**From:** **CircuitClerk-MB** CircuitClerk@mchenrycountyil.gov
**Subject:** RE: [EXTERNAL] Records request for case 12LA326
**Date:** March 2, 2023 at 2:02 PM
**To:** Paul Dulberg pdulberg@icloud.com

Thank you for your payment! Attached please find copies of the documents you requested.

*Patty*
Administrative Specialist
McHenry County Circuit Clerk
circuitclerk@mchenrycountyil.gov

---

**From:** CircuitClerk-MB <CircuitClerk@mchenrycountyil.gov>
**Sent:** Wednesday, March 1, 2023 2:08 PM
**To:** Paul Dulberg <pdulberg@icloud.com>
**Subject:** RE: [EXTERNAL] Records request for case 12LA326

***** THIS IS FOR ELECTRONIC COPIES ONLY *****

Please reference **EXACTLY** this Case # 2012LA000326

The total cost for your request will be $50.50. To submit payment, follow the instructions for payment options on the link below:

https://www.govpaynow.com/gps/user/cyg/plc/6650

Upon receipt of payment, I will forward the requested document in the order that they came in as time allows.

Thank you,
*Patty*
Administrative Specialist
McHenry County Circuit Clerk
circuitclerk@mchenrycountyil.gov

---

**From:** Paul Dulberg <pdulberg@icloud.com>
**Sent:** Wednesday, March 1, 2023 2:03 PM
**To:** CircuitClerk-MB <CircuitClerk@mchenrycountyil.gov>
**Subject:** Re: [EXTERNAL] Records request for case 12LA326

Dear Patty,

I'll take the whole file for $50.50 in PDF form please.

Please send a link for payment.

Thank you,
Paul

> On Mar 1, 2023, at 1:59 PM, CircuitClerk-MB <CircuitClerk@mchenrycountyil.gov> wrote:
>
> The entire file is $50.50. If you want just court orders you will need to provide a list of the dates they were filed.
>
> *Patty*
> Administrative Specialist
> McHenry County Circuit Clerk
> circuitclerk@mchenrycountyil.gov
>
> ---
>
> **From:** Paul Dulberg <pdulberg@icloud.com>
> **Sent:** Wednesday, March 1, 2023 10:36 AM
> **To:** McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>; CircuitClerk-MB <CircuitClerk@mchenrycountyil.gov>
> **Subject:** [EXTERNAL] Records request for case 12LA326
>
> Dear Circuit Clerk,
>
> I am requesting and would like to purchase all file stamped court orders in PDF form for case 12LA326.
>
> Please provide the link for payment your response.
>
> Separately, I am also requesting a quote on the cost for all documents for case 12LA326.
>
> Thank you in advance for your help with this matter.
>
> Sincerely,
> Paul
>
> Paul Dulberg
> 4606 Hayden Ct.
> McHenry, IL 60051

McHenry, IL. 60051

847-497-4250
pdulberg@icloud.com



**CAUTION:** This email originated from outside of the County network. Do not click links or open attachments unless you recognize the sender and know the content is safe.

While mismatches between the actual SENDER field and the FROM field are common. It is also a common spoofing tactic. For additional reference, this email was actually sent from pdulberg@icloud.com

If you have any questions about the legitimacy of this email, please call the helpdesk at extension 4828.


2012LA000326.
zip

LETFCC

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

TO: Romanucci & Blandin
33 N LaSalle St Ste 2000
Chicago IL 60602

Konicek & Dillon
21 W State St
Geneva IL 60134

FILED
SEP 26 2012
KATHERINE M. KEEFE
McHENRY CO. CLK.

# NOTICE OF ASSIGNMENT OF NEW CASE NUMBER

Plaintiff Mark Mc Donald Special Administrator Estate of Julie Mc Donald, Jax Mc Donald Jordan Mc Donald, Chase Mc Donald

Defendant Law Offices Thomas J Paporick
James P Tutaj & Thomas J Paporick

Old Case Number 12 L 196

New Case Number 12 h A 326

This case was filed on September 26, 20 12. It is scheduled for Status on October 17, 20 12 at 9:00am in Courtroom 204.

Katherine M. Keefe
McHenry County Clerk of the Circuit Court

---

I, Kathleen O'Brien, Deputy Clerk, on oath state that I served this Notice by mailing a copy to each person to whom it is directed on September 27, 20 12.

Kathleen O'Brien
Signature

Signed and sworn to before me
this 26th day of September, 20 12

Amy L Peckham
Notary Public

Official Seal
Amy L Peckham
Notary Public State of Illinois
My Commission Expires 08/26/2015

CV-NOT20: Revised 12/01/08

LAD



CASE NUMBER 12LA926

# TRANSFERRED DOCUMENTS

L A W  R E C O R D



12-L-000196 H MCDONALD MARK V. LAW OFFFICES THOMA

MCDONALD CHLOE
MCDONALD IAN
MCDONALD JULIE EST
MCDONALD QUINLIN

CASE DISPOSED

ON JURY CALL 00/00/00

POPOVICH THOMAS J
TUTAJ JAMES P

01/06/12 MCDONALD MARK
01/09/12
1066 LEGAL MALPRACTICE COMPLAINT FILED ( 50,000.00 567.00
35875 ROMANUCCI & BLANDIN 33 N LASALLE #2200 CHICAGO IL 60602

01/09/12 MCDONALD MARK
01/09/12
3498 CASE MANAGEMENT CALL NOTICE MAILED 03/15/12 9:45 A.M.

