

**In the Matter Of:**

**DULBERG vs THE LAW OFFICES OF THOMAS J. POPOVICH**

17 LA 377

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**PAUL DULBERG**

*February 19, 2020*

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1 IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

2 McHENRY COUNTY, ILLINOIS

3  
4 PAUL DULBERG, )

5 Plaintiff, )

6 vs. ) 17 LA 377

7 THE LAW OFFICES OF THOMAS J. )

8 POPOVICH, P.C., and HANS MAST, )

9 Defendants. )

10  
11 The deposition of PAUL DULBERG, called for  
12 examination, taken pursuant to the provisions of the  
13 Code of Civil Procedure and the rules of the Supreme  
14 Court of the State of Illinois pertaining to the  
15 taking of depositions for the purpose of discovery,  
16 taken before KAREN PILEGGI, a Notary Public within  
17 and for the County of DuPage, State of Illinois, and  
18 a Certified Realtime Reporter of said state, at 150  
19 South Wacker Drive, Chicago, Illinois,  
20 February 19, 2020, at the approximate hour of 1:00  
21 p.m.  
22  
23  
24

1 PRESENT:

2 THE CLINTON LAW FIRM,  
3 111 West Washington Street, Suite 1437,  
4 Chicago, Illinois 60602,  
5 312-357-1515, by:  
6 MS. JULIA C. WILLIAMS,  
7 juliawilliams@clintonlaw.net,  
8 appeared on behalf of the Plaintiff;

9  
10 KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,  
11 150 South Wacker Drive, Suite 1700,  
12 Chicago, Illinois 60606,  
13 312-431-3700, by:  
14 MR. GEORGE K. FLYNN,  
15 gflynn@karballaw.com,  
16 appeared on behalf of the Defendants.

17  
18  
19  
20  
21  
22  
23 REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,  
24 CSR License No. 84-3404

1 (WHEREUPON, the witness was  
2 duly sworn.)

3 PAUL DULBERG,  
4 called as the plaintiff herein, having been first  
5 duly sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. FLYNN:

8 Q. Let the record reflect that this is the  
9 discovery deposition of Paul Dulberg taken by  
10 agreement of the parties and pursuant to notice.

11 This deposition is being taken pursuant  
12 to the Rules of the Illinois Supreme Court, the  
13 Illinois Code of Civil Procedure and any applicable  
14 local rules in McHenry County.

15 Sir, could you state your name and spell  
16 your last name for the record.

17 A. Palm Dulberg, D-u-l-b-e-r-g.

18 Q. What is your address?

19 A. 4606 Hayden Court, McHenry,  
20 Illinois 60051.

21 Q. How long have you lived there?

22 A. Forty-nine years.

23 Q. Who do you live there with now?

24 A. Mike McArtor.



1 Q. Did your mother live there at some point  
2 throughout the history of this case?

3 A. Yes.

4 Q. I'm just going to go over a few rules for  
5 the deposition. I know you've testified at least  
6 one time in a deposition before because you  
7 testified in the underlying personal injury case,  
8 correct?

9 A. Correct.

10 Q. Have you testified in any other  
11 depositions before?

12 A. No.

13 Q. I'll just remind you of a few rules that  
14 I'm sure you were aware of back then when you gave  
15 your deposition.

16 The court reporter is here to take down  
17 everything that you and I say. She can only take  
18 down one at a time so I'd ask that before you answer  
19 a question, let me finish the entire question.  
20 Okay?

21 A. Yes.

22 Q. I'll try to do the same. I'll try to let  
23 you respond before I ask a follow-up question.

24 You just nodded your head. That's

1 another good point to make. She can't take down  
2 nods of the head, shrugs of the shoulders or other  
3 hand gestures. Your answers need to be verbal.

4 From time to time we forget those rules  
5 and I may just point to the court reporter as a  
6 reminder, if that's okay.

7 A. Yes.

8 Q. If you need to take a break at any time,  
9 feel free to stop me. I just ask that it's not  
10 while a question is pending that has not been  
11 answered. Fair enough?

12 A. I'll try to do that.

13 Q. If you've answered a question, I will  
14 assume you understood it. Okay?

15 A. Yes.

16 Q. I was asking you about your mother. She  
17 lived at the house during the pendency of the  
18 underlying case?

19 A. Yes.

20 Q. Is she still alive?

21 A. Yes.

22 MS. WILLIAMS: Can we define "underlying case"?

23 BY MR. FLYNN:

24 Q. The underlying case is a personal injury

1 case that you filed against Bill and Caroline  
2 McGuire and David Gagnon.

3 A. That sounds correct.

4 Q. We'll get into the dates of the filing a  
5 little bit later. We'll call that, generally, the  
6 underlying case.

7 Your mother lived at the house at that  
8 time?

9 A. Yes.

10 Q. Did she own the house?

11 A. No.

12 Q. Do you own the house currently?

13 A. Yes.

14 Q. Does anyone else own the house?

15 A. No.

16 Q. How long have you owned it?

17 A. I think I first purchased it off my  
18 parents in '97, '98, something like that.

19 Q. Did you hire a lawyer in connection with  
20 that transaction?

21 A. No.

22 Q. Were your parents represented by a  
23 lawyer?

24 A. No.

1 Q. The building, as I understand it, is a  
2 duplex; is that right?

3 A. No.

4 Q. Were there two apartments in the building  
5 at one time?

6 A. No.

7 Q. Was there a point in time where you and  
8 your mother lived in one half of the house and  
9 Mike McArtor lived in the other half?

10 A. Yes.

11 Q. How was that arrangement with respect to  
12 the location of the living spaces, if you can  
13 describe it?

14 A. It has a walkout basement. He had the  
15 downstairs with an exit out the back. We had the  
16 upstairs with an exit out the front.

17 Q. Have you ever been convicted of a crime  
18 of fraud, dishonesty or deceit?

19 A. No.

20 Q. Besides the hiring of the Popovich firm  
21 in connection with the underlying personal injury  
22 case, up to that point in time had you ever had an  
23 occasion to hire a lawyer?

24 A. I did during a traffic accident, and I

1 don't remember the year.

2 Q. Were you injured in about 2002? Does  
3 that sound right?

4 A. Roughly.

5 Q. Who did you hire?

6 A. I might get the name wrong because it's  
7 been a long time. I think it was Weiss and Michling  
8 and something else. It was a lawyer right outside  
9 the courthouse in Woodstock.

10 Q. A McHenry County lawyer?

11 A. Yeah.

12 Q. It was a personal injury case?

13 A. Yeah. It was a car accident.

14 Q. Did you file a lawsuit in that case?

15 A. I don't think we needed to.

16 Q. You just filed an insurance claim?

17 A. They did, yes.

18 Q. You settled it?

19 A. Yes.

20 Q. Any other occasions to hire a lawyer  
21 between that time and the time you hired the  
22 Popovich firm?

23 A. May I consult for a minute because I'm  
24 not sure how to answer that.

1 Q. Why don't you just tell me why you can't  
2 answer it.

3 A. Because I've hired lawyers, but they were  
4 for the company that I had. That's different.

5 Q. I'm asking general questions about any  
6 interaction you've had with hiring lawyers. Any  
7 experience you've had with hiring lawyers.

8 A. I had a corporate lawyer. My mom and dad  
9 hired a lawyer for me when I was a kid. It was  
10 something. And myself, just the corporate lawyer,  
11 the car accident lawyer and the Popovich firm.

12 Q. Have you ever been married?

13 A. No.

14 Q. So you never hired a divorce lawyer.  
15 Good. How old are you now?

16 A. Forty-nine.

17 Q. The underlying case arose out of an  
18 injury that occurred on June 28, 2011, correct?

19 A. That sounds correct.

20 Q. How old were you at that time?

21 A. Forty-one.

22 Q. Besides the underlying lawsuit against  
23 the McGuires and Mr. Gagnon, had you ever filed any  
24 other lawsuit up until that point in time?

1 A. No.

2 Q. Have you filed any lawsuits since that  
3 time besides the lawsuit against Popovich and Mast?

4 A. No.

5 Q. Do you have any military experience?

6 A. Yes.

7 Q. Please tell me about that.

8 A. Army National Guard. Illinois Army  
9 National Guard.

10 Q. How long have you been in the National  
11 Guard?

12 A. I'm not currently in it.

13 Q. When were you, from when to when?

14 A. I may not get the year correct. '88 or  
15 '89 to '92 or '93, somewhere in there.

16 Q. What was your highest rank when you were  
17 discharged from the National Guard?

18 A. When I was discharged?

19 Q. Correct.

20 A. I don't know. I've gotten moved up and  
21 moved down. I don't know where I ended up.

22 Q. How was it that you were discharged?

23 A. Less than honorable.

24 Q. What was the cause?

1           A.     I missed morning call, roll call.  If  
2     you're not there, you're AWOL.

3           Q.     Absent without leave?

4           A.     Yes.

5           Q.     What is the highest level of education  
6     that you've attained?

7           A.     I do not have a degree.  Two years of  
8     college.

9           Q.     You graduated from high school?

10          A.     Yes.

11          Q.     Was that in Johnsbury in 1988?

12          A.     Yes.

13          Q.     Did you know Mr. Gagnon from Johnsbury  
14     High School?

15          A.     Not from high school but just after high  
16     school.

17          Q.     Just coincidentally you attended the same  
18     high school?

19          A.     He was three years older than I was.  I  
20     didn't know who he was until after high school.

21          Q.     You had some education after high school  
22     but did not receive a degree, correct?

23          A.     Correct.

24          Q.     Where did you study?



1 A. I had a couple classes at McHenry County  
2 College and McMurray College.

3 Q. What did you study?

4 A. The first two years. The basics.

5 Q. General studies?

6 A. Yeah. I did a criminal justice course.  
7 I did a macro/microeconomics. I did psychology,  
8 sociology. The normal stuff.

9 Q. How did you meet David Gagnon?

10 A. Through a mutual friend.

11 Q. When was that?

12 A. I want to say, roughly, 1990.

13 Q. Was your home located somewhere fairly  
14 close to his parents' home or his mom and stepdad's  
15 home?

16 A. Two streets away.

17 Q. That's where you were injured on June 28,  
18 2011, was at David Gagnon's mom's house and his  
19 stepdad's house?

20 A. Yes.

21 Q. And their name is McGuire?

22 A. Yes.

23 Q. Generally speaking, you were injured  
24 assisting David with a chainsaw trying to cut down a

1 tree?

2 A. He was cutting a branch.

3 Q. Cutting branches off a tree, correct?

4 A. Cutting up the branches after they were  
5 off the tree.

6 Q. Could you tell me a little bit about your  
7 work history. Do you have any licenses or  
8 certifications?

9 A. I'm certified to run printing presses.  
10 Or at least I was.

11 Q. You worked for Sharp Printing, Inc. from  
12 '91 to 2011; is that right?

13 A. Ninety-one? No. I would say 1999.

14 Q. Did you own that corporation?

15 A. Yes. Well, partner. I was a partner. I  
16 didn't own like...

17 Q. It was an Illinois corporation?

18 A. Yes.

19 Q. Were you --

20 A. A stockholder.

21 Q. Let me just finish my question so she can  
22 take us down.

23 You were a stockholder in Sharp Printing,  
24 Inc.?

1 A. Yes.

2 Q. Who else were the stockholders?

3 A. Mike McArtor and Scott Dulberg and at  
4 that time it was Herbert Dulberg.

5 Q. What does that mean? Do you mean Scott's  
6 name was Herbert?

7 A. No. Scott Dulberg was an owner and  
8 Herbert Dulberg was an owner. Three different  
9 Dulbergs: me, my brother, my dad.

10 Q. And Mike McArtor?

11 A. Yes.

12 Q. There were four owners at what time?

13 A. Until my dad died and then it went to  
14 three.

15 Q. Was that business incorporated?

16 A. Yes.

17 Q. Did a lawyer assist the corporation with  
18 setting up the corporation?

19 A. Yes.

20 Q. When did that happen?

21 A. 1999.

22 Q. Did you hire the lawyer yourself?

23 A. All three of us did. All four of us.

24 Sorry.

1 Q. What was the name of that attorney?

2 A. McAndrews, and I don't remember the rest  
3 of it. It was McAndrews in McHenry. I can get you  
4 the rest of that information.

5 Q. They are based in Crystal Lake, Illinois?

6 A. It used to be in McHenry when we did  
7 that.

8 Q. Patrick McAndrews, he was also identified  
9 as the registered agent of that corporation?

10 A. Yes.

11 Q. It was voluntarily dissolved on April 8,  
12 2011; is that right?

13 A. That's what the Secretary of State's  
14 Office has, yes.

15 Q. Is that your understanding as well?

16 A. I was corrected. My partners -- I was  
17 corrected. It was actually after the accident. How  
18 it got to end up with that date, I'm not sure.

19 Q. What was corrected, exactly?

20 A. Well, do you want me to -- Mike read my  
21 deposition and he said, "You got that wrong." I  
22 said, "What do you mean?" because I answered it  
23 twice in that deposition.

24 I was thinking that Juskie happened

1 before the accident. Sharp Printing wasn't actually  
2 dissolved until after the accident when we decided  
3 to sell off the equipment and end it all. That's  
4 the honest truth.

5 Q. I will represent to you that the Illinois  
6 Secretary of State's Website as of today shows that  
7 the company was involuntarily dissolved on April 8,  
8 2011. So it's your testimony that that is not true?

9 A. I don't know how they come up with that.

10 Q. Why don't we break it down and start with  
11 why the corporation was involuntarily dissolved. Do  
12 you know that?

13 A. Involuntarily? I don't know. It may be  
14 that I was late on paying the corporate licensing  
15 thing, which we just pay a fine and did it. We  
16 didn't renew it because we decided to end it.

17 We had a ten-year thing, I think, on it.  
18 I may be wrong. I've got to go back and look at the  
19 records.

20 Q. Is it possible that the corporation was  
21 actually involuntarily dissolved by the Illinois  
22 Secretary of State on April 8, 2011?

23 A. Sure.

24 Q. Did Sharp Printing, Inc. file corporate

1 tax returns while it was a going concern?

2 A. We had a problem the couple of years  
3 before the accident because I was not up in Illinois  
4 and I usually did that with the lawyer and the  
5 accountant and things got screwed up while I was  
6 taking care of a loved one who was dying down in  
7 Florida.

8 Q. Did the corporation ever file tax  
9 returns?

10 A. Oh, yes.

11 Q. When did they file?

12 A. Quarterly and annually.

13 Q. Until what year?

14 A. Roughly somewhere in 2008. I was missing  
15 things because I was not here. I know we missed a  
16 few.

17 Q. I believe you testified in your  
18 underlying deposition that Sharp Printing, Inc. was  
19 not dissolved as a result of your June 28, 2011  
20 chainsaw accident, correct?

21 A. Yes, I did. I stood corrected by my  
22 partners.

23 Q. So is it your testimony that the  
24 corporation was dissolved because of your personal

1 injury?

2 A. I don't know how to answer that without  
3 going back and looking at records.

4 Q. Was the company winding down up until  
5 about the time you were hurt?

6 A. The company books got screwed up when I  
7 was down in Florida and I was back up in Illinois in  
8 2010 getting back on my feet and I was going to pick  
9 things back up, get everything paid up, the fines  
10 and everything.

11 Q. Who were you taking care of in Florida?

12 A. My grandmother.

13 Q. You were gone from when until when?

14 A. I want to say from the mid to end of 2007  
15 until somewhere in the beginning of 2010.

16 Q. Was anyone running Sharp Printing during  
17 that period of time?

18 A. Mike McArtor.

19 Q. Did Sharp Printing have any customers for  
20 that three-year period?

21 A. Yes, they did.

22 Q. How many?

23 A. I'm not sure, without looking at the  
24 books.

1 Q. Can you estimate what the yearly revenues  
2 were for Sharp Printing in the year 2007?

3 A. In 2007? I'd have to look at the books,  
4 to be honest with you.

5 Q. Was it more than \$5,000?

6 A. Yes.

7 Q. Was it more than \$100,000?

8 A. No.

9 Q. Was it more than \$20,000?

10 A. Yes.

11 Q. Same line of questioning with respect to  
12 2008. Do you know what the revenues were for Sharp  
13 Printing in '08?

14 A. Are you asking me what we reported or  
15 what we made and put into accounts for equipment?

16 Q. I'm asking you about revenues.

17 A. Total sales?

18 Q. Total revenues.

19 A. In two thousand...?

20 Q. 2008.

21 A. I'd have to go back and look.

22 Q. Can you estimate what they were?

23 A. No, because I wasn't there.

24 Q. Do you know how many customers the



1 company had in 2008?

2 A. We had a few, I know that. I don't know  
3 how many. Mike was handling it and it got messed  
4 up.

5 Q. What types of customers did Sharp  
6 Printing have in 2007 and 2008?

7 A. What kind of customers?

8 Q. Right. What did you do?

9 A. We printed on t-shirts. We printed on  
10 CDs. We printed on anything that wasn't wet. We  
11 printed on glass, all different stuff.

12 Q. Were there any full-time employees of  
13 Sharp Printing in '07 and '08?

14 A. In '07 and '08, no.

15 Q. Just the owners?

16 A. Just the owners.

17 Q. Did all the owners operate the business?

18 A. Yes.

19 Q. Including your brother?

20 A. Yes.

21 Q. What were the yearly revenues of Sharp  
22 Printing in 2009?

23 A. I don't know.

24 Q. What about 2010, do you know?

1 A. No.

2 Q. When did Sharp Printing start selling its  
3 equipment?

4 A. I put up the ad in August. I think  
5 August. I might be off by a month or two. August  
6 of 2011.

7 Q. Did you sell any equipment prior to  
8 August 2011?

9 A. No.

10 Q. What type of equipment did Sharp  
11 Printing, Inc. have or own?

12 A. Mostly textile screen printing equipment,  
13 but we had other screen printing stuff too. Paper.

14 Q. Where was the equipment located?

15 A. My home.

16 Q. Did you require a license to conduct this  
17 business out of your home?

18 A. We had what was called a temporary --  
19 we're in a rural area so we didn't have to have  
20 that.

21 Q. In any event, you didn't have a license,  
22 correct?

23 A. We had a license to do business there,  
24 yes.

1 Q. In that location?

2 A. Yes.

3 Q. Did customers ever come to the shop?

4 A. Yes.

5 Q. Do you recall how many customers the  
6 business had in 2010?

7 A. Not in 2010.

8 Q. Was it more than five?

9 A. Yes.

10 Q. Was it more than 100?

11 A. It might be around that. I don't know,  
12 specifically.

13 Q. In 2010 you may have had 100 customers  
14 that you did t-shirt screen prints for?

15 A. Possibly. I'm not saying that is the  
16 number, but it's possible.

17 Q. Did Sharp Printing have any customers in  
18 2011?

19 A. Mike was finishing up one customer's  
20 thing in the spring of 2011, yes. We don't -- I'll  
21 give you -- we don't typically get much work between  
22 January 1st and the first warm days of Spring. We  
23 sell t-shirts and not a lot of people buy during  
24 that period. They just don't.

1 Q. You did not earn a salary from Sharp  
2 Printing, correct?

3 A. No.

4 Q. You did not earn an hourly wage, correct?

5 A. No.

6 Q. I think your interrogatory answers  
7 indicate you didn't take a profit or a draw,  
8 correct?

9 A. Correct.

10 Q. How much, if any, money did you earn from  
11 Sharp Printing in 2011?

12 A. Can I ask how to define that? In 2011 I  
13 didn't pull any.

14 Q. Did you earn any income whatsoever from  
15 Sharp Printing in 2010?

16 A. I don't think so.

17 Q. You were down in Florida for '07 to 2010?

18 A. Sometime in early 2010, yes.

19 Q. Did you earn any income from Sharp  
20 Printing from 2007 to 2010?

21 A. No.

22 Q. Were you working in Florida?

23 A. No.

24 Q. Is it fair to say you were unemployed

1 from 2007 to 2010?

2 A. Yes. I was not officially collecting  
3 unemployment.

4 Q. You weren't an employee of any business  
5 or working for any individual, correct?

6 A. I did do some work for Mark. I did some  
7 traveling back and forth from Florida to Illinois  
8 back and forth during that time. When I was up  
9 here, I did do some work for Juskie Printing. Not  
10 much, though.

11 Q. What is Juskie Printing?

12 A. Juskie Printing is another one that I had  
13 listed as an employer in the underlying case.

14 Q. What are they?

15 A. Another print broker.

16 Q. Where are they located?

17 A. I don't know the exact address, but it's  
18 off of Chicago Avenue off of 355 going south.

19 MS. WILLIAMS: I think he's asking what city.

20 BY THE WITNESS:

21 A. I don't know how the cities break up down  
22 there.

23 BY MR. FLYNN:

24 Q. Somewhere in the western suburbs of

1 Chicago?

2 A. Yes.

3 Q. How long did you have a relationship with  
4 Juskie Printing?

5 A. Since the early 2000s.

6 Q. What type of printing did Juskie do?

7 A. Offset, mostly.

8 Q. What does that mean?

9 A. Prints on paper.

10 Q. Did you have a set schedule at any time  
11 working for Juskie?

12 A. I don't know what you mean by "a set  
13 schedule."

14 Q. Did you have a particular number of hours  
15 per week?

16 A. No. The jobs I got were project based.

17 Q. How many projects did you have from 2007  
18 to 2011 for Juskie?

19 A. Probably a few hundred quick little  
20 things, yeah. At least.

21 Q. Do you know what you earned from working  
22 at Juskie in 2007?

23 A. Not without looking at the returns, I  
24 don't know offhand.

1 Q. How often were you in the Chicago area in  
2 2007?

3 A. I didn't leave here until, I want to say,  
4 August or September of '07.

5 Q. And then thereafter?

6 A. I was not back that year.

7 Q. You didn't work for Juskie in 2008,  
8 correct?

9 A. I might have done some stuff.

10 Q. You're not sure?

11 A. I'd have to go back and look.

12 Q. Were you in Florida?

13 A. Part of the time, yeah.

14 Q. How often did you come back and forth  
15 between --

16 A. About every three months I tried to get  
17 back up here.

18 Q. For how long?

19 A. Sometimes a few weeks. Sometimes a  
20 month.

21 Q. Did you come back and work or did you  
22 take care of other things?

23 A. If I'd let Mark know I was back, "I've  
24 got something for you or I don't."

1 Q. Who is Mark?

2 A. Mark owns Juskie Printing.

3 Q. I think your interrogatory answers  
4 indicated from 1999 through 2006 you were employed  
5 in a barter situation; is that right?

