the deposition, to explain how Dulberg was cut on the lower portion of his right forearm perpendicular to the forarm? (Gagnon described Dulberg holding a branch with his left hand above where Gagnon was cutting and with his right hand below where Gagnon was cutting.)

27) Did you note that your client claimed he was invited by Gagnon to the McGuires to see if he wanted the firewood, not to work?

28) Did you note that your client claimed he was sitting with Carolyn for at least an hour watching Gagnon working with William McGuire, and after William McGuire refused to work any longer it was Carolyn McGuire that first asked Dulberg if he could help Gagnon?

29) Did you note that the McGuires purchased the chainsaw, that they claimed the chainsaw was new, and that they were in possession of the chainsaw and provided it for Gagnon to use contrary to the clear warnings on the cover and opening pages of the chainsaw owners manual?

30) Did you note that the McGuires were in possession of the owners manual and that the manual explicitly has clear warnings written on the cover, on the opening pages and throughout the manual to not do what they admit to allowing to be done with it?

31) If you did not wish to take the McGuire case to trial, why wouldn't you simply advise your client to seek alternative counsel rather than to settle with the McGuires for an amount that wouldn't pay for 10% of his medical bills or anything towards future lost wages?

32) Considering that $5,000 is such a small amount of money relative to Dulberg's medical bills and practically nothing compared to future lost wages, why would you urge your client sign a release barring any future legal action against the McGuires connected to the chainsaw accident in exchange for such an insignificant sum?

33) Why were you so sure the presiding judge would allow the McGuires to get out of the case on a motion considering the same Judge allowed the complaint to proceed to discovery? Why didn't you believe the judge would allow the case against the McGuires to proceed to trial?

34) Considering that $5,000 wouldn't change much for Dulberg in the predicament he was in, wouldn't he have been better off in taking his chances by proceeding with new counsel?

MAIN TOPICS:

MISSING DOCUMENTS FROM FILE

OCTOBER 22, 2013 OFFER FROM MAST TO BARCH OF $7,500

THE NOVEMBER 4th, 2013 MEETING IN MAST'S OFFICE

NOVEMBER 18, 2013 COUNTER-OFFER FROM BARCH TO MAST OF $5,000

THE NOVEMBER 20th, 2013 MEETING IN MAST'S OFFICE

COMMUNICATION WITHIN POPOVICH LAW FIRM ABOUT DULBERG CASE

DOUBTS ABOUT MCGUIRE LIABILITY AND REASONS FOR LETTING MCGUIRES OUT OF CASE

ADVICE TO ACCEPT $5,000

DOUBTS THAT GAGNON CAN BE FOUND NEGLIGENT IN COURT

Paul Evidence List:

1) There is no evidence of any communication about the $7,500 offer leading up to or at any time following Oct 22, 2013.

2) The $7,500 offer was never discussed at the November 4, 2013 meeting that Mast requested to discuss the McGuire case. A witness at the meeting can confirm this.

3) It is not possible to explain why Mast called the November 4th meeting to discuss the McGuire case with Dulberg if they already made an offer 4 weeks earlier and were waiting for Barch to reply at that time.

Barch made the $5,000 offer on November 18, 2013

4) It is clear that Dulberg disagreed with the $5,000 offer from first hearing about it on Nov 18 until finally agreeing on December 24th. The $7,500 offer was not mentioned once during these Mast-Dulberg exchanges.

Paul’s testimony. Emails between Oct 22, 2013 and Dec 26, 2013.

5) Dulberg quickly called for a meeting with Mast. The $7,500 offer was not discussed at the November 20th meeting. A witness at the meeting can confirm this.

6) It is not possible to explain why Mast called the November 20th meeting or what was discussed if Dulberg already agreed to 7,500.