02/14/12 MCDONALD MARK ROMANUCCI & BLANDIN
03/07/12
3331 NOTICE OF FILING FILED

02/14/12 MCDONALD MARK ROMANUCCI & BLANDIN
03/07/12
3372 PROOF OF SERVICE FILED

03/01/12 MCDONALD MARK ROMANUCCI & BLANDIN
03/07/12
2870 CERTIFICATE FILED

03/01/12 MCDONALD MARK ROMANUCCI & BLANDIN
03/07/12
3004 EXHIBITS FILED

03/01/12 MCDONALD MARK ROMANUCCI & BLANDIN
03/07/12
3331 NOTICE OF FILING FILED

03/01/12 MCDONALD MARK ROMANUCCI & BLANDIN
03/07/12
3390 MOTION FILED

03/08/12 LAW OFFICES THOMAS J P
03/12/12
1900 APPEARANCE FILED - FEE PAID - (JURY 436.00
37199 KONICEK & DILLON P.C. 21W STATE STREET GENEVA IL 60134

03/08/12 TUTAJ JAMES P
03/12/12
1900 APPEARANCE FILED - FEE PAID - (JURY 436.00
37199 KONICEK & DILLON P.C. 21W STATE STREET GENEVA IL 60134

03/08/12 POPOVICH THOMAS J
03/12/12
1900 APPEARANCE FILED - FEE PAID - (JURY 436.00
37199 KONICEK & DILLON P.C. 21W STATE STREET GENEVA IL 60134

03/08/12 LAW OFFFICES THOMA KONICEK & DILLON P.C.
03/12/12
2871 CERTIFICATE OF MAILING FILED

03/08/12 POPOVICH KONICEK & DILLON P.C.
03/08/12
3303 NOTICE OF MOTION FILED

03/08/12 LAW OFFFICES THOMA KONICEK & DILLON P.C.
03/12/12
3331 NOTICE OF FILING FILED

03/08/12 POPOVICH KONICEK & DILLON P.C.
03/08/12
3372 PROOF OF SERVICE FILED

03/08/12 POPOVICH KONICEK & DILLON P.C.
03/08/12
3390 MOTION FILED

03/08/12 POPOVICH KOGAN RANDYE A
03/08/12
4234 ORDER ON MOTION TO FILE APPEARANCE OR JURY DEMAND, ANSWER OR PLEAD - ALLOWED - 03/08/12 LD0000000

03/08/12 POPOVICH KOGAN RANDYE A
03/08/12
4234 ORDER ON MOTION TO FILE APPEARANCE OR JURY DEMAND, ANSWER OR PLEAD - ALLOWED - 03/29/12 LD0000000

03/08/12 POPOVICH KOGAN RANDYE A
03/08/12
4283 ORDER ON MOTION TO VACATE ANY OR ALL DEFAULT ORDERS - ALLOWED - LD0000000

03/08/12 POPOVICH KOGAN RANDYE A
03/08/12
4335 COURT DATE TO STAND - ALLOWED 03/15/12 LD0000000

03/15/12 MCDONALD MARK KOGAN RANDYE A
03/15/12
4231 ORDER ON MOTION TO FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS - ALLOWED - 03/29/12 LD0000000

03/15/12 MCDONALD MARK KOGAN RANDYE A
03/15/12
4253 ORDER ON MOTION TO PRODUCE EXHIBITS OR OTHER RECORDS OR DOCUMENTS OR PERSON - ALLOWED - 03/22/12 LD0000000

03/15/12 LAW OFFFICES THOM KOGAN RANDYE A
03/15/12
4288 ORDER ON MOTION TO ISSUE WRIT - ALLOWED - 03/29/12 LD0000000

03/15/12 MCDONALD MARK KOGAN RANDYE A
03/15/12
4296 ORDER ON MOTION TO DISCOVERY - ALLOWED - 05/29/12 LD0000000

03/15/12 MCDONALD MARK KOGAN RANDYE A
03/15/12
4296 ORDER ON MOTION TO DISCOVERY - ALLOWED - 05/29/12 LD0000000

03/15/12 LAW OFFFICES THOM KOGAN RANDYE A
03/15/12
4296 ORDER ON MOTION TO DISCOVERY - ALLOWED - 05/29/12 LD0000000

03/15/12 MCDONALD MARK KOGAN RANDYE A
03/15/12
4297 ORDER ON MOTION TO EXCHANGE INFORMATION - ALLOWED - 05/29/12 LD0000000

03/15/12 LAW OFFFICES THOM KOGAN RANDYE A
03/15/12
4297 ORDER ON MOTION TO EXCHANGE INFORMATION - ALLOWED - 05/29/12 LD0000000

03/15/12 MCDONALD MARK KOGAN RANDYE A
03/15/12
4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 05/29/12 LD0000000

03/15/12 MCDONALD MARK KOGAN RANDYE A
03/15/12
8232 CASE ASSIGNED TO CATEGORY 2 - DISC. COMPLETED IN 28 MONTHS LD0000000

03/29/12 LAW OFFFICES THOMAS POPOV KONICEK & DILLON P.C.
03/29/12
2870 CERTIFICATE FILED

03/29/12 LAW OFFFICES THOMAS POPOV KONICEK & DILLON P.C.
03/29/12
3303 NOTICE OF MOTION FILED 04/06/12 9:15 A.M.