6 A. With Mark, yes.

7 Q. What does that mean, exactly?

8 A. Well, he would owe me money and he would  
9 give me printing equipment instead of cash.

10 Q. He owed you money for working for him?

11 A. Well, he owed both Sharp Printing and me,  
12 personally, money. They are two different things.  
13 But he would just pay by saying, hey, I've got this  
14 or I've got this paper cutter or this or that. It  
15 was a barter.

16 Q. So you worked for him from 1999 to 2006  
17 but did not earn any income in the traditional  
18 sense?

19 A. No money changed hands.

20 Q. He gave you things to pay you for  
21 projects?

22 A. Correct.

23 Q. You gave a deposition in the underlying  
24 case on January 24, 2013. Does that sound right?



1 A. If it says it on there, yes.

2 Q. You took an oath that day?

3 A. Yes.

4 Q. You told the truth?

5 A. I tried to, to the best of my knowledge,  
6 on that day, yes.

7 Q. You told the truth in response to all of  
8 the questions that day, correct?

9 A. I tried to, yes.

10 Q. You testified you were last employed  
11 prior to the accident in May of 2011?

12 A. That would be with Juskie, yes.

13 Q. It's accurate --

14 A. Actually, I wasn't employed. I was a  
15 1099 so I was self-employment.

16 Q. When in May did you stop working for  
17 Juskie, whether it be as an employee or an  
18 independent contractor?

19 A. I believe it was the end of May.

20 Q. Then from the beginning of June until  
21 your accident on June 28, 2011, you were not  
22 employed; is that an accurate statement?

23 A. Correct.

24 Q. You were not even acting as an

1 independent contractor for any business from that  
2 period of time, correct?

3 A. Not during that month, no.

4 Q. Your deposition testimony from 2013 is  
5 typed up on 175 pages. I don't intend to go back  
6 over each of those details.

7 A. Okay.

8 Q. It's fair to say you were injured, your  
9 arm was injured on June 28, 2011, correct?

10 A. Correct.

11 Q. Which arm was that?

12 A. My right arm.

13 Q. As a result of the injury, you hired the  
14 Popovich law firm to explore a recovery in the case?

15 A. I hired them to represent me, yes.

16 Q. You hired them to represent you and file  
17 a lawsuit against David Gagnon who was operating the  
18 chainsaw that injured you, correct?

19 A. He was one of them, yes.

20 Q. I'm asking you if you hired him to --  
21 listen to the question, please.

22 David Gagnon was operating the chainsaw,  
23 correct?

24 A. Correct.

1 Q. No one else was operating the chainsaw?

2 A. Correct.

3 Q. You also hired Popovich to sue Bill and  
4 Caroline McGuire, correct?

5 A. Correct.

6 Q. They were the land owners where your  
7 accident occurred?

8 A. They did own the land, yes.

9 Q. The accident occurred at their house,  
10 correct?

11 A. Correct.

12 Q. This was in the backyard, so to speak?

13 A. Yes.

14 Q. Hans Mast was the primary handling  
15 attorney at the Popovich firm for your case?

16 A. That's who I met with, yes.

17 Q. Did any other lawyer communicate with you  
18 while Popovich was handling your case?

19 A. The lady who sat in on my deposition.  
20 Ms. Freeman I think it is. I'm not sure about that.

21 Q. Generally speaking, Hans Mast, though,  
22 was the primary handling attorney?

23 A. Yes.

24 Q. Before you hired the Popovich firm in May

1 of 2012, is that the correct time period?

2 A. I don't think so. I don't think they  
3 filed it until then, but I might be wrong. I'd have  
4 to go back and look.

5 Q. Was there a retainer agreement executed  
6 in May 2012?

7 A. I don't think I paid a retainer.

8 Q. Did you execute an attorney engagement  
9 agreement in May 2012?

10 A. I believe it was much earlier than that.

11 Q. You only executed one engagement letter  
12 or engagement agreement with Popovich, correct?

13 A. Yeah.

14 Q. Before you executed or came to an  
15 arrangement with Popovich, had you talked to any  
16 other lawyers about investigating --

17 A. One.

18 Q. Let me finish the question.  
19 -- investigating or filing the lawsuit?

20 A. Yes.

21 Q. Who was that?

22 A. I went back to the same firm that handled  
23 the car accident for me years earlier.

24 Q. What was the name of that firm?

1           A.       They changed names when I went back  
2 there. It was Weiss -- I have to go back through  
3 paperwork and get you the actual name.

4           Q.       They are known as a personal injury firm;  
5 is that right?

6           A.       Yes.

7           Q.       Why did you not hire them to take your  
8 case?

9           A.       The man who handled my case previously  
10 with the car accident was no longer with the firm  
11 and they said go find somebody else.

12          Q.       I'm not sure what one has to do with the  
13 other.

14          A.       I don't either. I just said okay and I  
15 went and found somebody else.

16          Q.       Did you meet with an attorney at that  
17 firm?

18          A.       Yes.

19          Q.       Did you tell them what happened with your  
20 incident?

21          A.       Yes.

22          Q.       They told you that they did not want to  
23 take the case; is that right?

24          A.       Yes.

1 Q. They declined the case?

2 A. They declined the case.

3 Q. Did they tell you why they declined the  
4 case?

5 A. No.

6 Q. You next went to the Popovich firm?

7 A. Yes.

8 Q. They took the case?

9 A. Yes.

10 Q. They, ultimately, filed a lawsuit against  
11 Gagnon and the McGuires on May 15, 2012; is that  
12 right?

13 A. Yes.

14 Q. You reviewed the lawsuit and approved it,  
15 correct?

16 A. I didn't -- I never got anything to  
17 review.

18 Q. Did you ever read the lawsuit?

19 A. No. I was never given any paperwork.

20 Q. Back to the incorporation of Sharp. What  
21 interaction did you have with corporate lawyers when  
22 they were first retained?

23 A. McAndrews?

24 Q. Correct.

1 A. What relationship?

2 Q. What experience did you have with  
3 McAndrews when you first retained them?

4 A. He was good.

5 Q. How often did you meet with him or speak  
6 to him?

7 A. Once a year.

8 Q. Did he file corporate returns or other  
9 documents for the company?

10 A. No. I had to file them. He just made  
11 sure they were all done right, I believe.

12 Q. Have you ever had occasion to hire a  
13 criminal lawyer?

14 A. I did in 1990. My mom and dad had to  
15 hire one. Not me.

16 Q. Did you hire a criminal lawyer for your  
17 mom and dad?

18 A. No. They hired one for me.

19 Q. Who was that?

20 A. Give me a second. You're digging back  
21 far in my memory. Driscoll was the last name.

22 Q. This was a McHenry County-based criminal  
23 lawyer?

24 A. No. Des Plaines.

1 Q. What was the general nature of the reason  
2 for the need for a lawyer?

3 A. Drug possession.

4 Q. Were you convicted of it?

5 A. Yes. I pled guilty.

6 Q. That was a Cook County case, then?

7 A. No. It was a McHenry County case.

8 Q. The lawyer was in Des Plaines, though?

9 A. Yes.

10 Q. But he represented you in McHenry County  
11 in criminal court?

12 A. Yes.

13 Q. Throughout the case you met with the  
14 lawyer?

15 A. A few times.

16 Q. While Popovich represented you in the  
17 underlying personal injury case, did you ever  
18 communicate with any other lawyers about your case?

19 A. At the end, yes.

20 Q. Popovich withdrew sometime in March 2015?

21 A. Correct.

22 Q. And Brad Balke entered his appearance on  
23 March 19, 2015. Does that sound correct?

24 A. That is correct.



1 Q. Popovich also withdrew that day, right?

2 A. I don't know if it was on the same day.  
3 I'd have to look at the paperwork.

4 Q. Besides Mr. Balke, had you talked to any  
5 other lawyers towards the end of the relationship  
6 with Popovich?

7 A. Yes.

8 Q. How many?

9 A. Hundreds.

10 Q. Hundreds of lawyers?

11 A. I'm not kidding. Yes.

12 Q. Did you ask those lawyers to take your  
13 case?

14 A. I asked them to review it.

15 Q. Did any of them take the case?

16 A. No.

17 Q. They all reviewed it, though?

18 A. Yes. Most took the time to review it.

19 Q. Did any of them tell you why they didn't  
20 want to take the case?

21 A. There were different reasons I got from  
22 various. Some people just didn't get back to me and  
23 some people wrote me letters. I think I gave you  
24 some of those. But I got various reasons back from

1 attorneys.

2 Q. I don't recall seeing any lawyers, but I  
3 would ask you to search for those.

4 MS. WILLIAMS: We'll search for those. I'll  
5 make a note.

6 BY MR. FLYNN:

7 Q. As you sit here, do you recall the basis  
8 for any attorney declining to take your personal  
9 injury case over from Popovich?

10 A. Say that again.

11 Q. As you sit here today, do you recall any  
12 of the reasons why any attorney declined to take  
13 your personal injury case over from the Popovich  
14 firm?

15 A. Yes.

16 Q. What were those reasons?

17 A. I remember a few. One I was looking at  
18 local lawyers in McHenry County and I was told  
19 like -- I can name them. My sister was married to  
20 him.

21 Anyway, I was told if Tom Popovich says  
22 you don't have a case, you don't have a case and  
23 we're not even going to look at it. That I got a  
24 lot of it.

1 Q. That's one reason. Any others?

2 A. That I got locally a lot of. As I  
3 started to work away from local further out finding  
4 attorneys, the thing was your decision to settle  
5 with the McGuires was a mistake and we don't take it  
6 because of that.

7 Q. Who said that?

8 A. Sal Ferris.

9 Q. When did you speak to Sal Ferris?

10 A. I don't know the exact date.

11 Q. When did he --

12 A. He wasn't the only one.

13 Q. When did he say that to you, that you  
14 just described?

15 A. He said it in a letter and he said it on  
16 the phone and he sent me an e-mail, I think. I  
17 don't remember the ways that he contacted me. I'd  
18 have to go back and look.

19 MS. WILLIAMS: We'll find it.

20 BY MR. FLYNN:

21 Q. Besides Sal Ferris, can you recall any  
22 other attorney, specifically, that told you they  
23 wouldn't take the case because of your settlement  
24 with the McGuires?

1 A. Yes.

2 Q. Who was that?

3 A. There was at least three firms downtown  
4 here right near the Daley Center that I came down to  
5 see and I don't remember their names, but they -- I  
6 got the same thing out of all three of them.

7 Q. Did any of the lawyers give you any other  
8 reason for declining your case?

9 A. Mostly it was because they knew Popovich  
10 or it was the McGuire settlement.

11 Q. Did any lawyer tell you that they didn't  
12 want to take your case because there was  
13 questionable liability against David Gagnon?

14 A. No.

15 Q. Did any lawyer tell you that there was  
16 questionable liability against the property owners,  
17 the McGuires?

18 A. No.

19 Q. We're jumping ahead, but did you have  
20 different lawyers that handled a binding arbitration  
21 or binding mediation for you in the underlying case?

22 A. Yes.

23 Q. Their name was Baudin?

24 A. Yes.

1 Q. Why did Brad Balke not handle the binding  
2 arbitration?

3 A. I fired him.

4 Q. When did you fire Brad Balke?

5 A. I'd have to look at the dates. I'm not  
6 sure, exactly.

7 Q. Why did you fire him?

8 A. Because he forced me to undergo the exact  
9 mediation at the McHenry County court in front of  
10 Judge Meyer that Hans Mast set up that I  
11 specifically said no to.

12 Q. When was this mediation?

13 A. I'd have to look at the dates again.

14 Q. Was it a pretrial conference?

15 A. Yes.

16 Q. You actually attended this pretrial  
17 conference?

18 A. Yes, I did.

19 Q. What happened?

20 A. I said no.

21 Q. You said no about what?

22 A. They offered an amount of money and I  
23 said no.

24 Q. The defendants offered an amount of

1 money?

2 A. Yes.

3 Q. Was this before or after the McGuires  
4 settled out of the case?

5 A. They were settled.

6 Q. So there was an offer of settlement from  
7 David Gagnon or his insurer?

8 A. Yes.

9 Q. Do you recall what that amount of money  
10 was?

11 A. \$50,000.

12 Q. You refused the offer?

13 A. Yes.

14 Q. Why did that cause you to fire  
15 Brad Balke?

16 A. He wouldn't take it any further than that  
17 and he agreed to when I hired him. He agreed that  
18 that was not going to be the end of it and then he  
19 changed his tune, and I said, you know what -- and  
20 the other thing was, I finally got through to the  
21 Baudins who I wanted to take the case because they  
22 had helped my family -- his dad helped my family  
23 many eons earlier.

24 Q. Did you ever talk to Brad Balke about the

1 liability or lack of liability by the McGuires, the  
2 property owners in the case?

3 A. I don't think so. We were on the Gagnon  
4 case.

5 Q. You didn't discuss the McGuires?

6 A. There may have been a word or something,  
7 but that's not what he was there for.

8 Q. He never gave you an opinion one way or  
9 the other whether the settlement was appropriate?

10 A. I don't believe Brad did, no. Like I  
11 said -- I don't think he did.

12 Q. At some point after your accident did you  
13 hire the Daley Disability Law Firm?

14 A. Yes.

15 Q. Was that for --

16 A. I didn't hire.

17 Q. I know you're anticipating what I'm  
18 saying.

19 A. I was trying to correct myself. I did  
20 not hire.

21 Q. Either way, let me try to get out my  
22 question before you raise any kind of response, just  
23 so she can take down --

24 A. Count before I answer.

1 Q. That's a good idea.

2 Did you ever retain the Daley Disability  
3 Law Firm?

4 A. NO.

5 Q. Did you have any relationship with Daley  
6 Disability --

7 A. Yes.

8 Q. -- Law? Let me finish it before you  
9 answer. I know you're anticipating what you think  
10 I'm going to say, but it might not come out the way  
11 you think. Either way, she can't take down both of  
12 us talking over each other.

13 What relationship did you ever have with  
14 the Daley Disability Law Firm?

15 A. They stepped in as a substitute counsel  
16 for the law firm that I did hire.

17 Q. You originally hired some other law firm  
18 to represent you in connection with social security  
19 disability?

20 A. Yes.

21 Q. What was the name of that original law --

22 A. The lady's ladies name was  
23 Margaret Bradshaw.

24 Q. You terminated your relationship with her



1 one way or another?

2 A. No.

3 Q. Why did Daley Disability Law substitute  
4 in for her?

5 A. I was told by -- I have to go back and  
6 look at the communications exactly how it happened,  
7 but I was told that, basically, they are going to be  
8 taking over the hearing part of it. I don't know  
9 why. I don't know whether they sub out work. I  
10 don't know how it works.

11 Q. Would it be fair to say that you first  
12 retained Ms. Bradshaw in 2012 sometime?

13 A. I'd have to go back and look.

14 Q. Is that approximately when you applied  
15 for social security?

16 A. It sounds like it.

17 Q. The Daley Disability Law Firm came in  
18 sometime in 2012 as well?

19 A. I don't know exactly when. I don't know.

20 Q. Would it be 2012 or 2013?

21 A. I know that they were there and -- I know  
22 that something had to be signed when we went in for  
23 the hearings. Margaret Bradshaw had to sign  
24 something for the judge allowing Daley Disability to

1 represent me at the hearings. I don't know when  
2 exactly they got involved. That's behind the  
3 scenes. I didn't have anything to do with that.

4 Q. Did you file for bankruptcy while your  
5 personal injury case was pending?

6 A. Yes.

7 Q. When did you file for bankruptcy?

8 A. I'd have to look at the paperwork again,  
9 but I don't believe that was until, I want to say,  
10 about eight or nine months, but I'm guessing, after  
11 the McGuire settlement.

12 MS. WILLIAMS: The question was what month and  
13 year.

14 BY THE WITNESS:

15 A. I don't know exactly. I'd have to go  
16 back and look at the paperwork.

17 BY MR. FLYNN:

18 Q. Did you hire a lawyer to represent you in  
19 a bankruptcy?

20 A. Yes.

21 Q. Who was that lawyer?

22 A. David Stretch.

23 MS. WILLIAMS: If it helps, we can stipulate to  
24 the date the bankruptcy was filed.

1 MR. FLYNN: That's fine. I think we've got  
2 some e-mails that may reflect when it was. I just  
3 wondered if he knew offhand.

4 MS. WILLIAMS: I can stipulate, at least, that  
5 it was 2014.

6 BY MR. FLYNN:

7 Q. You filed for bankruptcy while the  
8 Popovich firm was still representing you --

9 A. Yes.

10 Q. -- in the underlying case, correct?

11 A. Yes.

12 Q. Sometimes I'll still pause in my question  
13 so if you could please pause before you answer.

14 In the underlying case you answered  
15 written discovery; is that true?

16 A. I believe so.

17 Q. Then you later testified at your  
18 deposition January 24, 2013, correct?

19 A. If that's the date, yes.

20 Q. Ultimately, David Gagnon was also  
21 deposed, true?

22 A. Yes.

23 Q. Were you present for his deposition?

24 A. No.

1 Q. Did Caroline McGuire give a deposition in  
2 that case?

3 A. I believe so, yes.

4 Q. Were you present for that dep?

5 A. No.

6 Q. What about Bill McGuire's deposition?

7 A. I was not present.

8 Q. Did you e-mail back and forth with  
9 Hans Mast a fair amount during the Popovich firm's  
10 representation of you?

11 A. By "fair amount," what do you mean?

12 Q. Did you regularly e-mail with Hans Mast?

13 A. Yes.

14 Q. Those e-mail communications have all been  
15 produced in this case?

16 A. Yes.

17 Q. On to the exhibits. This will be 1.

18 (WHEREUPON, a certain document was  
19 marked Exhibit No. 1, for  
20 identification, as of 02/19/2020.)

21 BY MR. FLYNN:

22 Q. Let me show you what's been marked as  
23 Exhibit 1. These are one set of your Answers to  
24 Interrogatories in our case, the current legal

1 malpractice case you filed against the Popovich firm  
2 and Hans Mast.

3 Do you recognize this document?

4 A. Yes.

5 Q. We've been providing you with various  
6 copies of the signature page in the case that's been  
7 back and forth between me and your counsel.

8 I don't, frankly, know if this  
9 verification that's attached is the one that went  
10 with this document, but I'll just ask you, for the  
11 record, if these are your answers, that's your  
12 signature, and that this verification is accurate?

13 A. That is my signature on there, yes.

14 Q. What was the e-mail address you used  
15 in the communication with Hans Mast?

16 A. Primarily it was pdulberg@comcast.net.

17 Q. His address was hansmast@comcast.net?

18 A. And he switched it to at&t.net.

19 Q. Did you use some other e-mail address as  
20 well?

21 A. I may have accidentally e-mailed him a  
22 couple of times from a Yahoo account.

23 Q. In answering discovery in our case, the  
24 legal malpractice case, did you search through both

1 of those e-mail accounts of yours?

2 A. I no longer have the Yahoo account.

3 Q. Did you search through the Comcast  
4 account?

5 A. Yes.

6 Q. Did you search for PDFs or attachments to  
7 those e-mails that you produced?

8 A. Everything that I got, I turned over. I  
9 had converted the e-mails to PDFs because Comcast  
10 started purging the e-mails after so many years, so  
11 I turned them all into PDFs.

12 MS. WILLIAMS: The question was what did you  
13 search in your in box.

14 BY THE WITNESS:

15 A. What did I search?

16 BY MR. FLYNN:

17 Q. Let me ask you a different question.  
18 You produced e-mails in this case?

19 A. Yes.

20 Q. You turned e-mails into PDFs and sent  
21 them to your lawyer; is that right?

22 A. Yes.

23 Q. Some of the e-mails I reviewed have an  
24 icon that indicates there was a PDF or some other

1 attachment to the e-mail. Do you understand that?

2 A. Yes.

3 Q. Did you produce the attachments to each  
4 of the e-mails in this case?

5 A. We went through that. I produced the  
6 attachments that I still had.

7 Q. There were some that were not available,  
8 correct?

9 A. Yeah. When I looked at them, 99 percent  
10 of them were already part of some other document  
11 that we turned over. I think 100 percent of them.

12 Q. At some point in time while Hans was  
13 handling your case, did he start to communicate with  
14 you relative to his analysis of the McGuires'  
15 liability in the case?

16 A. Yes.

17 Q. Did he start to generally advise you that  
18 he didn't believe that there was a strong case for  
19 liability against the McGuires?

20 A. Yes.

21 Q. Is it fair to say that Hans' opinion was  
22 that the McGuires did not have liability in the case  
23 because they did not control the work that  
24 David Gagnon was doing?

1 A. Yes.

2 Q. That's generally a fair summary of Hans '  
3 opinion?

4 A. Not quite exactly those words, but yeah.

5 Q. The McGuires' liability as property  
6 owners was questionable because based on Hans '  
7 analysis of the evidence, they did not control the  
8 work or the manner of work of David Gagnon on the  
9 date of the accident; is that a fair summary?

10 A. Depends on which time he said that.

11 Q. Did he say things like that over and over  
12 again?

13 A. He did say things like that, yes.

14 Q. Again, I don't want to go over the facts  
15 you already testified to with regards to the date of  
16 the accident. At some point in time was  
17 William McGuire swimming in the swimming pool?

18 A. Yes.

19 Q. Was that an above ground pool or --

20 A. Above ground.

21 Q. Was there a fair amount of time during  
22 the day that Mr. McGuire was inside the house  
23 watching television?

24 A. Maybe -- he went inside the house for



1 probably about 45 minutes before the accident  
2 happened. I don't know that he was watching  
3 television.

