

In the Matter Of:

DULBERG vs THE LAW OFFICES OF THOMAS J. POPOVICH

17 LA 377

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.

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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 misled
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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