03/29/12 LAW OFFFICES THOMAS POPOV KONICEK & DILLON P.C.
03/29/12
3390 MOTION FILED

03/29/12 LAW OFFFICES THOMAS POPOV KONICEK & DILLON P.C.
03/29/12
3397 MOTION SPINDLED 04/06/12 9:15 A.M.

03/30/12 TUTAJ JAMES P
03/30/12
2104 SUMMONS SERVED - PERSONAL SERVICE 01/16/12

03/30/12 POPOVICH THOMAS J
03/30/12
2104 SUMMONS SERVED - PERSONAL SERVICE 01/10/12

03/30/12 LAW OFFFICES THOMAS POPO
03/30/12
2106 SUMMONS SERVED - CORPORATION/COMPAN 01/10/12

04/03/12 TUTAJ JAMES P KONICEK & DILLON P.C.
04/05/12
2871 CERTIFICATE OF MAILING FILED

04/03/12 TUTAJ JAMES P KONICEK & DILLON P.C.
04/05/12
3004 EXHIBITS FILED

04/03/12 TUTAJ JAMES P KONICEK & DILLON P.C.
04/05/12
3331 NOTICE OF FILING FILED

04/04/12 MCDONALD MARK ROMANUCCI & BLANDIN
04/10/12
3080 INTERROGATORIES FILED

04/04/12 MCDONALD MARK ROMANUCCI & BLANDIN
04/10/12
3342 NOTICE TO PRODUCE FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN
04/10/12
3080 INTERROGATORIES FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN
04/10/12
3331 NOTICE OF FILING FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN
04/10/12
3331 NOTICE OF FILING FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN
04/10/12
3372 PROOF OF SERVICE FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN
04/10/12
3372 PROOF OF SERVICE FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN
04/10/12
3378 REQUEST TO ADMIT FILED

04/06/12 POPOVICH KOGAN RANDYE A
04/06/12
4253 ORDER ON MOTION TO PRODUCE EXHIBITS OR OTHER RECORDS OR DOCUMENTS OR PERSON - ALLOWED - LD0000000

04/06/12 POPOVICH KOGAN RANDYE A
04/06/12
4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 04/20/12 LD0000000

04/06/12 POPOVICH KOGAN RANDYE A
04/06/12
6007 ORDER ON MOTION TO TRANSFER TO OTHER VENUE - OUTSIDE COOK COUNTY - CONTINUED - 04/20/12 LD0000000

04/20/12 LAW OFFICE KOGAN RANDYE A
04/20/12
4217 ORDER ON MOTION TO CONTINUANCE - ALLOWED - 06/18/12 LD0000000

04/20/12 MCDONALDS KOGAN RANDYE A
04/20/12
4231 ORDER ON MOTION TO FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS - ALLOWED - 05/18/12 LD0000000

04/20/12 LAW OFFICE KOGAN RANDYE A
04/20/12
4231 ORDER ON MOTION TO FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS - ALLOWED - 06/08/12 LD0000000

04/20/12 LAW OFFICE KOGAN RANDYE A
04/20/12
4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 06/18/12 LD0000000

04/27/12 LAW OFFFICES THOMA KONICEK & DILLON P.C.
05/01/12
3321 NOTICE FILED

04/27/12 POPOVICH THOMAS J KONICEK & DILLON P.C.
05/01/12
3321 NOTICE FILED

04/27/12 TUTAJ JAMES P KONICEK & DILLON P.C.
05/01/12
3321 NOTICE FILED

05/01/12 TUTAJ JAMES P KONICEK & DILLON P.C.
05/03/12
2871 CERTIFICATE OF MAILING FILED

05/01/12 TUTAJ JAMES P KONICEK & DILLON P.C.
05/03/12
3321 NOTICE FILED

05/22/12 MCDONALD MARK ROMANUCCI & BLANDIN
05/23/12
2870 CERTIFICATE FILED

05/22/12 MCDONALD MARK ROMANUCCI & BLANDIN
05/23/12
3298 RESPONSE / REPLY - FILED

05/22/12 MCDONALD MARK ROMANUCCI & BLANDIN
05/23/12
3372 PROOF OF SERVICE FILED

05/22/12 MCDONALD MARK ROMANUCCI & BLANDIN
05/23/12
3372 PROOF OF SERVICE FILED

05/29/12 MCDONALD KOGAN RANDYE A
05/30/12
4331 STRIKE FROM CASE MANAGEMENT CALL - ALLOWED 05/29/12 LD0000000

05/29/12 MCDONALD KOGAN RANDYE A
05/30/12
4335 COURT DATE TO STAND - ALLOWED 06/18/12 LD0000000

05/29/12 MCDONALD KOGAN RANDYE A
05/29/12
4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 06/18/12 LD0000000

05/29/12 LAW OFFFICES THOM KOGAN RANDYE A
05/29/12
6007 ORDER ON MOTION TO TRANSFER TO OTHER VENUE - OUTSIDE COOK COUNTY - CONTINUED - 06/18/12 LD0000000