4 MR. FLYNN: Let's mark the next exhibit as 2.  
5 (WHEREUPON, a certain document was  
6 marked Exhibit No. 2, for  
7 identification, as of 02/19/2020.)

8 BY MR. FLYNN:

9 Q. Showing you what's been marked as  
10 Exhibit 2, which is an e-mail chain including  
11 e-mails from November 18, 2013, are these e-mails  
12 between you and Hans Mast?

13 A. It looks like it, yes.

14 Q. I think the time stamps on these e-mails  
15 go from the bottom, which would be page 2, to the  
16 top of the first page, correct?

17 A. It's backwards, yes.

18 Q. In the original e-mail at 1:28 p.m., did  
19 Hans Mast relay to you a \$5,000 settlement offer  
20 from the McGuires?

21 A. Which -- where are you at?

22 Q. We're on Exhibit 2, which is also labeled  
23 as Bates label POP 181. At the bottom of the page,  
24 does Hans relay to you a settlement offer for

1 \$5,000?

2 A. Yes.

3 Q. He was telling you that the McGuires'  
4 attorney offered to settle the case for \$5,000?

5 A. Yes.

6 Q. Did you have an understanding that that  
7 was a settlement just for the McGuires, not  
8 including David Gagnon?

9 A. Yes.

10 Q. In the e-mail Hans says, quote, "As we  
11 discussed, they have no liability in the case for  
12 what Dave did as property owners. So they will  
13 likely get out of the case on a motion at some  
14 point, so my suggestion is to take the \$5,000 now."

15 Is that an accurate reading?

16 A. Of that sentence, yes.

17 Q. Is it fair to say that he suggested that  
18 you take the \$5,000 but didn't force you to take it?

19 A. It says, "So my suggestion is..."

20 Q. Then did you respond to the e-mail?

21 A. Yes.

22 Q. Hans replied again at 8:07 p.m. that same  
23 day, right?

24 A. Yes.

1 Q. He said, "Paul, whether you like it or  
2 not, they don't have a legal liability for your  
3 injury because they were not directing the work."

4 Is that right?

5 A. Part of it, yes.

6 Q. Was my prior summary of Hans' legal  
7 analysis a fair summary in view of these e-mails and  
8 his opinion that he relayed to you?

9 A. I think it went further than this, and  
10 other things, but yes.

11 Q. As far as these e-mails, I've  
12 accurately --

13 A. This e-mail, yes.

14 Q. What else did he tell you about the  
15 McGuires and why he didn't think they would be found  
16 liable in the case?

17 A. I'm pulling out of memory because I can't  
18 quote which document it's off of.

19 Q. That's what we're here for.

20 A. I can only give you the gist.

21 Q. I'll ask you for the exact language, but  
22 if you don't have it --

23 A. At one point he defined what an  
24 independent contractor is for me and he said that

1 David was an independent contractor and that the  
2 McGuires weren't liable because they had hired  
3 somebody outside even though it's their own son,  
4 he's an adult, outside to do the work and that they  
5 weren't responsible.

6 Q. By the way, how old was David at the time  
7 that this accident occurred?

8 A. I'm adding. If I was 41 -- I don't know  
9 what his birthday is, but I'm assuming he would be  
10 44, 45.

11 Q. Is it fair to say that there were two  
12 40-plus-year-olds, a 41- and a 44-year-old trimming  
13 trees with a chainsaw in David's parent's backyard  
14 that day, correct?

15 A. I was not using it. There was one  
16 44-year-old using a chainsaw.

17 Q. You, the 41-year-old was holding some  
18 branches for him?

19 A. Yes. Just before the accident, yes.

20 Q. Up until this point in time when Hans is  
21 providing this legal analysis to you, you had a fair  
22 number of occasions to interact with lawyers, as  
23 we've discussed today, correct?

24 A. At this point, the only lawyer that I

1 interacted with was the first one.

2 Q. I'm talking about in your lifetime. You  
3 had a corporate lawyer, you had a criminal lawyer,  
4 another personal injury lawyer --

5 A. I didn't hire --

6 Q. Let me finish. You had experience with  
7 lawyers representing you up to this point in time?

8 A. Yes.

9 Q. Did you have an understanding that  
10 lawyers evaluate cases differently?

11 A. Yes.

12 Q. And judges evaluate cases differently?

13 A. Sure. That's fair.

14 Q. Would it be fair to say that some laws in  
15 our country are clearer and some are open to  
16 interpretation?

17 A. I think all of them are.

18 MS. WILLIAMS: Objection. Calls for  
19 speculation.

20 If you understand the question, you can  
21 answer it.

22 BY MR. FLYNN:

23 Q. Would you say, for example, that the tax  
24 code is a little more clearcut than common law

1 that's created by cases and case precedent?

2 A. I'm not real familiar with tax law. I  
3 have accountants for that.

4 Q. How about an easier question. The stop  
5 sign means that you stop, and if you go through it,  
6 it's pretty clear that you're liable for a traffic  
7 violation?

8 A. I'll agree with that.

9 Q. The legal liability for a property owner  
10 in Illinois might be a little more complicated; is  
11 that a fair statement?

12 A. I don't know.

13 Q. Would it be fair to say, in your opinion  
14 or your knowledge of the law, the property owner  
15 isn't necessarily liable because somebody is injured  
16 on their property?

17 A. Are you talking about what I know now or  
18 what I knew back when this was?

19 Q. At any time.

20 A. What I know now is in the circumstances  
21 that we were in, they were very liable.

22 Q. I'm just asking if -- just because  
23 somebody is injured on a property owner's property,  
24 they are not necessarily liable, correct? Other

1 factors are required too.

2 MS. WILLIAMS: I'm going to object for -- he's  
3 not an expert and can't testify to legal analysis.

4 BY MR. FLYNN:

5 Q. As you sit here today, do you know  
6 whether a premises liability case involves multiple  
7 factors to prove liability against the property  
8 owner?

9 A. I don't know. I'd say that's fair.  
10 You're asking the wrong person for that.

11 Q. It was Hans' opinion that the McGuires  
12 did not control the work based on the evidence,  
13 correct?

14 A. In my opinion?

15 Q. That's not what I'm asking.  
16 Was it Hans' opinion --

17 A. I can't --

18 Q. Let me just finish.

19 Did Hans tell you that it was his opinion  
20 that the McGuires were not liable because they did  
21 not control the work?

22 A. He said that right there, yes.

23 Q. Do you believe that he truly felt that  
24 way? That was his legal opinion?

1           A.       Do you want the Monday morning  
2       quarterbacking version or at the time?

3           Q.       I'm asking if at that time you felt that  
4       he truly believed that the McGuires did not have  
5       liability?

6           A.       At the time I trusted him, yes. I hired  
7       him to represent me, and yeah.

8           Q.       You believed that he was relying his  
9       honest legal opinion to you at that time?

10          A.       Yes.

11          Q.       Including on November 18, 2013?

12          A.       Yes.

13          Q.       You did not accept the settlement offer  
14       of \$5,000 that he relayed to you on that day,  
15       correct?

16          A.       Correct.

17          Q.       Did you ultimately meet with Hans to  
18       discuss the settlement offer?

19          A.       I think it was the day before this, but  
20       I'm not sure. It was either the day before or the  
21       day after.

22          MS. WILLIAMS: I think the question was, did  
23       you meet with him, at all, not the date.

24



1 BY THE WITNESS:

2 A. Yes.

3 MR. FLYNN: Can we mark this as Exhibit 3,  
4 please.

5 (WHEREUPON, a certain document was  
6 marked Exhibit No. 3, for  
7 identification, as of 02/19/2020.)

8 BY MR. FLYNN:

9 Q. Showing you what's been marked as  
10 Exhibit 3. Do you recognize this memorandum?

11 A. Yes.

12 Q. You may have seen it from the document  
13 production that we made in this case. This is a  
14 memorandum drafted by Hans Mast, which purportedly  
15 memorializes a meeting that he had with you on  
16 November 20, 2013.

17 Does this refresh your memory as to when  
18 you met with him or if you met with him?

19 A. If he took the memorandum on the same  
20 day, then sure.

21 Q. In the memo Hans says, "I met with Paul  
22 and his friend."

23 Do you see that?

24 A. Yes.

1 Q. Did you meet with Hans and some third  
2 person --

3 A. Yes.

4 Q. -- at or about this time regarding the  
5 case?

6 A. Yes.

7 Q. Who was that friend?

8 A. Tom Kost.

9 Q. Who is Tom Kost?

10 A. My brother.

11 Q. Not that it matters necessarily for  
12 privilege purposes, but can you tell me how Tom Kost  
13 is your brother?

14 A. We have the same mom.

15 Q. He was with you and observed the meeting  
16 between you and Hans?

17 A. Yes.

18 Q. The \$5,000 settlement offer was  
19 discussed, correct?

20 A. Yes.

21 Q. At that time did Hans, again, relay his  
22 opinion as to the questionable liability about the  
23 McGuires -- strike that.

24 Did he relay to you his opinion about the

1 questionable nature of the McGuires' liability?

2 A. At the meeting with Tom, yes.

3 Q. He advised you they maintain they were  
4 not directing Dave's work. That was the McGuires'  
5 position, correct?

6 A. I don't know that he stayed on that at  
7 that meeting. At different times he gave different  
8 reasons.

9 Q. The next line says, "Paul maintains the  
10 McGuires controlled everything that Dave was doing."  
11 Is that an accurate reflection of your  
12 opinion?

13 A. Yes.

14 Q. As you sit here today, do you know if  
15 that statement is consistent with your own  
16 deposition testimony from the underlying case?

17 A. Yes.

18 Q. We'll come back to that. Did you tell  
19 Hans that you wanted to read the depositions of the  
20 McGuires and David Gagnon's depositions?

21 A. Say that again.

22 Q. Did you tell Paul that you wanted to read  
23 the depositions of the McGuires and Dave Gagnon's  
24 depositions?

1 A. Did I tell Paul?

2 Q. I'm sorry. Did you tell Hans that?

3 A. That I wanted to read the McGuires and  
4 David Gagnon's depositions?

5 Q. Yes.

6 A. Yes, I did.

7 Q. What was the purpose of your wanting to  
8 review those depositions?

9 A. Hans had told me that what they said in  
10 their depositions meant that they had no liability.

11 Q. You wanted to review the testimony to  
12 determine whether you wanted to consider the \$5,000  
13 settlement offer; is that correct?

14 A. Right.

15 Q. Did you do that?

16 A. Eventually, yes.

17 Q. Before you accepted the offer?

18 A. I think so.

19 Q. So sometime after this meeting on  
20 November 20, 2013 and before you accepted the  
21 settlement offer on January 29, 2014, did you review  
22 those three deposition transcripts?

23 A. I'll correct you. I did not accept the  
24 offer on January 20th. I signed a release on

1 January 29th.

2 Q. Fair point. Did you read the depositions  
3 between those two dates, November 20, 2013 and  
4 January 29, 2014?

5 A. Yes.

6 Q. Those are --

7 A. I believe I asked him -- I don't know --  
8 it may be a little earlier because I don't know that  
9 I asked him before or after the meeting. I don't  
10 remember. I'd have to go back in the e-mails to  
11 give the date.

12 Q. Some point in time between those two  
13 dates you read the deps?

14 A. I may have asked for them before. I  
15 don't know without seeing the e-mail. It was,  
16 roughly, in the last quarter of that year, yes. Or  
17 the first month. I don't remember the first time  
18 that I asked to read them. I don't remember off the  
19 top of my head.

20 Q. At any point in time did you ever grant  
21 Hans authority to make a settlement demand in the  
22 case?

23 A. No.

24 MR. FLYNN: Mark this as Exhibit 4.

1 (WHEREUPON, a certain document was  
2 marked Exhibit No. 4, for  
3 identification, as of 02/19/2020.)

4 BY MR. FLYNN:

5 Q. Showing you what's been marked as  
6 Exhibit 4. This is a copy of the original complaint  
7 in this instant case. It reflects a filing date of  
8 November 28, 2017.

9 Is this your original legal malpractice  
10 complaint against the Popovich firm and Hans Mast?

11 A. I believe so.

12 Q. Did you review and approve the  
13 allegations in this complaint?

14 A. For the most part. I wanted to reword  
15 some things, but the lawyer, they do their thing.

16 Q. At the time you were represented by the  
17 Gooch firm is when you filed this lawsuit, correct?

18 A. Yes.

19 Q. Directing your attention back to  
20 Exhibit 1, if you still have it. If you could turn  
21 to page 10.

22 The answer to Interrogatory No. 24  
23 indicates that on November 4, 2013, Mast was granted  
24 authority to investigate a settlement but a specific

1 dollar amount was never provided. Do you see that?

2 A. He was verbally granted authority to  
3 investigate, yes.

4 Q. Who did you want him to investigate a  
5 settlement with?

6 A. The McGuires.

7 Q. Just the McGuires or the McGuires and --

8 A. He wanted to do it. I didn't. I said,  
9 "If you want to look at that, go ahead."

10 Q. Did you grant him authority to  
11 investigate a settlement with David Gagnon as well?

12 A. I don't know if I did or not, off the top  
13 of my head, but that would have been much later.

14 Q. Eventually did you tell Hans that you  
15 would agree to accept the \$5,000 settlement offer  
16 from the McGuires?

17 A. Eventually did I tell him that?

18 Q. Yes.

19 A. Yes.

20 Q. When did you tell him that?

21 A. I want to say just before Christmas in  
22 December of 2013.

23 Q. There's no doubt in your mind that you  
24 relayed your acceptance of the \$5,000 settlement

1 offer to Hans Mast before Christmas Day, which would  
2 be December 25, 2013?

3 A. Right.

4 Q. Then did Hans mail to you a settlement  
5 release by letter dated January 24, 2014?

6 A. I'd like to see the letter, but yeah, I  
7 believe so.

8 Q. I believe it's --

9 A. I believe he had to mail it a couple  
10 times because I didn't get it.

11 MR. FLYNN: Let's mark Exhibit 5.

12 (WHEREUPON, a certain document was  
13 marked Exhibit No. 5, for  
14 identification, as of 02/19/2020.)

15 BY MR. FLYNN:

16 Q. Showing you what's been marked as  
17 Exhibit 5. I'll represent to you that this is a  
18 copy of the second amended complaint that you filed  
19 in this case by your new lawyers, your current  
20 lawyers. If I could direct your attention to  
21 Exhibit D attached to this Exhibit 5.

22 Is Exhibit D a January 24, 2014 cover  
23 letter from Hans Mast to you enclosing the general  
24 release and settlement agreement from defense



1 counsel for Caroline and Bill McGuire?

2 A. That's what it says.

3 Q. In the letter did he ask you to -- it  
4 looks like it might be a typo. It says, "Please  
5 release and return it to me in the enclosed  
6 self-addressed stamped envelope at your earliest  
7 convenience."

8 A. Right, but I believe it was just a  
9 release -- it was all tied into one.

10 Q. This letter is unsigned. Did you receive  
11 the letter unsigned?

12 A. Did I receive this unsigned?

13 Q. Yes.

14 A. Yes.

15 Q. Have you ever seen a signed copy of this  
16 letter?

17 A. No.

18 Q. If I could direct your attention to the  
19 next page of Exhibit D. Is that page 1 of the  
20 general release and settlement agreement?

21 A. Exhibit D?

22 Q. Correct.

23 MS. WILLIAMS: Turn the page.

24

1 BY MR. FLYNN:

2 Q. Is this what you received attached to the  
3 cover letter?

4 A. I don't think so. Let me see. Yes, this  
5 looks like it because it's got these things I  
6 remember.

7 Q. When did you receive this letter and the  
8 attachment?

9 A. I would say I wrote back on January 29th  
10 and I probably got it that day, signed it and sent  
11 it back.

12 Q. The copy of the release is also unsigned.  
13 It's attached as exhibit -- part of Exhibit D to  
14 your second amended complaint.

15 Do you see the signature lines and the  
16 notary signature here that's missing?

17 A. Yes.

18 Q. Is this the document that you signed and  
19 sent back to Hans Mast?

20 A. The document that I signed had my  
21 signature.

22 Q. I'm asking if this is the same document  
23 that you signed and sent back to him?

24 A. Yes.

1 Q. Right now we don't have a signed copy. I  
2 don't know that I've seen one in the case.

3 MS. WILLIAMS: Can we go off the record for a  
4 second?

5 MR. FLYNN: Sure.

6 (WHEREUPON, discussion was had  
7 off the record.)

8 BY MR. FLYNN:

9 Q. Is there any doubt, in your mind, that  
10 Exhibit D is the letter and attachment that you  
11 received from Hans Mast?

12 A. No. I believe that this is it.

13 Q. You signed some copy of this release and  
14 sent it back to Hans on January 29; is that correct?

15 A. Yes.

16 Q. You accepted the settlement offer prior  
17 to Christmas and presumably defense counsel or Hans  
18 drafted the settlement release and then Hans mailed  
19 it to you, correct?

20 A. Yes.

21 Q. At any point in time from December 25th  
22 until you received this settlement release, did you  
23 contact any lawyer to discuss whether it would be  
24 appropriate to let the McGuires out for 5,000?

1           A.       I believe I contacted Hans again.

2           Q.       Besides Hans, did you talk to anyone  
3 else?

4           A.       No.

5           Q.       Was there anything preventing you from  
6 seeking a second opinion from some other lawyer at  
7 that time?

8           A.       No.

9           Q.       Directing your attention to Exhibit E  
10 attached to the second amended complaint, the second  
11 amended complaint, again, being Exhibit 5. Is this  
12 an e-mail from you to Hans on January 29, 2014?

13          A.       This is the e-mail chain between me and  
14 Hans, yes.

15          Q.       Down below at the bottom of the page,  
16 January 29 at 10:51 a.m., it appears that you were  
17 questioning Hans regarding some of the language in  
18 the release, including social security disability  
19 check boxes. Do you see that?

20          A.       Yes.

21          Q.       Hans responded to you and then at the top  
22 of the page here at 1:59 p.m. it says, "Okay, it's  
23 signed and in the mail."

24          A.       Correct.

1 Q. What did you mean by that?

2 A. I signed it and mailed it.

3 Q. Did you -- where did you mail it from?

4 A. My home.

5 Q. How did you do that?

6 A. Put a stamp on the envelope and put it in  
7 the mailbox, put the flag up and waited for the  
8 mailman.

9 Q. Is the mailbox attached to your home or  
10 is it --

11 A. It's out on the street.

12 Q. You walked down there and you put the  
13 mail -- the envelope in the mailbox, put the flag up  
14 and --

15 A. That is correct.

16 Q. Your understanding of signing that  
17 release and sending it back to your lawyer was that  
18 you would agree to take the \$5,000 settlement,  
19 correct?

20 A. Yes.

21 Q. Hans didn't deliver the letter to you  
22 personally. He mailed it to you, correct?

23 A. He mailed it to me?

24 Q. He mailed it to you.

1           A.       Correct. U.S. mail.

2           Q.       Do you recall an allegation in your  
3 complaint or amended complaint or second amended  
4 complaint in this case alleging that you were  
5 pressured or alleging undue influence by Hans in  
6 urging you to accept the \$5,000 settlement from the  
7 McGuires?

8           A.       Yes.

9           Q.       How is it, as you sit here today, can you  
10 tell me how Hans unduly influenced you to accept the  
11 \$5,000 settlement offer?

12          A.       I don't know what Hans was thinking. How  
13 did I feel influenced?

14          Q.       Unduly influenced.

15                 Let me put it this way. He didn't put a  
16 gun to your head?

17          A.       No.

18          Q.       He suggested that you take the  
19 settlement?

20          A.       Correct.

21          Q.       He didn't force you to take the  
22 settlement?

23          A.       Correct.

24          Q.       It was your decision?

1 A. Correct.

2 Q. You signed it and you sent it back to him  
3 in the mail?

4 A. Yes.

5 Q. Aside from your e-mails with Hans on  
6 January 29, did you call him that day?

7 A. I believe so.

8 Q. Did you also discuss whether it was  
9 appropriate to accept the McGuires' \$5,000  
10 settlement offer at that time?

11 A. Yes.

12 Q. You deliberated on it and decided to take  
13 it, correct?

14 A. There wasn't much -- it was take it or  
15 get nothing.

16 Q. You had the opportunity to deliberate on  
17 it, correct?

18 A. For that day, yeah.

19 Q. You had reviewed the transcripts of the  
20 McGuire depositions and David Gagnon's depositions  
21 in order to provide you with some information in  
22 order to determine whether to accept the settlement  
23 offer, correct?

24 A. I believe I did try to read those, yes.

1 Q. Did you call Hans or e-mail him and  
2 question him with respect to the evidence, the  
3 testimony contained in those deposition transcripts?

4 A. Yes.

5 Q. What did you say to him and what did he  
6 say to you?

7 A. There were many conversations over the  
8 phone and I'm sure some through e-mails.

9 Q. He continued to tell you that it was his  
10 opinion that the liability on the McGuires is  
11 questionable because they did not control  
12 David Gagnon's work that day, correct?

13 A. It depends on which time. Sometimes he  
14 said because they didn't tell them how to squeeze  
15 the trigger. It depends which time you are talking  
16 about.

17 Q. Again, there was nothing preventing you  
18 from seeking a second opinion from some other lawyer  
19 at the time you signed the settlement release and  
20 sent it back to Hans, correct?

21 A. From the time I received it, signed it  
22 and sent it back?

23 Q. Right.

24 A. No. It was a matter of hours. I got it



1 that morning.

2 Q. You decided to mail it that day, right?

3 A. He needed it. He said now or you're not  
4 going to get anything.

5 Q. There was nothing preventing you from  
6 seeking the advice of another attorney at that time?

7 A. At that time it was time. It was now or  
8 nothing.

9 Q. You were in the comfort of your own house  
10 when you received the letter, correct?

11 A. Yes.

12 Q. You had the ability to go find another  
13 lawyer and ask them to discuss the case at that  
14 time. You had done it hundreds of times earlier --  
15 strike that.

