

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;

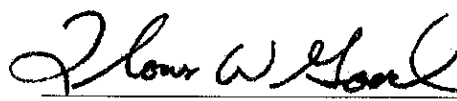
j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of \$5,000.00 for what was a grievous injury.

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.

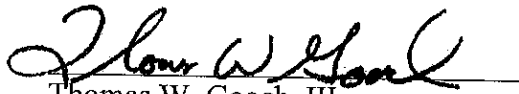
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys THE GOOCH FIRM,

A handwritten signature in black ink, appearing to read "Thomas W. Gooch, III", written over a horizontal line.

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
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 40 % 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.

Paul D. [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

KATHARINE M. KAEPF
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.:

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 I

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 20 ON
7/18/2012 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 20 ON
7/18/2012 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

(P)

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

1 - 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, act 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.

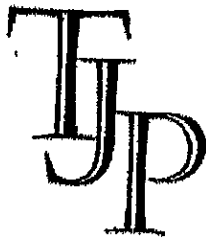
WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants,
CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs
of this action.

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

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

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

smq

Enclosure



WAUKEGAN OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, 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 22nd 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:

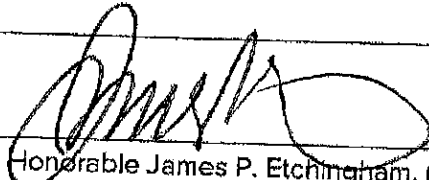
15

%(if applicable)

Net Award:

\$561,000

Comments/Explanation

Medical\$ 60,000.Future medical\$ 200,000.Lost Wage\$ 250,000.PIS75,000.LNL75,000.

 The Honorable James P. Etchingham, (Ret.)