06/15/12 LAW OFFFICES THOMA KONICEK & DILLON P.C.
06/21/12
2871 CERTIFICATE OF MAILING FILED

06/15/12 POPOVICH THOMAS J KONICEK & DILLON P.C.
06/21/12
2871 CERTIFICATE OF MAILING FILED

06/15/12 TUTAJ JAMES P KONICEK & DILLON P.C.
06/21/12
2871 CERTIFICATE OF MAILING FILED

06/15/12 LAW OFFFICES THOMA KONICEK & DILLON P.C.
06/21/12

3004 EXHIBITS FILED

06/15/12 POPOVICH THOMAS J KONICEK & DILLON P.C.
06/21/12
3004 EXHIBITS FILED

06/15/12 TUTAJ JAMES P KONICEK & DILLON P.C.
06/21/12
3004 EXHIBITS FILED

06/15/12 LAW OFFFICES THOMA KONICEK & DILLON P.C.
06/21/12
3298 RESPONSE / REPLY - FILED

06/15/12 POPOVICH THOMAS J KONICEK & DILLON P.C.
06/21/12
3298 RESPONSE / REPLY - FILED

06/15/12 TUTAJ JAMES P KONICEK & DILLON P.C.
06/21/12
3298 RESPONSE / REPLY - FILED

06/15/12 LAW OFFFICES THOMA KONICEK & DILLON P.C.
06/21/12
3331 NOTICE OF FILING FILED

06/15/12 POPOVICH THOMAS J KONICEK & DILLON P.C.
06/21/12
3331 NOTICE OF FILING FILED

06/15/12 TUTAJ JAMES P KONICEK & DILLON P.C.
06/21/12
3331 NOTICE OF FILING FILED

06/18/12 MCDONALD KOGAN RANDYE A
06/18/12
4253 ORDER ON MOTION TO PRODUCE EXHIBITS OR OTHER RECORDS OR DOCUMENTS OR PERSON - ALLOWED - 07/02/12 LD0000000

06/18/12 LAW KOGAN RANDYE A
06/18/12
4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 07/02/12 LD0000000

07/02/12 POPOVICH KOGAN RANDYE A
07/02/12
4217 ORDER ON MOTION TO CONTINUANCE - ALLOWED - 08/06/12 LD0000000

07/02/12 POPOVICH KOGAN RANDYE A
07/02/12
4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 08/06/12 LD0000000

08/06/12 POPOVICH KOGAN RANDYE A
08/06/12
4007 TRANSFER TO OTHER VENUE - OUTSIDE COOK COUNTY - ALLOWED LD0000000

*** END OF DATA FOR CASE 12-L-000196 ** LAST UPDATED ON 08/06/12 ***

CHARGE TO PRINT 12L000196 IS 45.00 (B863 BOP 09/19/12)

TRANSCRIPT OF RECORD TO

MCHENRY COUNTY

FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT LAW DIVISION

COOK COUNTY CASE NUMBER

12L000196

MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minors

PLAINTIFF

V

DEFENDANT

LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH,

DOROTHY BROWN

CLERK OF THE CIRCUIT COURT

PER Andrea Barnes

DEPUTY CLERK

UNITED STATES OF AMERICA

STATE OF ILLINOIS }
COUNTY OF COOK } ss:

PLEAS, before the Honorable RANDYE A. KOGAN

one of the Judges of the Circuit Court of Cook County, in the State of Illinois, holding a branch Court of said Circuit Court, at the Court House in said County and State, on AUGUST 6, 2012.

PRESENT: The Honorable RANDYE A. KOGAN
Judge of the Circuit Court of Cook County

Attest: DOROTHY BROWN, Clerk.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |



## COMPLAINT AT LAW

NOW COME, the Plaintiffs, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, by and through their attorneys, ROMANUCCI & BLANDIN, LLC, and as their Complaint against the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH states as follows:

## GENERAL ALLEGATIONS

### PARTIES

1. On November 28, 2011, Plaintiff, MARK MCDONALD, was appointed as Special Administrator of the Estate of Julie Ann McDonald by the Circuit Court of Walworth County, Wisconsin, for purposes of filing and prosecuting this action (A copy of the Letters of Special Administration is attached hereto as Exhibit A).

2. On and before June 29, 2010, Plaintiff, MARK MCDONALD, was a resident of the City of Elkhorn, Walworth County, Wisconsin.

3. On and before June 29, 2010, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., was a professional corporation created by and under the laws of the State of Illinois.

4. On and before June 29, 2010, and at all times relevant hereto, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., maintained an office at 212 W. Washington St., Suite 808 in the City of Chicago, Cook County, Illinois and/or at 849 N. Franklin St., Suite 1409 in the City of Chicago, Cook County, Illinois.

5. On and before June 29, 2010, and at all times relevant hereto, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C. was a law firm consisting of attorneys licensed to practice law in the State of Illinois, and was actively practicing law in the area of medical malpractice litigation.

6. On and before June 29, 2010, and at all times relevant hereto, Defendant, JAMES P. TUTAJ was an attorney, licensed to practice law in the State of Illinois, and practiced law as a partner, member, principal, or associate with the Law Offices of Thomas J. Popovich, P.C.

7. On and before June 29, 2010, and at all times relevant hereto, Defendant, THOMAS J. POPOVICH, was an attorney, licensed to practice law in the State of Illinois, and practiced law as a partner, member, principal, or associate with Law Offices of Thomas J. Popovich, P.C.

**FACTS**

8. On November 15, 2005, Julie McDonald presented to Aurora Health Center in the City of Lake Geneva, Walworth County, Wisconsin with a fever of 102.5 and was seen by Dr. Theodore Galvani.