16 After the settlement with the McGuires,  
17 you continued to prosecute the case against Gagnon,  
18 correct?

19 A. Yes.

20 Q. Did you have an understanding as to what,  
21 if any, insurance coverage he had?

22 A. Yes.

23 Q. How much was that?

24 A. What time frame are you talking about?

1 Q. What was your initial understanding as to  
2 the limits on David Gagnon's insurance coverage?

3 A. Hans Mast told me he had \$100,000.

4 Q. Was that in an e-mail?

5 A. There were -- not initially, no, but  
6 later on he reiterated that in e-mails, yes.

7 Q. Did you, ultimately, learn that there was  
8 some additional amount of coverage with respect to  
9 Gagnon's policy?

10 A. Long after Hans Mast was gone, not part  
11 of the case.

12 Q. How much was the coverage?

13 A. The Allstate coverage, I believe, was  
14 300,000.

15 Q. We'll talk about the settlement later,  
16 but did you ultimately settle the case against Gagnon  
17 for 300,000?

18 A. I believe it went to binding mediation.

19 Q. Was there an award of \$300,000 based on a  
20 high/low agreement?

21 A. Yes.

22 Q. Is it fair to say that if Hans made a  
23 mistake about the \$100,000 in coverage, that that  
24 was corrected and there was never any harm done as a

1 result of his --

2 A. No.

3 Q. Explain to me how you were harmed by the  
4 representation that there was \$100,000 in coverage.

5 A. You want me to explain?

6 Q. Yes.

7 A. Had I known the value of the case, I  
8 would have not filed for bankruptcy.

9 Q. Explain to me why one has something to do  
10 with the other.

11 A. Is my family and me going to dump money  
12 into a black hole that we can't recover or is there  
13 a light at the end of the tunnel where I can pay  
14 them back.

15 Q. At the time that you filed for  
16 bankruptcy, had any settlement offer been made from  
17 David Gagnon or his lawyers to you?

18 A. At the time of when?

19 Q. When you filed for bankruptcy.

20 A. I don't think so. I'd have to check the  
21 dates, but I don't think so.

22 Q. As the case was progressing against  
23 David Gagnon, were your doctors deposed?

24 A. As the case progressed with David Gagnon,

1 I believe they were deposed. I don't remember. I'd  
2 have to look at the dates.

3 Q. Discovery continued on in the case?

4 A. I believe one doctor was deposed after  
5 the McGuire settlement. I'm not sure, though.

6 Q. Did Hans continue to represent you for  
7 some period of time?

8 A. Yes.

9 MR. FLYNN: I'll have you mark this as  
10 Exhibit 6.

11 (WHEREUPON, a certain document was  
12 marked Exhibit No. 6, for  
13 identification, as of 02/19/2020.)

14 BY MR. FLYNN:

15 Q. Showing you what's been marked as  
16 Exhibit 6. Do you recognize this e-mail chain?

17 A. Yes.

18 Q. This is from September 23, 2014. If we  
19 go from the bottom up, it appears that Hans said to  
20 you that he wanted to give you the option of finding  
21 other counsel at this point if you really want to  
22 take the case to trial, which I think ultimately  
23 will be necessary. Correct?

24 A. Are we at "before I proceed" or "that's

1 the very reason"?

2 Q. "That's the very reason."

3 Is it fair to say he was suggesting you  
4 find another counsel in the case at that point?

5 A. Yes.

6 Q. He also said, "I just do not believe  
7 strongly that defense counsel will offer much in the  
8 way of settlement."

9 Do you see that?

10 A. Yes.

11 Q. That's his opinion regardless of what he  
12 believed the coverage limits to be; is that a fair  
13 statement?

14 A. Yes.

15 Q. You responded to him, he responded to you  
16 and then you wrote an e-mail to him at 8:25 p.m.  
17 that night?

18 A. Okay.

19 Q. Do you see that? Did you say, "First,  
20 I'm sorry that I'm not a better witness to help  
21 prove David cut me with a chainsaw"?

22 A. Yes.

23 Q. Did you start to look for other lawyers  
24 to help you in your case against Gagnon at that

1 point in time?

2 A. I believe I did, that summer. This is  
3 fall, September.

4 Q. You had already started looking for new  
5 lawyers?

6 A. I believe that Hans had told me to start  
7 looking for a new lawyer in April of that year.

8 Q. Did he say why?

9 A. We'd have to read his thing. He says  
10 why.

11 Q. Do you recall why he said that to you?

12 A. He did not feel that the case was  
13 provable against David. He did not feel the value  
14 of the case was worth it. He did not feel --  
15 actually, this is 2014. The dates are rough.

16 Q. He thought the case against David was  
17 difficult, correct?

18 A. Yes.

19 Q. Have you ever described the case as a he  
20 said, she said with respect to the facts of the  
21 accident?

22 A. He described that to me many times.

23 Q. Have you also --

24 A. And I used that back, yes.

1 Q. Have you ever described this case as a he  
2 said, she said case?

3 A. I may have. I don't know.

4 Q. It is your word against David Gagnon's as  
5 to what happened and whose fault it was that day?

6 A. That's what Hans explained to me as what  
7 the problem was.

8 Q. Did you ever describe the accident as a  
9 he said, she said?

10 A. I don't think I called David a "she said"  
11 or me a "she said." I don't know. Right here I do.

12 Q. What do you say there?

13 A. I said, "I'm sorry that I'm not a better  
14 witness to help prove David cut me with a chainsaw."

15 Q. He was denying that he even cut you,  
16 correct?

17 A. No, he never denied that.

18 Q. What was your reason for writing this  
19 sentence in that way?

20 A. Because Hans said that he believed David  
21 over me.

22 Q. With respect to what fact at issue?

23 A. His deposition versus mine. He said that  
24 I didn't make a good witness.

1 Q. With respect to what points?

2 A. All of it. He was dumping me and he was  
3 coming up with his own excuses.

4 Q. You and David were the only ones that  
5 witnessed this accident?

6 A. Correct.

7 Q. Based on your understanding of how the  
8 evidence came out in the case, would you agree that  
9 there were differences with respect to the version  
10 of events?

11 A. Oh, yeah.

12 Q. There were differences between what he  
13 said happened and what you said happened?

14 A. Oh, definitely.

15 Q. Would it be fair to say, then, it would  
16 be up to the trier of fact, whether it be a judge or  
17 a jury, to determine who they believed?

18 MS. WILLIAMS: Objection. Calls for a legal  
19 conclusion.

20 You can answer, if you understand.

21 BY THE WITNESS:

22 A. I believe it would be up to a judge or  
23 jury, sure.

24



1 BY MR. FLYNN:

2 Q. At the bottom of Exhibit 7 you say,  
3 "Bottom line Hans... do the best you can with what  
4 you got."

5 I'm sorry. I didn't mark this one yet.  
6 My apologies.

7 (WHEREUPON, a certain document was  
8 marked Exhibit No. 7, for  
9 identification, as of 02/19/2020.)

10 BY MR. FLYNN:

11 Q. Showing you what's been marked as  
12 Exhibit 7. Is this an e-mail chain between you and  
13 Hans?

14 A. I don't think it's a chain. I think it's  
15 one.

16 Q. Point is well taken. It's you writing to  
17 Hans?

18 A. Yes.

19 Q. At the bottom it sounds like you had been  
20 in the hospital with a migraine and then you wrote,  
21 "Bottom line, Hans... do the best you can with what  
22 you got."

23 A. Yes.

24 Q. What did you mean by that?

1           A.       He wanted to settle, and I can tell you  
2 right now this letter was written after a very  
3 traumatic experience and -- let me read it and  
4 refresh myself. I'm melting down in this letter.

5           Q.       You said after a traumatic experience.  
6 Are you referring to the bankruptcy filing from that  
7 day?

8           A.       That, in combination with migraines, yes.

9           Q.       David Stretch was your lawyer that filed  
10 bankruptcy for you?

11          A.       Yes.

12          Q.       Did you meet with Mr. Stretch and discuss  
13 the bankruptcy process before you hired him?

14          A.       Yes.

15          Q.       How long did you meet with him?

16          A.       I think I asked about it. I don't know.  
17 It may have been a couple of months or a couple  
18 weeks before it got filed. I wanted to learn about  
19 it.

20          Q.       Did you, ultimately, list the case  
21 against David Gagnon as an asset in your bankrupt  
22 filing?

23          A.       Yes, I did.

24          Q.       Is that why the bankruptcy trustee became

1 involved with the binding mediation?

2 A. Yes.

3 Q. Did you ever meet the bankruptcy trustee?

4 A. Yes. The first one.

5 Q. What was the name of that person?

6 A. The first one was Heeg was her last name.

7 H-e-e-g, I think.

8 Q. Again, we established that Brad Balke  
9 became your lawyer in the case on March 19, 2015,  
10 correct?

11 A. Yes.

12 Q. Is it fair to say that your relationship  
13 with Hans Mast was deteriorating over the fall and  
14 beginning of the winter of 2015?

15 A. I would say it had been deteriorating  
16 long before that. You can see from the last exhibit  
17 I'm melting down and it was already started  
18 deteriorating.

19 Q. By the time you drafted Exhibit 7, had  
20 you talked to other lawyers about taking your case?

21 A. I have to go back and look, but probably.  
22 If he told me to look at other lawyers in April  
23 before this, yes.

24 Q. How many lawyers would you say you talked

1 to between April and the time you drafted this  
2 e-mail on September 26?

3 A. I couldn't count that high, probably.

4 Q. Quite a few?

5 A. Yeah.

6 Q. Did any of them take your case?

7 A. No.

8 MR. FLYNN: Mark this as Exhibit 8.

9 (WHEREUPON, a certain document was  
10 marked Exhibit No. 8, for  
11 identification, as of 02/19/2020.)

12 BY MR. FLYNN:

13 Q. Showing you what's been marked as  
14 Exhibit 8. Is this an e-mail from you to Hans Mast?

15 A. Yes. It's an e-mail chain, yes.

16 Q. On February 22, 2015 at 7:42 p.m. you  
17 wrote to Hans, correct?

18 A. Yes.

19 Q. Halfway down in that e-mail message you  
20 said, quote, "Now I'm left wondering... how hard it  
21 is to sue an attorney?"

22 A. That is true.

23 Q. You wrote that?

24 A. Yes.

1 Q. The next line you wrote, "And yes, I am  
2 and have been looking for someone who will take this  
3 case..."

4 A. That is not in reference to suing the  
5 attorney. That was in reference to the Gagnon case.

6 Q. What did the reference to suing an  
7 attorney mean?

8 A. That was me being angry.

9 Q. With Hans?

10 A. Yes. I was seeing red.

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

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

14 Q. You, basically, made a threat, whether it  
15 be a veiled threat or an overt threat to sue him,  
16 correct?

17 A. Yes.

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

20 A. Yes.

21 Q. Is that what you had in mind when you  
22 wrote this?

23 A. No. This was about dropping Gagnon. The  
24 malpractice is about dropping the McGuires.

1 Q. This --

2 A. We're talking -- this is 2015.

3 Q. In this 2015 e-mail you are suggesting to  
4 Hans that you may sue him because of the McGuire  
5 settlement; is that right?

6 A. No.

7 Q. Then what is it that you're saying to  
8 him?

9 A. That if he damaged the Gagnon case, I  
10 didn't know if he did or didn't, and I'm threatening  
11 because I'm angry. You can see, again, I'm melting  
12 down here. These are emotional outbursts, I guess.

13 Q. Moving up the page a little bit also on  
14 February 22, 2015 at 8:14 p.m., you say, "To be  
15 honest, you took this case knowing it was my word  
16 versus his."

17 A. Yes.

18 Q. He said, he said, right?

19 A. Yes.

20 Q. Is that a fair characterization of the  
21 case, your word against David's?

22 A. That's how Hans kept describing it.  
23 That's the way I put it back to him, yes.

24 Q. You didn't correct him or dispute his

1 characterization, did you?

2 A. No. I used his characterization.

3 Q. You agreed with it?

4 A. He said -- how did it go? We had  
5 conversations between these e-mails on the phone.  
6 Then we would hang up and I would get angry and type  
7 it in an e-mail, type whatever it was that bothered  
8 me so he had it.

9 Q. Let me ask another question, if that's  
10 okay.

11 Did you ever correct Hans if he called  
12 this a he said, he said case? Did you ever say it's  
13 more than that?

14 A. Do I ever say it's more than that?

15 Q. Did you ever correct him? If he said  
16 it's a he said, he said case, did you say no, that's  
17 not right?

18 A. He said there's no witnesses. I said,  
19 "I'm a witness."

20 Q. You're one of the hes. It's your word  
21 against David Gagnon's, as you said in this e-mail?

22 A. Yes.

23 MR. FLYNN: If I could have you mark that as  
24 Exhibit 9.

1 (WHEREUPON, a certain document was  
2 marked Exhibit No. 9, for  
3 identification, as of 02/19/2020.)

4 BY MR. FLYNN:

5 Q. Exhibit 9, is that Brad Balke's  
6 substitute appearance that was filed on March 19,  
7 2015 in the case against Gagnon?

8 A. It looks like it, yes.

9 Q. Back to Exhibit 5, which is the second  
10 amended complaint. If I could direct your attention  
11 to Exhibit F. This appears to be a more complete  
12 copy of another e-mail we just talked about. Is  
13 Exhibit F more of the February 22, 2015 e-mail  
14 chain?

15 A. I'm not sure if that's separate or the  
16 same. Oh, it looks like it.

17 Q. At 7:20 p.m. Hans wrote to you and said,  
18 "Paul, I can no longer represent you in the case.  
19 We obviously have differences of opinion as to the  
20 value of the case."

21 Right?

22 A. Yes.

23 Q. He says, "I've been telling you over a  
24 year now the problems with the case and you just



1 don't see them."

2 Correct?

3 A. That's what it says.

4 Q. Obviously, a difference of opinion,  
5 right?

6 A. Yes. Are you talking about difference of  
7 opinion as to the value or difference of opinion of  
8 the problems within the case?

9 Q. Let's go on. He says, "You keep telling  
10 me how injured you are and completely ignore that it  
11 doesn't matter if you passed away from the accident  
12 because we still have to prove that the defendant  
13 was at fault. While you think it is very clear, it  
14 is not. My guess is that seven out of ten times you  
15 will lose the case outright. That means zero.  
16 That's why I've been trying to convince you to agree  
17 to a settlement. You clearly do not want to."

18 Did I accurately read that?

19 A. Just that part of that paragraph, yes.

20 Q. So Hans is telling you that in his  
21 opinion your case against Gagnon you're going to  
22 lose it seven out of ten times, correct?

23 A. In this one, yes.

24 Q. He's acknowledging that you may have a

1 chance.

2 A. I think later on he says nine out of ten.

3 Q. In this e-mail he says seven out of ten  
4 you will lose.

5 A. Yes.

6 Q. He's recognizing three times out of ten  
7 you may win, right?

8 A. I don't know what Hans is thinking.

9 Q. Is that what he said?

10 A. He says seven out of ten times you lose.

11 Q. You understood that there are risks in  
12 taking the case to trial that you could lose?

13 A. There are unforeseen risks, yes.

14 Q. There are always risks, period, in taking  
15 a case to trial?

16 A. Yes.

17 Q. Before you hired Brad Balke and after  
18 Hans told you he couldn't represent you, did you  
19 talk to any other lawyers about taking your case?

20 A. Yes.

21 Q. How many?

22 A. I can't tell you. A lot.

23 Q. Did any of them tell you that they  
24 wouldn't take the case because they didn't think you

1 could prevail against Gagnon?

2 A. No.

3 Q. Not one?

4 A. No.

5 Q. What are the names of any of the lawyers  
6 you talked to about taking your case over from  
7 Popovich?

8 A. I can't tell you without looking at  
9 documents who it was and what date it was, what it  
10 was between these two.

11 Q. I don't think documents I produced would  
12 help you in that regard.

13 I'll just ask you based on your memory  
14 the names of any lawyers you met with from the time  
15 Hans wrote this February 22 e-mail --

16 A. I believe --

17 Q. Let me finish.

18 A. I believe --

19 MS. WILLIAMS: He has not finished his  
20 question.

21 THE WITNESS: Sorry.

22 BY MR. FLYNN:

23 Q. From the time that Hans wrote this  
24 February 22 e-mail and the time that Brad Balke

1 enters an appearance on March 19. Just the name of  
2 any lawyer you --

3 A. I believe that Sal Ferris that I was  
4 talking about was one of the lawyers that I talked  
5 to.

6 Q. You're not sure? You believe that he  
7 was?

8 A. In between this time and this time?

9 Q. Yes.

10 A. I believe it's right around then.

11 Q. What type of law practice does Sal Ferris  
12 have?

13 A. I believe personal injury.

14 Q. Did you ever talk to him about taking  
15 your case before that date?

16 A. Before the date of this e-mail?

17 Q. Yes.

18 A. I'd have to look at it.

19 Q. He wasn't one of the original attorneys  
20 that you spoke with at the beginning of the case?

21 A. No.

22 Q. Fair to say once Balke entered his  
23 appearance on March 19, 2015 that Mast and Popovich  
24 were no longer your attorneys, correct?

1 A. When Balke enters his appearance?

2 Q. Yes.

3 A. I would believe that, yes.

4 Q. They were terminated and Balke stepped  
5 in?

6 A. Yes.

7 Q. Can you tell me how the binding mediation  
8 which proceeded on December 8, 2015 evolved and came  
9 to be.

10 A. I was ordered into it from a bankruptcy  
11 court.

12 Q. Why is that?

13 A. I believe that the trustee put a motion  
14 up. I don't know who did it. I assume it was the  
15 trustee and the court ordered that it be put into  
16 binding mediation.

17 Q. Did you appear at the mediation?

18 A. Yes.

19 Q. Do you recall the name of the mediator?

20 A. Not off the top of my head, no.

21 Q. One of the exhibits to your second  
22 amended complaint indicates it was retired Judge  
23 James Etchingham.

24 A. That sounds familiar.

1 Q. Do you recall how long the mediation  
2 lasted?

3 A. All day.

4 Q. Do you know if the parties submitted  
5 mediation briefs or statements to the judge?

6 A. I believe both sides submitted a whole  
7 bunch of things.

8 Q. The Boudins represented you in this  
9 mediation?

10 A. Yes.

11 Q. Because you had fired Balke by this  
12 point?

13 A. Oh, yes.

14 Q. Directing your attention, again, to  
15 Exhibit 5, the second amended complaint and Exhibit  
16 G. Exhibit G is, apparently, a memorialization of  
17 the mediation award. Do you see that?

18 A. It's how the judge decided to break it  
19 down, yes.

20 Q. Do you see that there's an award for  
21 future medical expenses of \$200,000?

22 A. Yes.

23 Q. Since that date of December 8, 2015, have  
24 you received any medical treatment relative to your

1 injuries --

2 A. Yes.

3 Q. Let me finish. Strike the question.

4 Since that date, December 8, 2015, have  
5 you received any medical treatment for your injuries  
6 incurred on January 28, 2011?

7 A. You're asking since the date of the  
8 binding mediation?

9 Q. That's right.

10 A. Yes.

11 Q. What medical treatment have you received?

12 A. I do an ongoing with the neurologist for  
13 the dystonia.

14 Q. That's in your right arm?

15 A. Yes.

16 Q. Have you calculated the medical bills  
17 that you've incurred since that day?

18 A. No, I have not.

19 Q. Are they anywhere near \$200,000?

20 A. It depends if you calculate with or  
21 without insurance. I know what I pay, but then I  
22 have to pay for the insurance that pays for that.

23 Q. How much have you paid out of pocket  
24 since that date for medical treatment on your arm?

1 A. I don't know, offhand.

2 Q. Was there any doctor that opined that you  
3 would require \$200,000 in future medical expenses?

4 A. I believe so.

5 Q. Who was that?

6 A. I believe that was Dr. Patel. I don't  
7 know that she said \$200,000. She was the doctor  
8 that was handling it at the time.

9 Q. Did you discuss your injury with the  
10 mediator at the mediation?

11 A. He did ask me a few questions.

12 Q. How much time did you spend with him?

13 A. On and off. He would come in and ask me  
14 questions and then go away and then come in and  
15 would ask me questions and then go away.

16 I don't remember which one was the  
17 mediator, which one was the Allstate adjuster, which  
18 one was the -- I don't remember.

19 Q. You're not sure which one was the  
20 mediator?

21 A. They came in and they said they are going  
22 to ask you some questions and I answered them.

23 Q. As you sit here today, you don't know how  
24 much face time you had with the mediator that day?



1           A.       I don't remember the face of which one is  
2       which.

3           Q.       Did the issue of lost wages ever come up?

4           A.       At the mediation with me?

5           Q.       Yes.

6           A.       I don't remember.

7           Q.       Did you ever make a claim of lost wages  
8       of \$250,000?

9           A.       I may have.

10          Q.       Do you know what that was based on?

11          A.       Yeah.

12          Q.       What is that based on?

13          A.       Past and future.

14          Q.       What past wages had you ever earned that  
15       could lead to an award of \$250,000?

16          A.       To me, that's not a very high number. I  
17       think I asked for more than that. It would be an  
18       average over a certain number of years plus benefits  
19       and that's all lost.

20          Q.       Would it be fair to say that your income  
21       would be accurately reflected in the tax returns  
22       you've produced in this case, so I don't want to ask  
23       you about each one of them?

24          A.       I would say my personal income, yeah.

1 Q. Have you filed personal tax returns since  
2 2015?

3 A. Tried.

4 Q. I didn't ask you if you tried.

5 A. No. They won't let me. They said I  
6 don't make enough anymore.

7 MR. FLYNN: I believe the next exhibit is 10.

8 (WHEREUPON, a certain document was  
9 marked Exhibit No. 10, for  
10 identification, as of 02/19/2020.)

11 BY MR. FLYNN:

12 Q. I'm handing you what's been marked as  
13 Exhibit 10. This is a six-page binding mediation  
14 agreement. The copy I have is unsigned.

15 Do you recognize this as the mediation  
16 agreement that governed your December 8, 2016  
17 mediation?

18 A. Yes.

19 Q. If I could direct your attention to --  
20 first, let me ask you.

21 Do you know why the bankruptcy trustee or  
22 the bankruptcy court ordered binding mediation as  
23 opposed to nonbinding?

24 A. I have no idea.

1 Q. On page 4, section F, subsection B -- I'm  
2 sorry, 1B. It says, "The parties agree that for  
3 this mediation the minimum award to Paul Dulberg  
4 will be \$50,000. Also, the maximum award to  
5 Paul Dulberg will be \$300,000."

6 Do you see that?

7 A. Yes.

8 Q. Do you know why the parties agreed to  
9 this high/low agreement?

10 A. No.

11 Q. Do you recall alleging in your original  
12 complaint against Popovich that there was a high/low  
13 agreement?

14 A. There is. There was.

15 MS. WILLIAMS: Can you repeat the question,  
16 please.

17 (WHEREUPON, the record was read by  
18 the reporter as requested.)

19 BY THE WITNESS:

20 A. I don't know. I'd have to read it.

21 MS. WILLIAMS: I asked her to read it. And you  
22 had answered it previously.

23 BY MR. FLYNN:

24 Q. Directing your attention back to

1 Exhibit 4, which is the original complaint in this  
2 case. Page 4, paragraph 16.

3 A. Okay.

4 Q. There's a sentence that begins with,  
5 "Unfortunately, a high/low agreement had been  
6 executed by Dulberg reducing the maximum amount he  
7 could recover to \$300,000 based upon the insurance  
8 policy available."

9 Do you see that?

10 A. Yes.

11 Q. It's not your position or testimony that  
12 Popovich had anything to do with the high/low  
13 agreement?

14 A. That was a mistake in there. No.

15 Q. You would agree that Popovich had nothing  
16 to do with the high/low agreement?

17 A. I believe that events that unfolded the  
18 way they did was due to Hans Mast's initial  
19 assessment of the value of the case.

20 Q. Let me ask it a different way.

21 Did Popovich have any idea that this  
22 high/low agreement existed when it was entered into?

23 A. I don't know.

24 Q. Do you have any reason to believe that he

1 did?

2 A. I don't know. I don't know how much the  
3 Boudins were in contact with them because they  
4 worked together. I don't know.

5 Q. What do you mean, "they worked together"?

6 A. They worked together on all different  
7 cases. That's a small county out there.

8 Q. Did you ever write to Hans and accuse  
9 Popovich of having a conflict of interest because he  
10 may have gone to high school with David Gagnon?

11 A. I did learn that.

12 Q. Do you believe the fact that someone went  
13 to high school with another person may give rise to  
14 a conflict of interest in a lawsuit?

15 A. I was shooting in the dark and guessing  
16 why they didn't see this as a viable case.

17 Q. Do you think that was appropriate to send  
18 to your lawyer at the time?

19 A. When you're wondering why they are doing  
20 what they are doing and you learn that and they were  
21 pretty much in the same class and they all knew each  
22 other and it's a small town, let me ask you, are you  
23 friends with the guy I'm suing? That's an  
24 appropriate question.

1 Q. You didn't say that. You asked if they  
2 went to school together.

3 A. Correct.

4 Q. Popovich did not enter into this high/low  
5 agreement on your behalf, correct?

6 A. Popovich, no.

7 Q. When I say "Popovich," I mean generally  
8 the Popovich firm and your lawyers.

9 A. This was years later. No.

10 Q. They had nothing to do with it, right?

11 A. I wouldn't say anything to do with it.

12 Q. Withdrawn.

13 Who drafted this high/low agreement  
14 that's contained in the mediation agreement?

15 A. I'm not sure who drafted it.

16 Q. Would it have been either the mediator,  
17 the bankruptcy trustee, your lawyers or the defense  
18 attorneys?

19 A. I assume that this would have been an  
20 agreement of all of them.

21 Q. You don't think Popovich had anything to  
22 do with drafting this high/low agreement, do you?

23 A. I don't know that he did or didn't.

24 Q. Do you have any reason to believe that he

1 did?

2 A. At this point, no.

3 Q. Continuing on in Exhibit 4. Directing  
4 your attention to the bottom of page 4,  
5 paragraph 10.

6 A. Exhibit 4. Say it again.

7 Q. The bottom of page 4, paragraph 20. This  
8 is your complaint against Popovich and Mast.

9 A. This has been amended since then.

10 Q. I understand. Paragraph 20 reads,  
11 "Following the execution of the mediation agreement  
12 with the high/low agreement contained therein and  
13 the final mediation award, Dulberg realized for the  
14 first time that the information Mast and Popovich  
15 had given Dulberg was false and misleading and that,  
16 in fact, the dismissal of the McGuires was a serious  
17 and substantial mistake."

18 Do you see that?

19 A. Yes.

20 Q. Can you tell me, as you sit here today,  
21 what false and misleading information did Mast and  
22 Popovich give you?

23 A. That I realized on the day of the --  
24 following the execution of the mediation agreement?

1 Q. Correct.

2 A. The liability of the McGuires.

3 Q. What was false about it?

4 A. What made them liable and what didn't.

5 Q. What is it you learned to dispute what  
6 you were told?

7 A. I learned from a reliability expert that  
8 had the report there that day that the McGuires  
9 provided the tools which made Gagnon an agent of the  
10 McGuires. He was working at their behest.

11 Q. Who was this liability expert?

12 A. What's his name?

13 Q. He's a doctor?

14 A. Yes.

15 Q. Continue on with that paragraph.

16 "Following mediation, Dulberg was advised to seek an  
17 independent opinion from an attorney handling legal  
18 malpractice matters and received that opinion on or  
19 about December 16, 2016."

20 Do you see that allegation?

21 A. Yeah.

22 Q. Who advised you to seek an independent  
23 opinion from an attorney handling legal malpractice  
24 matters?



1 A. I believe that was Boudin.

2 Q. You believe that or you know that?

3 A. I know that.

4 Q. You alleged it in this complaint so it's  
5 important that we know who that was.

6 A. Yes, that was Boudin.

7 Q. Boudin told you to seek an independent  
8 opinion from an attorney that handles malpractice  
9 matters?

10 A. Yes.

11 Q. It says you received that opinion on or  
12 about December 16, 2016.

13 A. Yes.

14 Q. That's separate and apart from any  
15 opinion you may have received from a liability  
16 expert, a doctor, an expert on chainsaws?

17 A. Yes.

18 Q. Who was the lawyer that you received a  
19 legal opinion from on December 16, 2016?

20 A. I believe that would be Thomas Gooch.

21 Q. The drafter of this complaint?

22 A. I'd have to look at the dates because I  
23 think -- December 8th was the mediation; is that  
24 right?

1 Q. Correct.

2 A. So the 16th would sound about right to be  
3 meeting with Gooch, but I can get that date.

4 Q. You met with Gooch --

5 A. Soon, within weeks. It was quick.

6 Q. Now that the door has been opened, you  
7 fired Gooch in this case, correct?

8 A. Yes.

9 Q. He drafted this complaint and he's also  
10 the one that gave you an opinion about legal  
11 malpractice liability on the part of my clients?

12 A. Yes.

13 Q. What is it that he told you on  
14 December 16, 2016?

15 MS. WILLIAMS: Objection. I don't think we've  
16 waived that privilege, but -- can we go off the  
17 record for a second?

18 MR. FLYNN: I don't want to go off the record.  
19 I've asked this interrogatory in about five  
20 different ways and it hasn't been answered  
21 appropriately.

22 The allegation was made in the complaint.  
23 That's why I drafted the interrogatory the way I  
24 did. I don't think that there's been a square

1 answer to it. This is clear that you're talking  
2 about a legal opinion.

3 BY THE WITNESS:

4 Q. Is this the same wording as we have in  
5 the current complaint?

6 BY MR. FLYNN:

7 Q. It's not exactly.

8 A. What would this be valid for, then?

9 Q. You've raised a response to a statute of  
10 limitations defense in this case and placed your  
11 knowledge of the malpractice and the date of  
12 incurring of an injury at issue.

13 Because your discovery of malpractice has  
14 been placed at issue, it's our position that you've  
15 waived privilege anyhow with respect to this  
16 conversation on December 16, 2016.

17 A. I'm not sure --

18 MS. WILLIAMS: There's not a question pending.  
19 I'm going to make a standing objection as to  
20 privilege with Gooch.

21 If we can agree that that objection will  
22 stand, we can go through this line of questioning  
23 and then if we need to later, have a judge determine  
24 whether or not that line of questioning is

1 admissible. Are you agreeable to that?

2 MR. FLYNN: I'm agreeable to continuing on for  
3 a few minutes. I want to explore. I'll try to lay  
4 foundation for -- to confirm this wasn't anyone  
5 else, for starters. Why don't we continue on and if  
6 you need to raise it again, we can talk.

7 MS. WILLIAMS: Otherwise, I'm just going to  
8 raise it to every single question you ask. I just  
9 don't want to have to continue to make the objection  
10 as to -- if questions are asked about advice given  
11 by a legal malpractice attorney, I'm going to raise  
12 an objection as to that.

13 MR. FLYNN: Okay. But this is why we had the  
14 201K conferences, multiple 201K conferences. It was  
15 made clear, to me, that there was a waiver with  
16 respect to subsequent counsel.

17 MS. WILLIAMS: Tom Gooch isn't subsequent  
18 counsel.

19 MR. FLYNN: The allegation has been made in  
20 this complaint and apparently this is subsequent  
21 counsel subsequent to my client's representation.

22 MS. WILLIAMS: It is a different case. It's  
23 not subsequent counsel in the underlying case. It's  
24 a new case.

1 MR. FLYNN: We'll get to the interrogatory in a  
2 few minutes. I'll pull that out.

3 BY MR. FLYNN:

4 Q. Let me ask you. Is there any other  
5 attorney besides Mr. Gooch that gave you an opinion  
6 that's referenced here on December 16?

7 A. No one that isn't privileged.

8 Q. Could it have been anyone else?

9 A. No.

10 Q. So Gooch is the only person that's being  
11 referenced here in this allegation that's in your  
12 complaint that's a public record?

13 I'm not asking you right now what the  
14 opinion is. I'm going to do that later. I'm asking  
15 you who gave it to you. It's not anyone besides  
16 Mr. Gooch, correct?

17 A. Yes. It was Thomas Gooch.

18 Q. He drafted the very complaint that that  
19 allegation is contained in?

20 A. Yes.

21 Q. Dr. Landford was the liability expert  
22 that you referenced earlier, correct?

23 A. Yes.

24 Q. Back to the allegation that Gooch and --

1 that Popovich and Mast provided you false and  
2 misleading information. That information was simply  
3 their legal opinion on the McGuires' liability;  
4 isn't that correct?

5 A. No. There was nothing simple about that.  
6 That's a very complex series of things that go all  
7 the way back to before the McGuire settlement.

8 Q. They didn't lie to you, did they?

9 A. It depends on how you define lie.

10 Q. How do you define lie?

11 A. If you know better and you say something  
12 else, that's a lie. Omission is a lie.

13 Q. Did they provide you with anything other  
14 than a legal opinion as to the McGuires' liability?

15 A. Yes. They provided me with case laws.  
16 They provided me with all different stuff. Yes.

17 Q. Whatever the advice that was given to you  
18 on December 16, 2016, you felt that you were mislead  
19 by Popovich and Mast at that point in time, correct?

20 A. At that point in time it was confirmed to  
21 me that I had a valid case against Popovich.

22 Q. You had a valid malpractice case against  
23 Popovich?

24 A. Yes. I did not know before that.

1 Q. As of December 16, 2016?

2 A. Yes.

3 Q. Why is it that you didn't file that  
4 lawsuit until nearly a year later on November 28,  
5 2017?

6 A. I believe because Thomas Gooch had some  
7 health issues and then his wife had some health  
8 issues. It took a while.

9 (WHEREUPON, a certain document was  
10 marked Exhibit No. 11, for  
11 identification, as of 02/19/2020.)

12 BY MR. FLYNN:

13 Q. I'm handing you what has been marked as  
14 Exhibit 11. This is one set of your supplemental  
15 Answers to Interrogatories.

16 First, I'll ask you if that is your  
17 verification and signature at the end?

18 A. That is my signature.

19 Q. Again, I don't know if that verification  
20 was attached to this original document. It may have  
21 been. But there's been some confusion with respect  
22 to these verification pages. This is your signature  
23 and you answered these interrogatories, correct?

24 A. Yeah.

1 Q. So this is a valid verification page with  
2 respect to this discovery document; is that a fair  
3 statement?

4 A. This is supplemental to original answers.

5 Q. That's your signature and you agree these  
6 are your answers?

7 A. I've reviewed them and we went over them  
8 and yes, I agree.

9 Q. And they are accurate?

10 A. As accurate as we can be.

11 Q. If I could direct your attention to  
12 Interrogatory No. 26. Do you see that?

13 A. Okay. Yes, I see it.

14 Q. This is similar to what we just talked  
15 about a few minutes ago. I'll read the  
16 interrogatory to you. "Identify and describe the  
17 false and misleading information Mast and Popovich  
18 provided to you and explain how you realized for the  
19 first time in December of 2016 that the information  
20 was false and misleading and the dismissal of the  
21 McGuires was a serious and substantial mistake as  
22 alleged in paragraph 56 of your second amended  
23 complaint."

24 Do you see your supplemental answer here?



1           A.       I see it, yes.

2           Q.       You reference the mediation award and  
3 then you state, quote, "At that time Dulberg  
4 realized that Mast's advice to settle with the  
5 McGuires for \$5,000 was incorrect because Mast had  
6 cited Dulberg being able to recover in full from  
7 Gagnon as his reasoning."

8           A.       I do.

9           Q.       Can you explain what that means because I  
10 don't quite understand it.

11          A.       Hans Mast assured me -- I want to go back  
12 to 2013, the Fall between October and the signature  
13 of the final release for the McGuires.

14                   He assured me that, he said -- at that  
15 time he didn't tell me what anybody's policies were.  
16 He assured me that if we let the McGuires out of the  
17 case, Gagnon has enough insurance, you're going to  
18 get everything from him, so it doesn't matter that  
19 you're carrying the McGuires in the case.

20          Q.       The next interrogatory is 27. "Identify  
21 and describe the expert opinions provided to you in  
22 December 2016 as alleged in paragraph 57 of your  
23 second amended complaint including the identity of  
24 the expert, any opinions and any other information

1 provided by the expert which caused you to learn in  
2 the summer of 2016 and became reasonably aware that  
3 Mast and Popovich did not properly represent you."

4 What does the summer of 2016 have to do  
5 with your discovery of malpractice?

6 A. Technically, I was sent Dr. Landford's  
7 report -- I might be off a little by a couple months  
8 here, but I think in July of that year. And I read  
9 it, but I didn't -- you don't catch everything the  
10 first time you read it.

11 It was not until later that I caught the  
12 part of the report that was brought to the  
13 attention -- it caught my eye when I was sitting  
14 there and reading it.

15 Q. You didn't read any of this interrogatory  
16 or the original interrogatory as requesting legal  
17 opinions that you had alleged that gave you notice  
18 that there was a malpractice claim against Mast and  
19 Popovich?

20 A. Excuse me?

21 MR. FLYNN: Can you read that back.

22 (WHEREUPON, the record was read by  
23 the reporter as requested.)  
24

1 BY THE WITNESS:

2 A. The way she said it, I don't understand.

3 BY MR. FLYNN:

4 Q. I'll rephrase it.

5 We've known about this allegation in the  
6 original complaint since it was filed. You received  
7 some legal opinion in 2016. That's why you didn't  
8 know you had a malpractice case against Mast and  
9 Popovich.

10 We asked you in discovery answers a  
11 couple different ways what those legal opinions are.  
12 You didn't read 26 and 27 as requesting information  
13 about legal opinions?

14 A. I don't know that an expert witness would  
15 be considered a legal opinion. Wouldn't that be  
16 more like an attorney?

17 Q. I'll ask you again. Why is it that you  
18 first became aware of a legal malpractice matter  
19 against Mast and Popovich on or about December 16,  
20 2016?

21 A. December 16th I was talking to a legal  
22 malpractice attorney.

23 Q. You were told that there was a case  
24 against --

1 A. A valid case, yes.

2 Q. -- Mast and Popovich?

3 A. Yes.

4 Q. Why is it you didn't know about this  
5 valid case prior to that date?

6 A. Because I hadn't talked to anybody that  
7 was a lawyer that specialized in that area.

8 Q. Whatever it is that he said to you gave  
9 you the basis for believing you had a valid case  
10 against Mast and Popovich?

11 A. Very much so, yes.

12 Q. You're withholding that information from  
13 me right now, as we sit here. You won't tell me  
14 what that expert said, correct?

15 MS. WILLIAMS: Repeat the question.

16 (WHEREUPON, the record was read by  
17 the reporter as requested.)

18 MS. WILLIAMS: I'm asserting attorney-client  
19 privilege on behalf of my client for Gooch's advice  
20 on December -- in December of 2016.

21 However, because I want to move forward  
22 with this deposition, if he can answer the question,  
23 I believe we should go ahead and move forward and  
24 have him answer the question.

1 I'll assert the privilege with the  
2 understanding that this may have to be briefed  
3 later.

4 MR. FLYNN: To be stricken later?

5 MS. WILLIAMS: Right.

6 MR. FLYNN: The substance of the answer he can  
7 put on the record. You're just saying you may move  
8 to strike it later?

9 MS. WILLIAMS: Right. I want to maintain the  
10 privilege with the objection, but I don't want to  
11 have to call the judge right now. I don't think  
12 it's something we should have to call the judge  
13 about right now.

14 MR. FLYNN: Just for the record, I believe it's  
15 been placed at issue by virtue of the first amended  
16 complaint. The responses to the statute of  
17 limitation defenses that were raised in very  
18 dispositive motions before Gooch withdrew from the  
19 case, the gist of that is the discovery rule has  
20 been raised and, therefore, it's our position that  
21 the date of discovery has been placed at issue and,  
22 accordingly, any legal opinions that were provided  
23 to this plaintiff have been exposed and that we're  
24 entitled to know what those are.

1 MS. WILLIAMS: Can I also note one more thing?

2 MR. FLYNN: Sure.

3 MS. WILLIAMS: In the supplemental -- in the  
4 request it specifically refers to paragraph 57 of  
5 the second amended complaint, which is different.

6 MR. FLYNN: It is different. I'll acknowledge  
7 that. I believe that the prior original  
8 interrogatories asked for any opinions relative to  
9 the discovery of the malpractice. I could be wrong.  
10 There was a reason I asked this and that's why I  
11 believe that's what it was about.

12 MS. WILLIAMS: So --

13 MR. FLYNN: That particular one I agree with  
14 you is not phrased as calling for --

15 MS. WILLIAMS: Right. That's the question that  
16 was asked. We answered the question that was asked,  
17 which that particular paragraph does not refer to a  
18 legal expert. It just merely -- I'll read it out  
19 loud. "It was not until the mediation in December  
20 of 2016 based on the expert's opinion that Dulberg  
21 retain for mediation that Dulberg became reasonably  
22 aware."

23 I just want it clear that he did answer  
24 the question that was asked. I understand your line

1 of questioning and we'll agree to move forward.

2 MR. FLYNN: I believe there were other  
3 discovery requests that did point to that and I  
4 think we can take a break here and I can find them  
5 fairly quickly because I think we're getting close  
6 to the end anyway.

7 MS. WILLIAMS: Okay.

8 BY MR. FLYNN:

9 Q. Did you ever receive any money from the  
10 mediation award?

11 A. No. I received money from the bankruptcy  
12 itself. It was a surplus bankruptcy.

13 Q. There was a \$300,000 award given in the  
14 mediation.

15 A. That did not go to me. That went to  
16 bankruptcy.

17 Q. It was collected on your behalf and paid  
18 to the bankruptcy trustee, correct?

19 A. Correct.

20 Q. All \$300,000?

21 A. I don't know that because I think -- I  
22 don't know how exactly it works. I heard attorneys  
23 have a lien that's special. I don't know how they  
24 break it up. I assume it goes to the trustee.

1 Q. The Boudins weren't working for free.  
2 They got something out of it, right?

3 A. Yes.

4 Q. The trustee took the remainder and paid  
5 off some of your creditors, correct?

6 A. Correct. All of them.

7 Q. But the award was paid to the trustee on  
8 your behalf?

9 A. I believe so. I don't know how it  
10 worked.

11 Q. How much was the surplus after your  
12 creditors were paid?

13 A. After just the creditors?

14 Q. How much did you get?

15 A. How much did I get?

16 Q. Yes.

17 A. A third.

18 Q. I'm asking how much money did you get?

19 A. A third of the award.

20 Q. Dollars. How much money did you get?

21 A. Roughly a hundred.

22 Q. \$100,000?

23 A. I don't know the exact number. It's  
24 roughly a hundred.



1 Q. Was there a check that was issued to you?

2 A. By the trustee, yes.

3 Q. Did you cash it?

4 A. Yes.

5 Q. At what bank?

6 A. McHenry Bank & Trust.

7 Q. Do you still have an account there?

8 A. Yes.

9 Q. Do you have a copy of the canceled check?

10 A. I'm sure the bank has a photo thing.

11 Q. You can request a copy of the check,  
12 correct?

13 A. I could. I could see if they got it.

14 Q. I would ask you to do that. If you have  
15 any other documentation relative to the payouts that  
16 were made by the bankruptcy trustee on your behalf,  
17 we are requesting that information.

18 MR. FLYNN: Why don't we take a break and I'm  
19 going to look for one document and then we're just  
20 about done here.

21 (WHEREUPON, a recess was had.)

22 MR. FLYNN: Mark these as the next two.

23

24

1 (WHEREUPON, a certain document was  
2 marked Exhibit No. 12, for  
3 identification, as of 02/19/2020.)

4 (WHEREUPON, a certain document was  
5 marked Exhibit No. 13, for  
6 identification, as of 02/19/2020.)

7 BY MR. FLYNN:

8 Q. I'm going to show you what I've marked as  
9 Exhibits 12 and 13. Twelve are your answers to Hans  
10 Mast's interrogatories. Thirteen is your responses  
11 to Popovich's request for production.