9. On said date, Dr. Galvani diagnosed Ms. McDonald with strep throat. Dr. Galvani prescribed antibiotics, commonly known as Levaquin 750 mg.

10. On November 15, 2005, after taking the prescribed dose of Levaquin, Ms. McDonald went into anaphylactic shock and died.

11. On November 16, 2005, an autopsy revealed that Ms. McDonald died of a Levoquin-induced anaphylactic shock.

12. At the time of her death, Julie McDonald left surviving her, Plaintiff, MARK MCDONALD, her surviving husband, Cole McDonald, her surviving adult son, Micaela McDonald, her adult daughter, Sydney McDonald, her adult daughter, Ian McDonald, her minor son, Quinlan McDonald, her minor son, and Chloe McDonald, her minor daughter.

13. Under Wisconsin law, Plaintiff, MARK MCDONALD, and his minor children, Ian McDonald, Quinlan McDonald, and Chloe McDonald were the beneficiaries of any recovery made arising out of a wrongful death/survival action.

14. Prior to November of 2008, Plaintiff, Mark McDonald hired Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C. to investigate and prosecute a medical malpractice case against Dr. Theodore Galvani and Aurora Health Center.

15. After being retained by Plaintiff, Defendants, JAMES P. TUTAJ and THOMAS J. POPOVICH were assigned to be the handling attorneys on the file.

16. The statute of limitations for medical malpractice actions filed in the State of Wisconsin is 3 years from the date the injured party knew or should have known of the negligence.

17. The statute of limitations for wrongful death actions filed in the State of Wisconsin is 3 years from the date of the injured person's death.

18. At no time relevant hereto, was Defendant, JAMES P. TUTAJ admitted to practice law in the State of Wisconsin.

19. At no time relevant hereto was Defendant, THOMAS J. POPOVICH admitted to practice law in the State of Wisconsin.

20. At no time relevant hereto were any attorneys retained or employed by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., licensed to practice law in the State of Wisconsin.

21. At no time relevant hereto, did Defendants, LAW OFFICES OF THOMAS J. POPOVICH, JAMES P. TUTAJ, or THOMAS J. POPOVICH, contract with, hire, or otherwise retain an attorney who was admitted to practice law in the State of Wisconsin for the purpose of investigating, filing, or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

22. At no time relevant hereto were the Defendants, JAMES P. TUTAJ, or THOMAS J. POPOVICH admitted to the Circuit Court of Walworth County, Wisconsin on a *pro hac vice* basis for the propose of filing or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

23. At no time relevant hereto were any attorneys retained or employed by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., admitted to the Circuit Court of Walworth County, Wisconsin on a *pro hac vice* basis for the purpose of filing or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

24. On March 17, 2009, Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, and LAW OFFICES OF THOMAS J. POPOVICH filed a medical malpractice action, captioned *McDonald v. Aurora Health Care, Inc., et al.*, in the Circuit Court of Walworth County, Wisconsin, Case No. 2009 CV 000393.

25. Said complaint was filed more than 3 years after the running of the statutes of limitations applicable to both medical malpractice actions and wrongful death actions in the State of Wisconsin.

26. Said complaint was signed and filed by an attorney who was not licensed to practice law in the State of Wisconsin.

27. On July 8, 2009, a certificate of non-service with respect to Dr. Galvini was returned to the Circuit Court of Walworth County, stating that Dr. Galvani was not served with a copy of the complaint and summons for the above referenced action.

28. Between July 8, 2009 and February 16, 2010, no further efforts were made by Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, and LAW OFFICE OF THOMAS J. POPOVICH, P.C. to effectuate service upon Dr. Galvani.

29. On February 16, 2009, an order of dismissal was entered in *McDonald v. Aurora Health Care, Inc.*, with respect to Dr. Galvani, stating that Dr. Galvani would be dismissed due for a lack of service and lack of prosecution.

30. On March 9, 2010, Dr. Galvani was dismissed from said action.

31. On June 29, 2010, on hearing on the Aurora Health Center's motion to dismiss, the Circuit Court of Walworth County, Wisconsin the Court found that *McDonald v. Aurora Health Care, Inc.* shall be dismissed due to the filing of the matter by an attorney not admitted to practice law in the State of Wisconsin.

32. On July 15, 2010, an order dismissing said action was entered.

33. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., take any action to vacate or alter said dismissal orders.

34. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., notify Plaintiff, MARK MCDONALD of the dismissal.

35. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., inform Plaintiff, MARK MCDONALD, that legal malpractice may have been committed.

36. At no time following dismissal did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., advise Plaintiff, MARK MCDONALD to consult with an attorney regarding any potential malpractice.

**COUNT I**
**(*McDonald v. Law Offices of Thomas J. Popovich* – Legal Malpractice)**

1 – 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count I, as though fully set forth herein.