12 Interrogatory No. 1 from Mast asks,  
13 "Identify and describe each and every way that  
14 Popovich or Mast breached any duty of care to you,  
15 the date of the breach, and when and how you became  
16 aware of the breach."

17 Do you understand that?

18 A. Yes.

19 Q. So how is it they committed malpractice?

20 A. May I see it?

21 Q. I'm going to show it to you in a second.  
22 I only have one copy.

23 This is basically, how did you first  
24 become aware that they committed malpractice?

1 That's the essence of that interrogatory.

2 Here is your response. I can show that  
3 to you. It doesn't reflect any discussion with any  
4 malpractice lawyer in December of 2016.

5 Tell me --

6 A. Let me read it again. We're talking  
7 about No. 1 on this?

8 Q. Correct.

9 A. Okay.

10 Q. You understand it?

11 A. Yes.

12 Q. Would you agree that the legal opinion  
13 you received on December 16, 2016 is responsive to  
14 that interrogatory, whatever it is that you were  
15 told?

16 A. Yes.

17 Q. You didn't identify this December 16,  
18 2016 discussion in the answer to that interrogatory,  
19 correct?

20 A. Say that again.

21 Q. Your discussion with Mr. Gooch on  
22 December 16, 2016, that's referenced in your  
23 original complaint, you didn't respond and identify  
24 it in this answer to the interrogatory, correct?

1           A.       This asks for every way Popovich or Mast  
2 breached the duty of care. It didn't ask for  
3 Gooch's opinion.

4           Q.       How did you find out that Mast and  
5 Popovich breached the duty of care to you? Because  
6 Gooch told you, right?

7           A.       Yes.

8           Q.       That's what you've alleged here in this  
9 complaint.

10          A.       Yes.

11          Q.       Here I'm asking you, each and every way  
12 that they ever breached a duty of care to you. I  
13 covered the waterfront. You didn't answer --

14          A.       On the McGuire case it was between  
15 October 2013 and January 2014. Yes. There's a  
16 multitude of things and that's why I listed a range.

17          Q.       I'm asking when you became aware of it,  
18 in that interrogatory. Do you see that?

19          A.       I became aware of that when Thomas Gooch  
20 read them and said there's a problem here.

21          Q.       That's not the way you answered the  
22 interrogatory, correct?

23          A.       I answered the first part. I did not  
24 answer after the comma and the and.

1 Q. There's no objection and indication that  
2 any information is being withheld, correct?

3 A. Excuse me?

4 Q. There's no objection and an indication  
5 that you're withholding --

6 A. I was not withholding.

7 Q. I'll show you Exhibit 13. It asks --  
8 Exhibit 13 are the production requests to you.

9 Number 8 asks for you to produce a privilege log  
10 identifying the creator and recipient of any  
11 document withheld, the basis for any claimed  
12 privilege, the date the document was created and the  
13 date the recipient received the document.

14 The answer is, "The plaintiff is only  
15 withholding attorney-client communication between  
16 his successor counsel."

17 Is that your answer to the production  
18 request and did I accurately read No. 8?

19 A. May I consult with her for a minute?

20 Q. Sure.

21 THE WITNESS: Can we go off the record?

22 MS. WILLIAMS: If you can answer the question,  
23 answer the question first.

24

1 BY THE WITNESS:

2 A. It's been a while since I've done this,  
3 so I'm not sure who the successor counsel is. Is it  
4 her or is it the Boudins or Balke?

5 BY MR. FLYNN:

6 Q. I think successor counsel, we can both  
7 agree, the successor counsel in the underlying case  
8 which would be Balke and then Boudin.

9 You didn't identify any documents  
10 withheld other than documents between you and  
11 successor counsel, correct?

12 THE WITNESS: I believe we waived those, didn't  
13 we, for Balke and Boudin?

14 MS. WILLIAMS: For Balke and Boudin we can  
15 represent that we waived those.

16 BY MR. FLYNN:

17 Q. Let me ask a different question.

18 Did Gooch communicate with you in writing  
19 relative to his opinion that you had a legal  
20 malpractice case against Mast and Popovich?

21 A. In writing?

22 Q. Yes.

23 A. I suppose the agreement between us that  
24 he would represent me because I had the case is a

1 document in writing.

2 Q. Did he tell you -- strike that.

3 The discussion that you reference in the  
4 complaint, paragraph 20 of December 16, 2016, was  
5 that a face-to-face communication with Gooch?

6 A. What number is that?

7 Q. Exhibit 4, paragraph 20. The legal  
8 opinion you received, was it verbal, was it written?

9 A. I believe it was verbal.

10 Q. Now, I'm going to ask you what he said.  
11 There was an objection and that will be addressed by  
12 the Court later. Please tell me what Gooch told  
13 you.

14 A. He read what I brought him, looked  
15 through some things, and I don't remember if it was  
16 the same day that we talked to him or he took a day  
17 or two. I don't remember. He got back to me and he  
18 said, "You have a case here. You have a valid  
19 case."

20 Q. Did he say why?

21 A. On the basis of what I brought to him.  
22 Yes.

23 Q. Specifics, though. I don't want to talk  
24 about generalities. Did he tell you what Mast and

1 Popovich did wrong and how it injured you?

2 A. How it injured me? Yeah.

3 Q. The first part of my question was, did he  
4 tell you exactly what they did wrong in connection  
5 with your -- their representation of you?

6 A. He probably did. I'm not recalling it  
7 right now. I'm pulling a blank.

8 The parts of the conversation I'm  
9 remembering, and for some reason I'm not pulling it.  
10 We've been at this a while and this is a long thing.  
11 Yes, he said based on what he saw, he saw reason for  
12 malpractice.

13 Q. You don't remember any details, as you  
14 sit here? Did you discuss the liability of property  
15 owners in Illinois?

16 A. Well, if they were just property owners  
17 in the case, that would be one thing, but they  
18 weren't just property owners.

19 Q. That wasn't my question. I'm asking if  
20 you discussed it?

21 A. Certainly.

22 Q. You and Gooch discussed the liability of  
23 the McGuires in the case?

24 A. Yes.



1 Q. What did you say to him and what did he  
2 say to you?

3 A. I showed him the expert opinion.

4 Q. The chainsaw expert?

5 A. Yes.

6 Q. Did you show him any deposition  
7 transcripts?

8 A. Yes.

9 Q. Which ones?

10 A. All of them.

11 Q. And he read them before you talked?

12 A. I don't remember. Like I said, it may  
13 have been a few days between our initial meeting and  
14 bringing the whole file that I had and trying to get  
15 what the Boudins had and letting him go through it.  
16 I don't remember how long that took.

17 Q. How did you transmit the documents to  
18 him --

19 A. My brother carried them.

20 Q. Let me finish.

21 How did you transmit the documents to  
22 Mr. Gooch, including the deposition transcripts?

23 A. I believe we brought him a box.

24 Q. So you physically handed the documents to

1 him?

2 A. I didn't physically hand them. My  
3 brother did.

4 Q. Did you communicate with Mr. Gooch by  
5 e-mail, at all, leading up to this meeting?

6 A. No.

7 Q. Did he ever write you any letters?

8 A. An e-mail or regular mail or what are you  
9 talking about?

10 Q. Any letters whatsoever.

11 A. Throughout the course of his  
12 representation, yes.

13 Q. What about in December of 2016?

14 A. I believe we started communicating in  
15 December, yes.

16 Q. But in writing?

17 A. In e-mails, sure.

18 Q. Did he discuss --

19 A. We may have. I'm not -- whenever we  
20 started -- whenever he started sending me things and  
21 going back and forth, I don't remember the exact  
22 date, but it was right after he started representing  
23 me, sure, we exchanged e-mails and started, yes.

24 Q. When did Gooch begin representing you?

1           A.     The day that he agreed to represent me.  
2 I believe it would have been the day that he decided  
3 that he had a case.

4           Q.     On or about December 16?

5           A.     Yes.

6           Q.     At that point in time, or shortly  
7 thereafter, he communicated with you in writing the  
8 details of the breach of the standard of care  
9 committed by Popovich and Mast; is that correct?

10          A.     I believe he started to detail those out  
11 in the complaint and we were working it back and  
12 forth trying to get it right.

13          Q.     When did you first exchange drafts of the  
14 complaint?

15          A.     I'd have to look back in the e-mails. I  
16 don't remember the dates.

17          Q.     Did you look for any of these e-mails in  
18 connection with my discovery requests in this case?

19          A.     At the time I think we thought they were  
20 privileged.

21          Q.     That privilege objection wasn't exactly  
22 made. My question is, did you look for them?

23          A.     Did I look for them? I have them.

24          Q.     I would ask that you preserve each and

1 every communication between you and Mr. Gooch, all  
2 written communications, even phone records that  
3 might reflect the dates and times of your phone  
4 communications, if any. Did you use a cell phone  
5 back then?

6 A. I used VOIP over a data line.

7 Q. Who was your carrier?

8 A. Comcast.

9 Q. Is that still your carrier?

10 A. Yes.

11 Q. Do you have the same phone that you  
12 utilized?

13 A. Same phone number for 50 years, yes.

14 Q. What else could you remember that Gooch  
15 told you on or about the 16th of December 2016 about  
16 Mast and Popovich breaching the standard of care and  
17 how it damaged you?

18 A. Say that again.

19 Q. What, if anything, else do you recall  
20 about your discussions with Gooch on December 16  
21 regarding the breach of the standard of care by  
22 Popovich and Mast and how it injured you?

23 A. We discussed the whole scenario between  
24 October and January and what happened. It was

1 pretty detailed. We discussed everything that you  
2 see that's been communicated in the e-mails. He  
3 didn't have much else to go on other than the  
4 documents and the e-mails.

5 Q. You're talking about the e-mails between  
6 you and Hans from the fall of 2013?

7 A. Yes.

8 Q. Ultimately leading to the \$5,000  
9 settlement?

10 A. Yes.

11 Q. Other than you have a case, what did  
12 Gooch say to you?

13 A. He said that they definitely committed  
14 malpractice.

15 Q. Did he ever put this in writing?

16 A. Did he ever put it in writing? I think  
17 he backed it up by filing a suit. That's  
18 documented.

19 Q. Again, the suit wasn't filed until  
20 November of 2017.

21 A. Yes, he had some health problems and then  
22 his wife had some health problems. Believe me, I  
23 was pushing for him to get that done.

24 Q. From December of 2016 until the complaint

1 was filed, you exchanged some drafts of complaints  
2 with him?

3 A. I believe he let me see what he wanted to  
4 put in the complaint. I got to review some things.  
5 Of course I had, do this or that's not right. In  
6 fact, a couple of these things in here we had to  
7 definitely -- you caught one. He totally worded it  
8 wrong. It was wrong. We had to amend.

9 MS. WILLIAMS: His question was, did he give  
10 you drafts for you to review?

11 THE WITNESS: Yes.

12 BY MR. FLYNN:

13 Q. These were exchanged by e-mail?

14 A. I believe so, yes.

15 Q. So you would have records of them?

16 A. Yes.

17 Q. Any comments with respect to the  
18 pleadings, as well, did you ever ask him questions?  
19 Did he explain to you the basis for the allegations  
20 in the draft complaints, similar to what you did  
21 with Hans?

22 A. Over many times, yes.

23 Q. This is all reflected in e-mails?

24 A. Yes.

1 Q. Ultimately, you didn't file until  
2 November of 2017?

3 A. Correct.

4 Q. Popovich ceased being your lawyer  
5 March 19 of 2015, correct?

6 A. That sounds about right.

7 Q. Until December 16, 2016, you didn't have  
8 any reason to believe there was a malpractice case  
9 against --

10 A. Say the date again.

11 Q. Until December 16, 2016, you didn't have  
12 any other reason to believe there was a malpractice  
13 case against Popovich and Mast?

14 A. I did not know that I had a case, no.

15 Q. You threatened one with respect to the  
16 Gagnon case --

17 A. Yes.

18 Q. -- at another point in time, correct?

19 A. I think I threatened him a few times in  
20 there. Yeah. I was actually nice to what I really  
21 wanted to say.

22 Q. Subject to the ruling on these  
23 objections, you don't recall any other specific  
24 details that you discussed with Popovich -- I'm

1   sorry -- Gooch on December 16, other than what we  
2   already talked about?

3           A.     I discussed the exact same things that  
4   you -- the same documents that you already have. We  
5   went over the case that Mast and Popovich had  
6   against the McGuires. He followed through all the  
7   way to the end. We went over the whole case. You  
8   see as much as he did.

9           Q.     Did Gooch ever explain to you why the  
10  McGuires would have been liable any more than Mast  
11  explained to you that they wouldn't be liable?

12          A.     He said he agreed right away. He said  
13  that's obvious.

14          Q.     Did Gooch ever provide you with any cases  
15  or statutes?

16          A.     Provide to me, maybe. Maybe. I don't  
17  know.

18          Q.     Would that be by e-mail?

19          A.     It could be. I was in his office quite a  
20  few times. He may have.

21          Q.     As you sit here today, other than you  
22  have a case against Popovich and Mast, what did  
23  Gooch tell you specifically that was any different  
24  than what Mast and Popovich told you with respect to



1 the McGuires' liability?

2 A. That they were definitely liable. He  
3 tried to say that -- like Popovich and Mast were  
4 first- or second-year lawyers and that they may have  
5 made a mistake here.

6 I said they've got 20 years in this. You  
7 think they'd know the difference. That's the kind  
8 of thing. He agreed with me. Twenty years, yeah,  
9 they should have known better.

10 Q. Did you ever discuss the specifics of the  
11 McGuires' potential liability with Gooch?

12 A. Liability with Gooch?

13 Q. With Gooch, did you ever discuss the  
14 specifics of the McGuires' liability other than he  
15 thinks you have a case?

16 A. Yes.

17 Q. Did he ever tell you why? What was it?

18 A. Because he agreed with the expert's  
19 opinion.

20 Q. The expert on the chainsaw?

21 A. Yes. The liability expert.

22 Q. The expert said you should use safety  
23 goggles and gloves and things like that?

24 A. He said more than that, but yes.

1 Q. Do you know who commissioned that expert  
2 report?

3 A. Boudins.

4 Q. Do you know when the first draft of that  
5 doctor's expert report was circulated?

6 A. I heard that Boudin got it in February,  
7 maybe. I don't think I got it until July, but I'm  
8 not sure about that.

9 Q. July of what year?

10 A. The same year as the mediation.

11 Q. Of 2016?

12 A. Yeah.

13 Q. So you actually read it in advance of the  
14 mediation?

15 A. I talked about this earlier. I said yes.  
16 You don't catch everything the first time you read  
17 it. I was sitting there at the mediating table and  
18 I was reading it and I caught it and I turned to  
19 Randy and I said, after it was over, does this  
20 mean -- that means.

21 Q. Means what?

22 A. Does this mean the McGuires are liable?  
23 Yeah, that means they are liable. He said, call my  
24 office after everything and I'll give you a name for

1 an attorney you should go see.

2 MR. FLYNN: Any follow-up, Julia?

3 MS. WILLIAMS: I have two follow-up questions.

4 EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Did you ever give Hans authority to make  
7 a settlement demand regarding Mr. Gagnon?

8 A. I think at one time in one of my meltdown  
9 letters I said get whatever you can, but no, I never  
10 actually signed anything saying you have the right  
11 to offer a settlement.

12 Q. Did you ever give Hans authority to make  
13 a settlement demand with regard to the McGuires?

14 A. A demand, no. He said he was going to  
15 probe and see what was out there, and I said, if you  
16 want to do that, that's fine.

17 MS. WILLIAMS: I have no further questions.

18 MR. FLYNN: Signature?

19 MS. WILLIAMS: We can waive signature.

20 THE REPORTER: Are you ordering this?

21 MR. FLYNN: Yes.

22 THE REPORTER: Regular delivery, e-tran?

23 MR. FLYNN: Yes.

24 THE REPORTER: Copy?

1 MS. WILLIAMS: Yeah.

2 THE REPORTER: Regular delivery, e-tran?

3 MS. WILLIAMS: PDF.

4 (WHEREUPON, at 4:00 p.m.,  
5 the deposition of PAUL DULBERG  
6 was concluded.)

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1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF DUPAGE )

4 I, KAREN PILEGGI, a Notary Public  
5 within and for the County of DuPage, State of  
6 Illinois, and a Certified Shorthand Reporter of said  
7 state, do hereby certify:

8 That previous to the commencement of  
9 the examination of the witness, the witness was duly  
10 sworn to testify the whole truth concerning the  
11 matters herein;

12 That the foregoing deposition  
13 transcript was reported stenographically by me, was  
14 thereafter reduced to typewriting under my personal  
15 direction, and constitutes a true record of the  
16 testimony given and the proceedings had;

17 That the said deposition was taken  
18 before me at the time and place specified;

19 That I am not a relative or employee  
20 or attorney or counsel, nor a relative or employee  
21 of such attorney or counsel for any of the parties  
22 hereto, nor interested directly or indirectly in the  
23 outcome of this action.

24 IN WITNESS WHEREOF, I do hereunto

1 set my hand and affix my seal of office at Chicago,  
2 Illinois this 3rd day of March, 2020.

3  
4 *Karen Piseggi*

5 Notary Public, DuPage  
6 County, Illinois.

7 My commission expires 1/2/24.

8  
9 CSR Certificate No. 84-3404  
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J.	)	
POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

**DULBERG'S ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J.  
POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

**INTERROGATORIES**

1. Identify the person(s) answering and/or providing assistance in the answering of these interrogatories.

**ANSWER:** Paul Dulberg, available through counsel. The Clinton Law Firm, as counsel for Paul Dulberg.

2. Identify all persons who have knowledge of any matters relating to any of the facts, claims, damages, or defenses at issue in this case.

**ANSWER:** Paul Dulberg is the Plaintiff in this matter and is expected to testify in accordance with any deposition testimony he provided or provides. He has knowledge regarding the circumstances leading to the injury he sustained, the actual injury, the harm he suffered, including financial injury.

William McGuire ("William") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

EXHIBIT # 1  
2-19-20

Caroline McGuire (“Caroline”) has knowledge regarding the facts and circumstances leading to Dulberg’s injury.

David Gagnon (“Gagnon”) has knowledge regarding the facts and circumstances leading to Dulberg’s injury.

Barbara Dulberg. 4606 Hayden Ct., McHenry, IL 60051. Retired. Barbara is expected to testify to the facts and circumstances of the November 4, 2013 meeting with Hans Mast. Barbara is also expected to testify as to the facts and circumstances of Paul Dulberg’s pain and suffering, and Dulberg’s loss of use of his arm.

Thomas Kost. 423 Dempster Ave., Mt Prospect, IL 60056. Electrician. Thomas Kost is expected to testify as to the legal advice given to Dulberg from Mast and The Popovich Firm on the McGuires’ liability, or lack of it, and how the judge would rule in the December 2013 meeting, as well as Dulberg’s pain and suffering and loss of use of arm.

Mike McArtor, 4606 Hayden Ct., McHenry, IL 60051. McArtor was Dulberg’s business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg’s ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Scott Dulberg, 8245 Cunat Blvd, Apt. 2B, Richmond, IL 60071. Scott Dulberg is Paul Dulberg’s family member and was Paul Dulberg’s business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg’s ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Investigation continues.

3. Identify the address of the McGuire’s property described in paragraph 6 of your second amended complaint, and your address identified in paragraph 7 of the second amended complaint.

**ANSWER:** McGuires’ real property is located at 1016 W. Elder Ave., McHenry, IL 60051.



Dulberg's home is located at 4606 Hayden Ct., McHenry IL 60051

4. Identify and describe how you were invited to the McGuires' property to see if you wanted any of the wood from the tree, as alleged in paragraph 12 of your second amended complaint.

**ANSWER:** Dulberg received a call from Gagnon on June 27, 2011. Over the phone, Gagnon asked Dulberg if he wanted wood from the tree that the McGuires were removing and invited Dulberg to come see the wood.

5. Identify how William McGuire physically assisted in cutting down the tree, including the date, time, and location of his assistance, and describe how and when he supervised David Gagnon's actions in cutting down the tree, as alleged in paragraph 13 of your second amended complaint.

**ANSWER:** On June 28, 2011, Dulberg went to the McGuires' home and arrived between 8:30-9:00 am. He observed William McGuire working with Gagnon between that time and approximately noon that same day to remove tree branches from the tree. Gagnon continued to work throughout the day, after William stopped working. Caroline was present observing the work and supervising the work.

William and Caroline McGuire purchased and provided the chainsaw that was used to cut the branches. William and Caroline McGuire provided the ropes and straps that Gagnon used to climb the tree. Caroline had the chain saw owner's manual in her possession and instructed Gagnon what fuel/oil ratio to use for the chain saw.

William and Caroline McGuire instructed Gagnon as to which trees and branches that they wanted removed and where they wanted the trees and branches to fall during the removal process. Gagnon climbed into the tree and cut the branches utilizing the chain saw that the McGuire's provided. The branches would fall to the ground and William would pile the branches in the yard. He also started a fire and burnt some of the branches. At times, William started the chainsaw for Gagnon.

Throughout the entire day, Caroline observed the work and instructed Gagnon to "be careful"

on several occasions. She also provided water to both William and Gagnon.

William, Caroline, and Gagnon had several conversations throughout the morning as to which trees and branches to cut, how to best remove the trees and branches, where the trees and branches would fall, and how to clean them up. William and Caroline instructed Gagnon regarding those matters.

At approximately noon on that same date, William stopped working on cutting down the tree and went into the house. He then came out of the house and entered the McGuires' pool that is located on the same property.

Gagnon continued to work through the afternoon and early in the afternoon complained to Caroline that he was "working alone" and couldn't complete the work that day without help. Caroline and Gagnon then asked Dulberg to assist. Dulberg agreed to assist.

Dulberg assisted William McGuire by moving branches to the garden and started the chainsaw for Gagnon once while Gagnon was in the tree.

Dulberg then assisted Gagnon by moving the large branches that had already been cut and holding the large limbs steady so that Gagnon could cut them. Dulberg would hold the large branch while Gagnon would cut the smaller branches off the larger branch with the chain saw.