37. At all times relevant herein, Defendant, James P. Tutaj, was an employee, agent, and/or servant of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

38. At all times relevant herein, in handling the matter of *McDonald v. Aurora Health Center, Inc., et al.*, Defendant, James P. Tutaj, was acting within the scope of his employment with Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

39. At all times relevant herein, Defendant, Thomas J. Popovich, was an owner, partner, principal, and/or shareholder of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

40. At all times relevant herein, Defendant, Thomas J. Popovich, was an employee, agent, and/or servant of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

41. At all times relevant herein, in handling the matter of *McDonald v. Aurora Health Center, Inc., et al.*, Defendant, Thomas J. Popovich, was acting within the scope of his agency, employment, and/or servant relationship with Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

42. Upon being retained by Mark McDonald, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

43. Notwithstanding said duty, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, committed one or more of the following negligent acts/or omissions:

a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;

b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;

c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;

d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;

e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;

f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;

g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;

h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;

i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;

j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;

k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or

l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.

44. On March 17, 2011, after obtaining a printout of the court docket from the Circuit Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald v. Aurora Health Center, Inc., et al.*, had been dismissed.

45. As a direct and proximate result of one or more of these negligent acts or omissions by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, Plaintiffs were denied their right to pursue the wrongful death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

46. As a further direct and proximate result of one or more of these negligent acts or omission by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs were denied their right to recover significant money damages as a result of the death of Julie McDonald.

WHEREFORE, Plaintiffs, MARK MCDONALD, individually, as Administrator of the Estate of Julie McDonald, deceased; and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, COLE MCDONALD, MICAELA MCDONALD, and SYDNEY MCDONALD, prays that a judgment be entered against

Defendant, LAW OFFICES OF THOMAS J. POPOVICH, for an amount in excess of $50,000.00, plus costs of pursing this action, and for any further relief this Court deems appropriate and just.

## COUNT II
## (*McDonald v. James P. Tutaj* – Legal Malpractice)

1 – 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count II, as though fully set forth herein.

37. At all times relevant herein, Defendant, JAMES P. TUTAJ, was an employee, agent, and/or servant of Defendant, Law Offices of Thomas J. Popovich.

38. At all times relevant herein, in handling the matter of *McDonald v. Aurora Health Center, Inc., et al.*, Defendant, JAMES P. TUTAJ, was acting within the scope of his employment with Defendant, Law Offices of Thomas J. Popovich.

39. Upon being retained by Mark McDonald, Defendant, JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

40. Notwithstanding said duty, Defendant, JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, committed one or more of the following negligent acts/or omissions:

a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;

b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;

c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;

d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;

e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;

f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;

g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;

h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;

i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;

j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;

k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or

l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.

41. On March 17, 2011, after obtaining a printout of the court docket from the Circuit Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald v. Aurora Health Center, Inc., et al.*, had been dismissed.

42. As a direct and proximate result of one or more of these negligent acts or omissions by JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, Plaintiffs were denied their right to pursue the wrongful death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

43. As a further direct and proximate result of one or more of these negligent acts or omission by JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs were denied their right recover significant money damages as a result of the death of Julie McDonald.

WHEREFORE, Plaintiffs, MARK MCDONALD, individually, as Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, COLE MCDONALD, MICAELA MCDONALD, and SYDNEY MCDONALD, prays that a judgment be entered against Defendant, JAMES P. TUTAJ, for an amount in excess of $50,000.00, plus costs of pursing this action, and for any further relief this Court deems appropriate and just.

## COUNT III
**(*McDonald v. Thomas J. Popovich* – Legal Malpractice)**

1 – 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count III, as though fully set forth herein.

32. At all times relevant herein, Defendant, THOMAS J. POPOVICH, was an owner, partner, principal, and/or shareholder of Defendant, Law Offices of Thomas J. Popovich.

33. At all times relevant herein, Defendant, THOMAS J. POPOVICH, was an employee, agent, and/or servant of Defendant, Law Offices of Thomas J. Popovich.

34. At all times relevant herein, in handling the matter of *McDonald v. Aurora Health Center, Inc., et al.*, Defendant, THOMAS J. POPOVICH, was acting within the scope of his employment with Defendant, Law Offices of Thomas J. Popovich.

35. Upon being retained by Mark McDonald, Defendant, THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

36. Notwithstanding said duty, Defendant, THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, committed one or more of the following negligent acts/or omissions:

a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;

b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;

c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;

d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;

e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;

f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;

g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;

h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;

i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;

j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;

k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or

l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.

37. On March 17, 2011, after obtaining a printout of the court docket from the Circuit Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald v. Aurora Health Center, Inc., et al.*, had been dismissed.

38. As a direct and proximate result of one or more of these negligent acts or omissions by THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, Plaintiffs were denied their right to pursue the wrongful death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

39. As a further direct and proximate result of one or more of these negligent acts or omission by THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs were denied their right recover significant money damages as a result of the death of Julie McDonald.

WHEREFORE, Plaintiffs, MARK MCDONALD, individually, as Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, COLE MCDONALD, MICAELA MCDONALD, and SYDNEY MCDONALD, prays that a judgment be entered against

Defendant, THOMAS J. POPOVICH, for an amount in excess of $50,000.00, plus costs of pursing this action, and for any further relief this Court deems appropriate and just.

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
One of Plaintiff's Attorneys

Antonio M. Romanucci
Stephan D. Blandin
Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602
Tel: (312) 458-1000
Fax: (312) 458-1004
Attorney No.: 35875

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

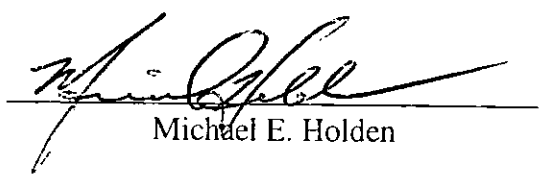
**AFFIDAVIT REGARDING DAMAGES SOUGHT**

Michael E. Holden, being first duly sworn under oath, states as follows:

1. That your affiant is one of the attorneys of record for the party in this matter.

2. That the total money damages sought in this civil action exceeds $50,000.

FURTHER AFFIANT SAYETH NOT.