Gagnon would tell Dulberg which branches to pick up and move to the location where Gagnon was cutting them into smaller pieces by cutting off smaller limbs with the chain saw. Gagnon would also instruct Dulberg as to how and where to hold the limbs so that he could cut the branch with the chain saw. Gagnon placed the larger limb, which was now stripped of the smaller branches in a pile and instructed Dulberg to grab the next limb, which still had the smaller branches, to start the process again.

The chain saw was very loud and little conversation occurred during the time the chain saw was on. Instead, Gagnon would gesture to communicate with Dulberg as to how he wanted the branch

held or moved.

No one cut down the entire tree that day, instead branches were removed from the tree and cut down into smaller pieces.

6. Identify and describe how Caroline McGuire supervised David Gagnon and William McGuire's actions, as alleged in paragraph 14 of the second amended complaint.

**ANSWER:** See answer to 5.

7. Identify the date, time, the location, and the exact words exchanged between Gagnon and the McGuires on the one hand and you on the other as alleged in paragraph 15 of your second amended complaint, in which it is alleged that were asked to assist the trimming and removal of the tree.

**ANSWER:** See answer to 5. Dulberg does not recall the "exact words exchanged" but does recall the incident as outlined in his answer to 5.

8. Identify what safety information was readily available to Caroline and William McGuire as alleged in paragraph 18 of your second amended complaint, and how you know this information.

**ANSWER:** Caroline and William McGuire had the owner's manual to the chain saw. Caroline was reading parts of it aloud to Gagnon in the morning of June 28, 2011. Dulberg observed Caroline in possession of the owner's manual and saw her reading it in the morning of June 28, 2011.

The owner's manual had safety instructions and warnings that would have prevented the accident.

9. Did you request any protective equipment or other safety devices from the McGuires or Gagnon while you provided assistance to Gagnon in operating the chainsaw?

**ANSWER:** No, Gagnon instructed Dulberg as to what to do and Dulberg never operated the chain saw or read the owner's manual.

10. Did you assist Gagnon with trimming and removal of the tree? If so, describe

each and every action you took in assisting Gagnon with the cutting down or removal of the tree.

**ANSWER:** See answer to 5.

11. Identify and describe each and every conversation between and David Gagnon while you were assisting him with trimming or cutting down the tree.

**ANSWER:** See answer to 5.

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

**ANSWER:**

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is \$650 per month.

2. 1999-2011 Juskie Printing

Paul Dulberg served as an independent contractor for Juskie Printing performing graphic design and prepress functions.

From 1999-2006, this was a barter arrangement.

From 2007-2011, Paul Dulberg earned approximately \$18,000 per year.

See tax documents.

3. Intermatic Incorporated

1998-2002 Intermatic Incorporated, Offset Press Operator I

2002-2007 Intermatic Incorporated, Graphic Designer

2010 Intermatic Incorporated, Independent Contractor for Graphic Design

See tax documents for income information.

See job description provided with documents.

4. 2011 Art Material Services, Material Handler

Operated and maintain thread roller.

See tax documents for income information.

13. Did you suffer any serious personal injury and/or illness within ten years prior to the date of the occurrence? If so, describe where and how you were injured and/or became ill and describe the injuries and/or illness suffered.

**ANSWER:**

1. Migraine Headaches, treated at home.

2. 2002. Rear end collision at Hayden Dr and Johnsburg/Wilmot Rd., in McHenry, IL.

See medical records produced.

3. Approx. 2004, Chest Infection. Treater: Dr. Sek. Treated with inhaler and antibiotics

4. 2005. Broken Foot. Treated at Centegra Hospital in McHenry. Scott Dulberg stepped on Paul Dulberg's bare right foot.

14. Have you suffered any serious injury and/or illness since the date of the occurrence? If so, state when, where, and how you were injured and/or became ill and describe the injury and/or illness suffered.

**ANSWER:**

1. 2011 to present. Migraines.  
Treaters: Dr. Levin  
Dr. Terrance Lee  
Investigation Continues.

2. 2013 Hemorrhoid related to stress. Treater: Dr. Conway

3. 2016 Dog Bite to Left Leg. Treater: Centegra, McHenry.

a. Dulberg broke up a fight between his dog and the neighbors' dog when he was bitten by a neighbor's dog.

4. Enlarged Prostate Treaters: Dr. Berger, The Uro Center, Lake Zurich, Illinois.

Dr. Elterman and Dr. Tarnauskas, Elterman Center, Skokie, Illinois.

Investigation continues. No other major illness or injuries relevant to this case.

15. Have you filed any claim for workers compensation benefits in the ten years prior to the underlying accident of June 28, 2011? If so, state the name and address of your employer, the date(s) of the accidents, the identity of the insurance company that paid you such benefits and the case nos. and jurisdictions where filed.

**ANSWER:** No.

16. State the personal injuries sustained by you as the result of the underlying occurrence.

**ANSWER:** Chainsaw injury to the right arm. See medical records.

17. With regard to your injuries, state:

- (a) The name and address of each attending physician and/or health care professional;
- (b) The name and address of each consulting physician and/or health care professional;
- (c) The name and address of each person and/or laboratory taking an x-ray, MRI and/or other radiological tests of you;
- (d) The date or inclusive dates on which each of them rendered you service;
- (e) The amounts to date of respective bills for services; and
- (f) From which of them you have written reports

**ANSWER:** See medical records provided.

18. As a result of your personal injuries from the underlying case, were you a patient or outpatient at any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

**ANSWER:** See medical records provided.

19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:
- (a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
  - (b) The date or inclusive dates on which you were unable to work;
  - (c) The amount of wage and/or income lost by you; and
  - (d) The name and address of your present employer and/or wage and/or salary.

**ANSWER:** Paul Dulberg was self-employed and unable to work after the accident. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

20. State any and all other expenses and/or losses you claim as a result of the occurrence in the underlying case or resulting from any alleged legal malpractice committed by Popovich or Mast. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm, and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid, and if so, by whom it was so paid and describe the reason and/or purpose for each expense and/or loss.

**ANSWER:** Investigation continues. Medical costs, lost wages, loss of use, permanent disability resulting from injury, and pain and suffering.

21. Were any photographs, movies, and/or videotapes taken of the scene of the occurrence or the persons and/or equipment involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

**ANSWER:** Photograph of Mr. Gagnon. See all photographs produced with request to produce.

22. Had you consumed any alcoholic beverage within the 12 hours immediately prior to the occurrence or had you used any drugs or medications within 24 hours immediately prior to the occurrence. If so, state the name(s) and address(es) of those from whom it was obtained, where it was used, the particular kind and amount of drug, medication, or alcohol so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication or alcohol.

**ANSWER:** Dulberg may have taken Naproxen sodium prior to the accident. Naproxen

sodium is a pain reliever available over the counter. Dulberg does not recall whether he took the drug the night before or the day of the accident, but he did take it on a regular basis at that time. He did not consumer any other drugs or alcohol during that time.

23. Describe why you agreed to a binding mediation in the summer of 2016 as alleged in paragraph 52 of your second amended complaint.

**ANSWER:** At that time, a bankruptcy trustee was appointed by the bankruptcy court and the bankruptcy trustee filed a motion for binding mediation that was granted.

24. Identify the date on which you provided any settlement authority to Hans Mast or the Popovich firm, and the amount of any specific settlement authority to make any settlement demand upon the defendants in the underlying case.

**ANSWER:** Specific settlement authority was never given. On November 4, 2013, Mast was granted authority to investigate a settlement, but a specific dollar amount was never provided. On or around January 29, 2014, Dulberg signed the settlement agreement.

25. Identify and describe the date on which you received a copy of the settlement agreement from Mast in the underlying case, the date on which you executed the settlement agreement and the date on which you mailed the executed settlement agreement to Mast.

**ANSWER:** January 29, 2014, received, signed and mailed back to Mast.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

**ANSWER:** Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that Dulberg would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to



XFINITY Connect

hansmast@comcast.net

+ Font Size -

**Re: Dave's Best and oldest friend John****From :** Paul Dulberg <pdulberg@comcast.net>

Tue, Nov 19, 2013 02:29 AM

**Subject :** Re: Dave's Best and oldest friend John**To :** Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg  
847-497-4250  
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

>

> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

>

> Sent from my iPhone

>

>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

>>

>> Only 5, That's not much at all.

>> Is this a take it or leave it or do we have any other options?

>>

>> If you want a negligence case for the homeowners ask what happened immediately after the accident.

>>

>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners Insurance.

>>

>> They all left me out in the yard screaming for help while they were busy making sure they were covered.

>>

>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

>>

>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

>>

>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

>>

>> I'm not happy with the offer.

>>

>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.

>>

>> Paul

>>

>> Paul Dulberg

>> 847-497-4250

>> Sent from my iPad

>>

>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

>>>

>>> Im waiting to hear from John. I tried calling him last week, but no one answered.

>>>

>>> In addition, the McGuire'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 will likely get out of the case on a motion at

EXHIBIT # 2  
2-19-20

some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

>>>

>>> Let me know what you think..

>>>

>>> Hans

>>> ----- Original Message -----

>>> From: Paul Dulberg <pdulberg@comcast.net>

>>> To: Hans Mast <hansmast@comcast.net>

>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

>>> Subject: Dave's Best and oldest friend John

>>> Hans,

>>> Just spoke with John Choyinski again about talking with you.

>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.

>>> I believe he will try and call sometime tomorrow.

>>> Paul

>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.

>>> Paul Dulberg

>>> 847-497-4250

>>> Sent from my iPad

---

## MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the \$5,000 offer. Paul wants to read the depositions of the McGuire's and also wants us to order his and Dave's deposition to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's depositions. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

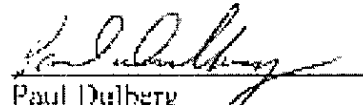
Hans

EXHIBIT # 3

2-19-20

### VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Paul Dulberg

THE UNITED STATES OF AMERICA  
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J.  
POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

Katherine M. Keefe  
Clerk of the Circuit Court  
\*\*\*Electronically Filed\*\*\*  
Transaction ID: 17111117451  
17LA000377  
11/28/2017  
McHenry County, Illinois  
22nd Judicial Circuit  
\*\*\*\*\*

NOTICE

THIS CASE IS HEREBY SET FOR A  
SCHEDULING CONFERENCE IN  
COURTROOM 201 ON  
02/27/2018, AT 9:00 AM.  
FAILURE TO APPEAR MAY RESULT IN  
THE CASE BEING DISMISSED OR AN  
ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW  
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as

"DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint  
against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as  
"POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the  
following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was  
such a resident at all times complained of herein.
2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm  
operating in McHenry County, Illinois, and transacting business on a regular and daily basis in  
McHenry County, Illinois.
3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW  
OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of  
Illinois, and was so licensed at all times relevant to this Complaint.

4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

---

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of \$260,000.00, along with lost wages in excess of \$250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as Exhibit A.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as Exhibit B, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as Exhibit A, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.

11. That as Exhibit B reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them

there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of \$5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of \$5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.

16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of \$660,000.00 in gross, and a net award of \$561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to \$300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as Exhibit D.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois,

McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the



mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

- a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;
- b) Failed to thoroughly investigate liability issues against property owners of the subject property;
- c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;
- d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;
- e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;
- f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;
- g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;

h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;


j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of \$5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

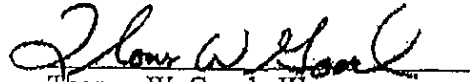
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his  
attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

  
Thomas W. Gooch, III

Thomas W. Gooch, III  
THE GOOCH FIRM  
209 S. Main Street  
Wauconda, IL 60084

847-526-0110

ARDC No.: 3123355

[gooch@goochfirm.com](mailto:gooch@goochfirm.com)

[office@goochfirm.com](mailto:office@goochfirm.com)

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3 %) of my recovery from my claim by suit or settlement; this will increase to 44 % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

[Signature]  
Client

\_\_\_\_\_  
Client

Date: \_\_\_\_\_

LAW OFFICES OF THOMAS J. POPOVICH

By: [Signature]

Date: \_\_\_\_\_

LAW OFFICES OF THOMAS J. POPOVICH, P.C.  
3416 West Elm Street  
McHenry, Illinois 60050  
815/344-3797



**COPY**

MAY 15 2012

KATHLEEN M. KADE,  
McHENRY CT. CLK.

STATE OF ILLINOIS )  
COUNTY OF McHENRY ) SS

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,  
Plaintiff,

vs.

No.:

12LA178

DAVID GAGNON, Individually, and as  
Agent of CAROLINE MCGUIRE and BILL  
MCGUIRE, and CAROLINE MCGUIRE  
and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF  
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,  
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE  
MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,  
County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE  
lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE  
BY LOCAL RULE 3.10  
THIS CASE IS HEREBY SET FOR SCHEDULING  
CONFERENCE IN COURTROOM 206 ON  
JULY 18, 2012, AT 9:00 AM PM  
FAILURE TO APPEAR MAY RESULT IN THE CASE  
BEING DISMISSED OR AN ORDER OF  
DEFAULT BEING ENTERED.

NOTICE  
BY LOCAL RULE 3.10  
THIS CASE IS HEREBY SET FOR SCHEDULING  
CONFERENCE IN COURTROOM 206 ON  
JULY 20, 2012, AT 9:00 AM PM  
FAILURE TO APPEAR MAY RESULT IN THE CASE  
BEING DISMISSED OR AN ORDER OF  
DEFAULT BEING ENTERED.

ALL-STATE LEGAL  
PLAINTIFF'S  
EXHIBIT  
B

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scared and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.



Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the

Defendant, DAVID GAGNON, not or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

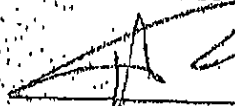
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

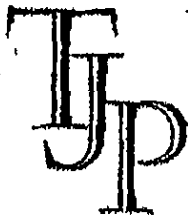
22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,  
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs  
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

  
\_\_\_\_\_  
One of the Attorneys for Plaintiff

Hans A. Mast  
LAW OFFICES OF THOMAS J. POPOVICH, P.C.  
3416 West Elm Street  
Lake, Illinois 60050  
(815) 344-3797  
ARDC No. 06203684



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET  
McHENRY, ILLINOIS 60050  
TELEPHONE: 815.344.3797  
FACSIMILE: 815.344.5280  
[www.popovichlaw.com](http://www.popovichlaw.com)

THOMAS J. POPOVICH  
HANS A. MAST  
JOHN A. KORHAK

MARK J. VOGG  
JAMES P. TUTAJ  
ROBERT J. LUMBER  
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg  
4606 Hayden Court  
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*  
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

**COPY**  
HANS A. MAST

smg  
Enclosure



WAUKESHA OFFICE  
210 NORTH MARTIN LUTHER  
KING JR. AVENUE  
WAUKESHA, IL 60085

### GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22<sup>nd</sup> Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012-LA-178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

- c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: \_\_\_\_\_

PAUL DULBERG

STATE OF ILLINOIS       )  
                                  ) SS.  
COUNTY OF MCHENRY    )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this \_\_\_\_\_ day of January, 2014.

\_\_\_\_\_  
Notary Public



## Binding Mediation Award

Paul Dulberg

v.

ADR Systems File # 33391BMAG

David Gagnon

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of:

Paul Dulberg

Gross Award:

\$660,000.

Comparative fault:

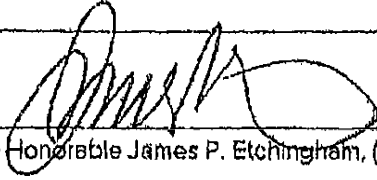
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% (if applicable)

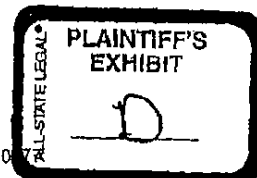
Net Award:

\$561,000

Comments/Explanation

Medical\$ 60,000.Future medical\$ 200,000.Lost wage\$ 250,000.P & S75,000.L & L75,000.
  
 The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602  
 312.960.2280 • Info@adrsystems.com • www.adrsystems.com



IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,  
PLAINTIFF,

v.

THE LAW OFFICES OF THOMAS POPOVICH,  
and HANS MAST,  
DEFENDANTS.

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)

Case No. 17 LA 377

NOTICE OF FILING

TO: George Flynn  
Clausen Miller, PC  
10 S. LaSalle St.  
Chicago, IL 60603  
[gflynn@clausen.com](mailto:gflynn@clausen.com)

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams  
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773  
Julia C. Williams, ARDC No. 6296386  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
312.357.1515  
[ed@clintonlaw.net](mailto:ed@clintonlaw.net)  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch  
Mary Winch

EXHIBIT # 5  
2-19-20



THE UNITED STATES OF AMERICA  
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J.	)	
POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendant.	)	

**SECOND AMENDED COMPLAINT AT LAW**

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

**COUNT I  
LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.
2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.
3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

**B. Relevant Facts**

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or should have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of \$260,000, lost wages in excess of \$250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for \$5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the \$5,000.00, "the McGuire'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 will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." \* \* \* "So if we do not accept their \$5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the \$5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of \$5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for \$5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to \$100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the \$5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

53. In December of 2016, Dulberg was awarded a gross amount of \$660,000 and a net award of \$561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately \$300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

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

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

- a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
- b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
- c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing

Dulberg that Gagnon's insurance policy was "only \$100,000" and no insurance company would pay close to that;

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

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

f) Coerced Dulberg, verbally and through emails, into accepting a settlement with the McGuires for \$5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.



Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his  
attorneys The Clinton Law Firm

/s/ Julia C. Williams  
Julia C. Williams

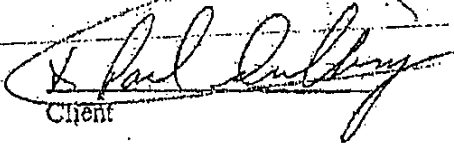
Edward X. Clinton, Jr., ARDC No. 6206773  
Julia C. Williams, ARDC No. 6296386  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
312.357.1515  
[ed@clintonlaw.net](mailto:ed@clintonlaw.net)  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~10%~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

  
Client

LAW OFFICES OF THOMAS J. POPOVICH

By:   
\_\_\_\_\_

Client

Date: \_\_\_\_\_

Date: \_\_\_\_\_

LAW OFFICES OF THOMAS J. POPOVICH, P.C.  
3416 West Elm Street  
McHenry, Illinois 60050  
815/344-3797



**COPY**

MAY 15 2012

KATHLEEN M. KILPATRICK  
McHENRY CTY. CLK.

STATE OF ILLINOIS )  
 )SS  
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.:

17LA178

DAVID GAGNON, Individually, and as  
Agent of CAROLINE MCGUIRE and BILL  
MCGUIRE, and CAROLINE MCGUIRE  
and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF  
THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON,  
Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE  
McGUIRE and BILL MCGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry,  
County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE  
lived, controlled, managed and maintained a single family home located at 1016 W. Elder  
Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE  
BY LOCAL RULE 8.10  
THIS CASE IS HEREBY SET FOR SCHEDULING  
CONFERENCE IN COURTROOM 206 ON  
JULY 18, 2012, AT 2:00 PM  
FAILURE TO APPEAR MAY RESULT IN THE CASE  
BEING DISMISSED OR AN ORDER OF  
DEFAULT BEING ENTERED.

NOTICE  
LOCAL RULE 8.10  
ON OR BEFORE JULY 18, 2012, THE CASE MUST BE SET FOR SCHEDULING  
CONFERENCE IN COURTROOM 206 ON  
JULY 18, 2012, AT 2:00 PM  
FAILURE TO APPEAR MAY RESULT IN THE CASE  
BEING DISMISSED OR AN ORDER OF  
DEFAULT BEING ENTERED.

**EXHIBIT**

**R**

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, not work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.

21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

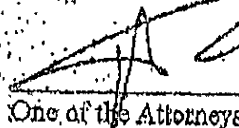
- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,  
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs  
of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

  
One of the Attorneys for Plaintiff

Hans A. Mast  
LAW OFFICES OF THOMAS J. POPOVICH, P.C.  
3416 West Elm Street  
Lake, Illinois 60050  
(815) 344-3797  
ARDC No. 06209684

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Subject:** Fwd: Dave's Best and oldest friend John  
**Date:** December 28, 2016 10:33:35 AM CST  
**To:** paul\_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Date:** November 20, 2013 at 7:26:53 AM CST  
**To:** Hans Mast <hansmast@comcast.net>  
**Subject:** Re: Dave's Best and oldest friend John

Morning Hans,  
Ok we can meet. I will call Sheila today and set up a time.  
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.  
I need to read it myself and any links to recent case law in this area would be helpful as well.  
Thanks,  
Paul

Paul Dulberg  
847-497-4250  
Sent from my iPad

On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:

Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.

— Original Message —

**From:** Paul Dulberg <pdulberg@comcast.net>  
**To:** Hans Mast <hansmast@comcast.net>  
**Sent:** Tue, 19 Nov 2013 02:29:56 -0000 (UTC)  
**Subject:** Re: Dave's Best and oldest friend John

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul  
Paul Dulberg  
847-497-4250  
Sent from my iPad

On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

Sent from my iPhone

On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Only 5, That's not much at all.  
Is this a take it or leave it or do we have any other options?

If you want a negligence case for the homeowners ask what happened immediately after the accident.

Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg  
847-497-4250  
Sent from my iPad

On Nov 18, 2013, at 1:28 PM, Hans Mast <[hansmast@comcast.net](mailto:hansmast@comcast.net)> wrote:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire'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 will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

Hans

----- Original Message -----

From: Paul Dulberg <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>

To: Hans Mast <[hansmast@comcast.net](mailto:hansmast@comcast.net)>

Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

Subject: Dave's Best and oldest friend John

Hans,

Just spoke with John Choyinski again about talking with you.

I am leaving your number with him as he has agreed to talk with you about David Gagnon.

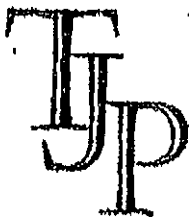
I believe he will try and call sometime tomorrow.

Paul

Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

Sorry for the rant but Dave was a complete ass all the way and deserves this.

Paul Dulberg  
847-497-4250  
Sent from my iPad



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET  
McHENRY, ILLINOIS 60050  
TELEPHONE: 815.344.3797  
FACSIMILE: 815.344.5280  
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THOMAS J. POPOVICH  
HANS A. MAST  
JOHN A. KONIAR

MARK J. VOOG  
JAMES P. TUTAJ  
ROBERT J. LUMBER  
THERESA M. FREEMAN

January 24, 2014

Paul Dulberg  
4606 Hayden Court  
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*  
McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

**COPY**  
HANS A. MAST

smg  
Enclosure



WAUKESHA OFFICE  
210 NORTH MARTIN LUTHER  
KING JR. AVENUE  
WAUKESHA, IL 60085

**GENERAL RELEASE AND SETTLEMENT AGREEMENT**

NOW COMES PAUL DULBERG, and in consideration of the payment of Five Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; Improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22<sup>nd</sup> Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012-LA-178, and that this settlement is contingent upon WILLIAM MCGUIRE and CAROLYN MCGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

- c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: \_\_\_\_\_

PAUL DULBERG

STATE OF ILLINOIS       )  
                                  ) SS.  
COUNTY OF MCHENRY    )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this \_\_\_\_\_ day of January, 2014.

\_\_\_\_\_  
Notary Public

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Subject:** Fwd: McGuire settlement  
**Date:** December 28, 2016 10:21:55 AM CST  
**To:** paul\_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Date:** January 29, 2014 at 1:59:31 PM CST  
**To:** Hans Mast <hansmast@comcast.net>  
**Subject:** Re: McGuire settlement

Ok, it's signed and in the mail.  
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.  
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.  
Paul

Paul Dulberg  
847-497-4250  
Sent from my iPad

On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:

SSD has to be part of it...its not going to effect anything...  
We can't prevent disclosure of the amount...

----- Original Message -----

**From:** Paul Dulberg <pdulberg@comcast.net>  
**To:** Hans Mast <hansmast@comcast.net>  
**Sent:** Wed, 29 Jan 2014 17:47:39 -0000 (UTC)  
**Subject:** Re: McGuire settlement

What and why do those questions have any relevance at all and why do they need to be part of this agreement?  
Particularly the one about being eligible.

Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.

Is it possible to make this agreement blind to the McGuires or David Gagnon?

What I mean is can we make it so that the amount of money cannot be told to them in any way?

It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.

Paul Dulberg

847-497-4250

Sent from my iPad

On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:

Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...

----- Original Message -----

**From:** Paul Dulberg <pdulberg@comcast.net>  
**To:** Hans Mast <hansmast@comcast.net>  
**Sent:** Wed, 29 Jan 2014 16:16:04 -0000 (UTC)  
**Subject:** McGuire settlement

Here is a copy of the first page.

It has check boxes and one of the check boxes says;

I am not eligible to receive SSI or SSDI.

Another says;

I am not receiving SSI or SSDI.

As you know, I have applied for SSDI and SSI



**From:** Paul Dulberg <pdulberg@comcast.net>  
**Subject:** Fwd: Memo  
**Date:** December 27, 2016 6:11:20 PM CST  
**To:** paul\_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Date:** February 22, 2015 at 7:42:25 PM CST  
**To:** Hans Mast <hansmast@att.net>  
**Subject:** Re: Memo

To believe David's version of events you must believe I was committing suicide.  
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...  
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg  
847-497-4250  
Sent from my iPad

On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:

Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only \$100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.

Sent from my iPhone

On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.  
I agree showing me the memo is a good idea it's just not the accuracy I expected.  
I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.

What's left for me?

Facebook, scrap booking, crafts, etc... A life of crap...

With ongoing pain and grip issues in my dominate arm/hand that are degenerative.

This is as total as it gets for us in the working class short of being paralyzed or dead.

I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.

What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.







## Binding Mediation Award

Paul Dulberg

v.

ADR Systems File # 33391BMAG

David Gagnon

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of:

Paul Dulberg

Gross Award:

\$660,000.

Comparative fault:

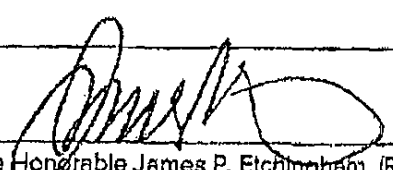
15

% (if applicable)

Net Award:

\$561,000

Comments/Explanation

Medical\$ 60,000.Future medical\$ 200,000.Lost wage\$ 250,000.PJS75,000.LNL75,000.
  
 The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 25 • Chicago, IL 60602  
 312.960.2280 • Info@adrsystems.com • www.adrsystems.com

EXHIBIT

G

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #1711117451 / Case #17LA000

Page 19 of 19

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

Page 25 of 25

## Pamela Walker

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**From:** McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>  
**Sent:** Monday, December 10, 2018 1:37 PM  
**To:** George K. Flynn; Pamela Walker  
**Subject:** 17LA000377 - 2 Documents Filed



**17LA000377**

**DULBERG, PAUL VS MAST, HANS, ET AL**

Doc Type	COAA
Description	COMPLAINT - AMENDED
Date Filed	12/6/2018
Image Link	<a href="#">View Document Image</a>

Doc Type	NOTF
Description	NOTICE - FILING
Date Filed	12/6/2018
Image Link	<a href="#">View Document Image</a>

**NOTE:** E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Subject:** Fwd: Just received your mailed letter  
**Date:** December 27, 2016 7:10:43 PM CST  
**To:** paul\_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Date:** September 23, 2014 at 9:06:46 PM CDT  
**To:** Hans Mast <hansmast@comcast.net>  
**Subject:** Fwd: Just received your mailed letter

Hans,  
if I use a chainsaw and cut you badly who is going to believe me when I say it's not my fault, Hans just fell into it?

Who in their right mind is going to believe me when your pointing your finger at me saying I did it?

Who?

Begin forwarded message:

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Date:** September 23, 2014 at 8:25:03 PM CDT  
**To:** Hans Mast <hansmast@comcast.net>  
**Subject:** Re: Just received your mailed letter

First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw. I was but a lowly printer/graphic designer my whole life and never asked for anyone's sympathy till now.

Secondly, I'm sorry I must live among a bunch of potential jurors that you don't trust to just do the right thing.

Thirdly, I'm most sorry for agreeing to lend David Gagnon a hand when he needed some help, I had no idea he was going to try and lop it off.

Fourth, I'm sorry you don't feel good about pushing for a trial. I wish whatever mysterious evidence you seek would be shared with me because without a video camera I can only say what I've seen from direct experience. And I guess in this case "me" the victim isn't credible enough but the one wielding a chainsaw that hurt me is.

A few questions from a layman,

How much could a trial actually cost?

What,

\$50,000

\$150,000

Does it even cost as much as a car?

What number?

How much would you hope to get for us in a settlement?

How much could be expected if the trial does proceed and we have a favorable outcome?

Hans, if your heart is not in this I'm sorry

Paul

Paul Dulberg  
847-497-4250  
Sent from my iPad

On Sep 23, 2014, at 7:39 PM, Hans Mast <hansmast@comcast.net> wrote:

Hi Paul. My view hasn't changed. I think each time we've talked I've always tried to be open about my reservation to take this

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case to trial. I just don't think we have enough evidence to prove our case and to invest the time and cost and preparing for trial and moving to trial just in my mind does not make sense to me. I have to be very realistic about things and honest with my opinion. It doesn't do you any good if I do not feel strongly about the case.

That's the very reason why I wanted to have this discussion. I want to give you the option of finding other counsel at this point if you really want to take the case to trial which I think ultimately will be necessary. I just do not believe strongly that defense counsel will offer much in the way of a settlement. Although I will ask him if he is going to make an offer and maybe that will allow you to make a better judgment on this.

Sent from my iPhone

On Sep 23, 2014, at 7:17 PM, Paul Dulberg <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)> wrote:

Before I proceed,

Why the change of heart?

I mean, last month your response was we are setting a date for trial or something like that but Now it's settle or find new council again.

Paul

Paul Dulberg

847-497-4250

Sent from my iPad

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Subject:** Fwd: Bad night  
**Date:** December 27, 2016 7:07:16 PM CST  
**To:** paul\_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Date:** September 26, 2014 at 6:32:40 PM CDT  
**To:** Hans Mast <hansmast@comcast.net>  
**Subject:** Bad night

Hans,

Last evening I was in the hospital with the most severe migraine I've ever had.

This morning I filed for bankruptcy with David Stretch.

This afternoon I spent with my regular physician Dr Zaide doing a follow up from yesterday.

And right now, I have to email you. All when I still have a slight residual headache and should be in bed.

At first I thought the migraine was brought on by the medications I'm taking but it wasn't, it was brought on after our discussions. Now I can't prove that but it seems pretty obvious to me. Joke no pun intended there!

That migraine made me realize I need the stress of this situation over with. All the stress on top of losing everything is too much and I'd rather live than die from it all before my body does something worse.

My body is not reacting well and the migraines are getting more frequent and worse. Have you ever vomited at the same time as defecating while being in some of the most excruciating pain in your life?

If not, neither did I till the chainsaw went through my arm. That's when the migraines became more frequent, stronger and faster coming on. And now for the first time during the day.

Ever since I awoke this morning, all I can I think is the stress of it all is killing me more and more as the reality sets in and I just can't afford to care about it anymore.

My health means more than some lawsuits and the lure of money.

All because some idiot named David Gagnon forgot to tell me to move out of the way and he can't seem to admit it.

Yes, after reading his deposition and hearing it was my fault I was pissed.

In my anger I suspected all sorts of things. Including it being intentional especially after my discussions at his home only trying to get his homeowners policy number and him wanting money and threatening me for it.

Yes, my arm and elbow were hurt from his stupidity irregardless if some dr can link the two together or not.

Yes, there will be ongoing medical as a result of all this because it still hurts and doesn't work right.

Yes, I am now disabled irregardless of what SSDI appeal goes because of this.

Yes, I understand I'm screwed because of a system that allows one person to hurt another and even after a trial and judgement entered all they have to do is go file for bankruptcy in the same courthouse on the same day.

Yes, it just took me almost an hour just to type this.

Yes, yes, yes...

but none of it matters anymore!

Bottom line Hans... Do the best you can with what you got. I've got nothing more to lose or give. I need it all to just go away.

EXHIBIT # 7  
2-19-20

Dulberg 001462

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Subject:** Fwd: Memo  
**Date:** December 27, 2016 6:01:21 PM CST  
**To:** paul\_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>  
**Date:** February 22, 2015 at 9:38:57 PM CST  
**To:** Hans Mast <hansmast@att.net>  
**Subject:** Re: Memo

No answer, that's what I thought...

Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.  
Got it?

On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Is your wanting out a personal issue with me or is it strictly financial?

On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.  
In effect he did admit it was his fault.

On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

You do not have my consent to quit.

On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:

Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.

Sent from my iPhone

On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

To be honest, you took this case knowing it was my word vs. his.  
Now you back out because the value of the case isn't worth your time?  
You got some nerve and your earning the reputation of a shady lawyer

On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

To believe David's version of events you must believe I was committing suicide.  
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...  
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

EXHIBIT # 8  
2-19-20

Dulberg 001384

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE 22<sup>ND</sup> JUDICIAL CIRCUIT  
McHENRY COUNTY,

FILED *APE*

MAR 19 2015

KATHERINE M. MOSE  
McHENRY CTY. CLERK

PAUL DULBERG

vs.

Case Number 12 LA 178

DAVID GAGNON, ET AL.

APPEARANCE

THEREBY ENTER THE APPEARANCE OF

PAUL DULBERG  
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

- |   |  |
|---|--|
| <input type="checkbox"/> REGULAR COUNSEL              | <input type="checkbox"/> TRIAL COUNSEL                 |
| <input type="checkbox"/> SPECIAL & LIMITED APPEARANCE | <input checked="" type="checkbox"/> SUBSTITUTE COUNSEL |
| <input type="checkbox"/> PRO-SE                       | <input type="checkbox"/> COUNSEL IN FORCIBLE ENTRY     |
| <input type="checkbox"/> ADDITIONAL COUNSEL           | <input type="checkbox"/> APPELLATE COUNSEL             |
| <input type="checkbox"/> GUARDIAN AD LITEM            | <input type="checkbox"/> COURT APPOINTED COUNSEL       |

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED

*BB*

(Signature of Attorney filing appearance)

Name BRAD J. BALKE, P.C.

BRAD J. BALKE  
Printed Name

ARDC Number 6273304

Attorney for PLAINTIFF

Address 542 S. DEARBORN ST., STE 310

City, State Zip CHICAGO, IL 60603

Phone 312-986-8063

CG-APPT (Revised 12/01/00)

EXHIBIT # 9

2-19-20

Dulberg-002646



**Binding Mediation Agreement  
ADR Systems File # 33391BMAG**

**Revised for Special Billing**

**I. Parties**

- A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II
- B. David Gagnon, by attorney, Shoshan Reddington

**SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to \$3,500.00 of Plaintiff's Binding Mediation Costs.**

**II. Date, Time and Location of the Binding Mediation**

Date: Thursday, December 8, 2016  
Time: 1:30 P.M.  
Location: ADR Systems of America, LLC  
20 North Clark Street  
Floor 29  
Chicago, IL 60602  
Contact: Alex Goodrich  
312-960-2267

**III. Rules Governing the Mediation**

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

**A. Powers of the Mediator**

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

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## **B. Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes **MUST** be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

## **C. Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

## **D. Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
  - a. Medical records and medical bills for medical services;
  - b. Bills for drugs and medical appliances (for example, prostheses);
  - c. Property repair bills or estimates;
  - d. Reports of lost time from employment, and / or lost compensation or wages;
  - e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
  - f. Photographs;
  - g. Police reports;
  - h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
  - i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.

- a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and
  - b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.
3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**
4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016.**
5. The items are considered delivered as of the date that one of the following events occur:
  - a. If mailed, by the date of the postmark;
  - b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and
  - c. The date transmitted by facsimile or email.

6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

If emailing Submissions, please send to [submissions@adrsystems.com](mailto:submissions@adrsystems.com), however, please do not send anything over 50 pages, including exhibits.

The Honorable James P. Etchingham, (Ret.) (Mediator)  
C/O ADR SYSTEMS  
20 North Clark Street  
Floor 29  
Chicago, IL 60602

Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)  
BAUDIN LAW GROUP  
304 McHenry Avenue  
Crystal Lake, IL 60039

Shoshan Reddington, Esq. (Defense Attorney)  
LAW OFFICES OF STEVEN LIHOSIT  
200 N. La Salle Street  
Suite 2550  
Chicago, IL 60601

**E. Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

**F. Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").
  - a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.
  - b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **\$50,000.00**. Also, the maximum award to Paul Dulberg will be **\$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

**IV. Effect of this Agreement**

- A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

- B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

## V. Mediation Costs

### A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is \$2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred ("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

Administrative Fee	\$390.00 (Non-refundable)
Mediator's Review Time	\$450.00 per hour
Session Time	\$450.00 per hour
Mediator's Decision Writing Time	\$450.00 per hour
Mediator's Travel Time (if any)	\$75.00 per hour

### B. Responsibility for Payment

#### **\*\*Special Billing**

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.

3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.
5. **\*\*Defendant agrees to pay up to \$3,500.00 of Plaintiff's Binding Mediation Costs.**

#### VI. Acknowledgment of Agreement

- A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.
- B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: \_\_\_\_\_  
Paul Dulberg / Plaintiff Date

By: \_\_\_\_\_  
Kelly N. Baudin / Attorney for the Plaintiff Date

By: \_\_\_\_\_  
Randall Baudin, II / Attorney for the Plaintiff Date

By: \_\_\_\_\_  
Shoshan Reddington / Attorney for the Defendant Date

ADR Systems File # 33391BMAG  
ADR Systems Tax I.D. # 36-3977108  
Date of Hearing: Thursday, December 8, 2016



IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J.	)	
POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

**DULBERG'S SUPPLEMENTAL ANSWERS TO DEFENDANTS THE LAW OFFICES  
OF THOMAS J.  
POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds, in supplement, to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

**INTERROGATORIES**

**12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.**

**SUPPLEMENT TO ORIGINAL ANSWER:**

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor. Dulberg provided full time employment services to Sharp Printing, Inc. and thus was "employed" by Sharp Printing, Inc. However, Dulberg did not draw a salary from Sharp Printing, Inc. and did not receive any profits from the company.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

EXHIBIT # 11  
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Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is \$650 per month.

**19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:**

- (a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;**
- (b) The date or inclusive dates on which you were unable to work;**
- (c) The amount of wage and/or income lost by you; and**
- (d) The name and address of your present employer and/or wage and/or salary.**

**SUPPLEMENT TO ORIGINAL ANSWER:**

Paul Dulberg was self-employed by Sharp Printing and unable to work after the accident. He was also an independent contractor with Juskie Printing. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

**26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.**

**SUPPLEMENT TO ORIGINAL ANSWER:**

On December 8, 2016, the mediator issued a net award to Dulberg of \$561,000. Dulberg discovered he could not recover the entire mediation award from Gagnon. At that time Dulberg realized that Mast's advice to settle with the McGuires for \$5,000 was incorrect, because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning.

**27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.**

**SUPPLEMENT TO ORIGINAL ANSWER:**

Dr. Landford is a chainsaw expert who was retained by Dulberg during the mediation which occurred in 2016. Landford's expert opinion demonstrates that contrary to Mast's advice, the McGuires were liable for Gagnon's actions with the chainsaw. The expert report came out in February of 2016 and the mediation award was issued in December of 2016.

Respectfully submitted,

/s/ Julia C. Williams

Julia C. Williams

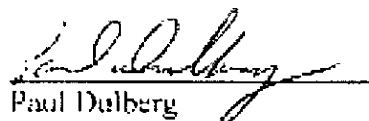
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.  
Julia C. Williams  
The Clinton Law Firm, LLC  
111 W Washington Street  
Suite 1437  
Chicago, IL 60602  
Attorneys for Plaintiff, Atty No. 35893  
312.357.1515  
ed@clintonlaw.net  
juliawilliams@clintonlaw.net



### VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Paul Dulberg

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J.	)	
POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

**DULBERG'S ANSWERS TO DEFENDANT HANS MAST'S  
INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant Hans Mast's Interrogatories To Plaintiff Paul Dulberg as follows:

**INTERROGATORIES**

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

**ANSWER:** Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

**ANSWER:** Various dates between October 2013 to January 2014. The advice was

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provided via email, text messages, telephone calls, and in person meetings.

Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg would that he would retain his claim against Gaganon and be able to seek and receive a full recovery from Gagnon.

All documents in Plaintiff's possession and control produced.

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

**ANSWER:** The McGuire's owned their home and vehicles. McGuire's also held bank accounts in their name. Investigation continues.

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than \$100,000?

**ANSWER:** The McGuire's produced insurance information to Dulberg on the day of the accident and also were represented by insurance counsel.

Respectfully submitted,

/s/ Julia C. Williams  
Julia C. Williams  
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.  
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J.	)	
POPOVICH, P.C. and HANS MAST,	)	
	)	
Defendants.	)	

**DULBERG'S RESPONSES TO DEFENDANTS THE LAW OFFICES  
OF THOMAS J. POPOVICH, P.C., s REQUESTS FOR PRODUCTION TO PLAINTIFF**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 214, responds to Defendants, The Law Offices of Thomas J. Popovich, P.C.'s Requests for Production To Plaintiff as follows:

**PRODUCTION REQUESTS**

1. Produce any and all records regarding the legal representation provided to you by the Law Offices of Thomas J. Popovich, P.C. ("Popovich") and/or Hans Mast ("Mast") in connection with the underlying case, against William McGuire, Caroline McGuire, and David Gagnon.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

2. Produce any and all correspondence, agreements, draft agreements, emails, letters, and any other documents between you and Popovich or Mast in connection with the legal representation in the underlying case.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

3. Produce any and all correspondence between you and any defendant from the underlying case, including Caroline McGuire, William McGuire, and David Gagnon, from June 28, 2011 to the present time.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

4. Produce any and all documentation relating to legal representation of you by any successor counsel in the underlying case.

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**RESPONSE:** Objection. Attorney Client Privilege.

5. Any and all engagement or disengagement letters or agreements between you and any attorney relative to legal services in the underlying case.

**RESPONSE:** Objection. Attorney Client Privilege.

6. Any and all pleadings and discovery (including deposition transcripts) created, filed, served, and received in the underlying case prior and subsequent to Popovich and Mast's withdrawal as your attorneys, including but not limited to any "high/low" agreement and any arbitration award, arbitration agreement, and any other documentation relating to any arbitration in the underlying case.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

7. Produce any and all documents relating in any way to your claimed damages in the instant case, including but not limited to any special damages, such as medical bills, medical records, costs, invoices, and lost wages.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

8. Produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created, and the date any recipient received the document.

**RESPONSE:** Plaintiff is only withholding attorney client communication between his successor counsel.

9. Produce any and all state and federal tax returns you filed in the ten year period prior to the accident of June 28, 2011.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

10. Produce any and all documentation of lost wages as alleged in paragraph 30 of your second amended complaint, including but not limited to any employment agreement, wage records, paystubs, cancelled checks, and any other documentation reflecting income in the ten year period prior to the date of the accident.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

11. Produce copies of any and all settlement documents, settlement agreements, cancelled checks or other payments made in connection with any settlement reached in the underlying case, including payment of approximately \$300,000 as alleged in paragraph 54 of your supplemental complaint.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

12. An affidavit signed you (and not your attorney) pursuant to Illinois Supreme Court Rule 214, certifying that your response is complete in accordance with each request contained herein.

**RESPONSE:** Produced.

Respectfully submitted,

/s/ Julia C. Williams

Julia C. Williams

One of Plaintiff's Attorneys

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seek and receive a full recovery from Gagnon.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

**ANSWER:**

Dr. Landford is a chain saw expert who was retained by Dulberg. See documents produced.

Respectfully submitted,

/s/ Julia C. Williams

Julia C. Williams

One of Plaintiff's Attorneys

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