Michael E. Holden

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109 (1993), I certify that the statements set forth herein are true and correct.

Michael E. Holden
ROMANUCCI & BLANDIN
33 North LaSalle Street
Suite 2000
Chicago, Illinois 60602
312/458-1000
Atty. No.: 35875

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**JURY DEMAND**

The undersigned demands a jury trial.

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
Attorney for Plaintiff

Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 N. LaSalle Street
Suite 2000
Chicago, Illinois 60602
Tel.: (312) 458-1000
Fax: (312) 458-1004
Attorney No.: 35875

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

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## NOTICE OF FILING

TO: All Counsel of Record
(No Appearances filed)

PLEASE TAKE NOTICE that on **February 14, 2012** we have filed the following with the Circuit Court of Cook County, Law Division **Proof of Service for All Defendants,** copies of which are attached hereto.

ROMANUCCI & BLANDIN
33 North LaSalle Street - Suite 2000
Chicago, Illinois 60602
312-458-1000
312-458-1004 Fax
Attorney No. 35875

## PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. **February 14, 2012** , with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

FILED-6

2012 MAR 1 AM 9:41

CLERK OF THE CIRCUIT COURT
LAW DIVISION
DOROTHY BROWN CLERK

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**NOTICE OF FILING**

TO: LAW OFFICES OF THOMAS J. POPOVICH, P.C.,
JAMES P. TUTAJ, and THOMAS J. POPOVICH
3416 W. Elm Street
McHenry, IL 60050

PLEASE TAKE NOTICE that on **March 15, 2012** at **9:45 a.m.**, at the scheduled Case Management Conference, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Judge Kogan** or any judge sitting in his/her stead, in **Courtroom 2206** usually occupied by her in the Richard J. Daley Center, Chicago, Illinois, and shall move the court in accordance with **Plaintiff's Motion to for Default,** copies of which are attached hereto.

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ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, Illinois 60602
(312) 458-1000
Attorney No.: 35875

**CERTIFICATE OF SERVICE**

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to counsel for defendant by depositing the same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. on March 1, 2012.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**MOTION FOR DEFAULT JUDGEMENT**

NOW COME, the Plaintiffs, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, by and through their attorneys, ROMANUCCI & BLANDIN, LLC, and moves this Honorable Court for the entry of an Order of Default Judgment against the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH. In support thereof, Plaintiff states as follows:

1. This is a legal malpractice action against Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH.

2. On January 6, 2012, Plaintiff filed his Complaint at Law with the Clerk of the Circuit Court of Cook County and had Summons issued for all Defendants.

3. On January 6, 2012, Plaintiff mailed summons for service of process on all

Defendants to the McHenry County Sheriff.

4. On January 11, 2012, December 1, 2011, McHenry County Sheriff served all Defendants with service of process.

5. On February 14, 2012, Counsel for Plaintiff filed the affidavits of service with this Court. (See Notice of Filing and Affidavits of Service, attached hereto as Exhibit A)

6. That to date, Defendants, have failed to file an appearance or answer in this matter.

WHEREFORE Plaintiffs, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, respectfully requests that this Court enter an Order of Default Judgment against the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH, and schedule this matter for a prove-up of damages and for any further relief this Court deems just.

ROMANUCCI & BLANDIN

By: _____
Attorney for Plaintiff

Michael E. Holden
Rebekah L. Williams
ROMANUCCI & BLANDIN
33 North LaSalle Street
Suite 2000
Chicago, Illinois 60602
(312) 458-1000
Attorney No. 35875

McDonald Pleadings

FILED

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CLERK OF CIRCUIT COURT
LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

## NOTICE OF FILING

TO: All Counsel of Record
(No Appearances filed)

PLEASE TAKE NOTICE that on **February 13, 2012** we have filed the following with the Circuit Court of Cook County, Law Division **Proof of Service for All Defendants,** copies of which are attached hereto.

ROMANUCCI & BLANDIN
33 North LaSalle Street - Suite 2000
Chicago, Illinois 60602
312-458-1000
312-458-1004 Fax
Attorney No. 35875

## PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. **February 13, 2012** , with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

EXHIBIT
tabbies A

Kevin Nygren, Sheriff of McHenry County, Woodstock, IL
2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720
*Civil Process Proof of Service*

Court Number: **2012L000196** Docket Number: **SO-CIV-12-000181**

Case Name: **MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL**

Paper Type: **SUMMONS/COMPLAINT FOREIGN**

Court: **COOK**

---

Person Served: **POPOVICH, THOMAS J** DOB: Race: Ethn: Sex:

Business Name:

Additional Name Information:

Address: **3416 W ELM ST** Apt/Unit:
**MCHENRY, IL 60050**
Second Address/Work:

Substitute Service **False**
Name of Person Accepting Service:
Relationship:
Date of Birth: Race: Sex: Ethnicity
, IL

Service Information:

Date Received: **01/10/2012** Status: **Served** Status Date: **1/11/2012 9:30:00AM**

How Served: **SERVED PERSONALLY** Reason:

Comment: **M/W AGE 47.**

Deputy: **SO6627 - MARZANO, WILLIAM**

Deputy's Signature: W. Marzano

FEES: SERVICE & RETURN

| | |
|---|---|
| 8275 | $31.65 |
| MLG | $15.00 |
| Total Fees: | **$46.65** |

Kevin Nygren, Sheriff of McHenry County, Woodstock, IL
2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720
*Civil Process Proof of Service*

Court Number: **2012L000196** Docket Number: **SO-CIV-12-000181**

Case Name: **MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL**

Paper Type: **SUMMONS/COMPLAINT FOREIGN**

Court: **COOK**

---

Person Served: **TUTAJ, JAMES P** DOB: Race: Ethn: Sex:

Business Name:

Additional Name Information:

Address: **3416 W ELM ST** Apt/Unit:
**MCHENRY, IL 60050**

Second Address/Work:

Substitute Service **False**

Name of Person Accepting Service:

Relationship:

Date of Birth: Race: Sex: Ethnicity

, IL

Service Information:

Date Received: **01/10/2012** Status: **Served** Status Date: **1/11/2012 9:30:00AM**

How Served: **SERVED PERSONALLY** Reason:

Comment: **M/W AGE 47.**

Deputy: **SO6627 - MARZANO, WILLIAM**

Deputy's Signature:

FEES: SERVICE & RETURN

| | |
|---|---|
| MLG | $15.00 |
| 8275 | $31.65 |
| Total Fees: | **$46.65** |

K[redacted] Nygren, Sheriff of McHenry County, Woo[redacted]ck, IL
2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720
*Civil Process Proof of Service*

Court Number: **2012L000196** Docket Number: **SO-CIV-12-000181**

Case Name: **MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL**

Paper Type: **SUMMONS/COMPLAINT FOREIGN**

Court: **COOK**

---

Person Served: , DOB: Race: Ethn: Sex:

Business Name: **LAW OFFICES OF THOMA J POPOVICH PC**

Additional Name Information:

Address: **64 E CRYSTAL LAKE AV** Apt/Unit:
**CRYSTAL LAKE, IL 60014**

Second Address/Work:

,

Substitute Service **False**
Name of Person Accepting Service:
,
Relationship:
Date of Birth: Race: Sex: Ethnicity
,
, **IL**

Service Information:

Date Received: **01/10/2012** Status: **Served** Status Date: **1/11/2012 8:45:00AM**

How Served: **CORPORATE** Reason:

Comment: **SERVED THRU ATTORNEY CURT REHBERG M/W AGE 47.**

Deputy: **SO6553 - BERO, DON**

Deputy's Signature: [signature]

---

FEES: SERVICE & RETURN

| | |
|---|---|
| 8275 | $31.65 |
| MLG | $14.00 |
| Total Fees: | **$45.65** |

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |



**APPEARANCE AND JURY DEMAND**

The undersigned, as attorney for Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, hereby enters this Appearance and requests trial by jury.

Respectfully submitted,

Daniel F. Konicek
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
(630) 262-9655

CLERK OF THE CIRCUIT COURT - COOK COUNTY
00072734 Law-01 3/8/2012 2:25PM
ATTY: 37199 019 ALOMBARD
AD DAMNUM: $50,000.00
CASE NO: 2012L000196 CALENDAR: H
COURT DATE: 0/0/0000 12:00AM
CASE TOTAL: $436.00

| | |
|---|---|
| Appearance Fee 3 | $110.00 |
| 12 Jurors 3 | $230.00 |
| Automation | $15.00 |
| Document Storage | $15.00 |
| Law Library | $21.00 |
| Arbitration | $10.00 |
| Court Services | $25.00 |
| Children Waiting Rm | $10.00 |
| CHECK NO: 3197 | |
| CHECK AMOUNT: | $436.00 |
| CHANGE | $0.00 |
| TRANSACTION TOTAL: | $436.00 |

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | 3331 2871 |

FILED-2
2012 MAR -8 PM 2:25
DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

## NOTICE OF FILING

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

*PLEASE TAKE NOTICE* that on **March 8, 2012**, we filed by First Class Mail with the Cook County Circuit Court Clerk's office our **APPEARANCE AND JURY DEMAND** on behalf of the Defendants; a copy of which is attached hereto and served upon you.

Attorney for Defendants

Daniel F. Konicek
Amir R. Tahmassebi
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

## CERTIFICATE OF SERVICE

The undersigned states that the foregoing **APPEARANCE** and **JURY DEMAND** was served upon the above-listed attorney by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **March 8, 2012**, with proper postage prepaid.

C.C.
YS

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION



MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children,
Plaintiff,
vs.
LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH,
Defendants.

No. 12 L 000196

E.W.

3303
3372
3390

**NOTICE OF ROUTINE MOTION**

TO: Michael E. Holden
Romanucci & Blandin,LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

*PLEASE TAKE NOTICE* that on **March 8, 2012** at **8:45 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Kogan** or any judge sitting in his/her stead in **Courtroom 2209** or in the courtroom usually occupied by him/her at the **Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois**, and shall then and there present the Defendants' **ROUTINE MOTION**; a copy of which is attached hereto and hereby served upon you.

Attorney for Defendants

Daniel F. Konicek
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

**CERTIFICATE OF SERVICE**

The undersigned states that the foregoing **NOTICE and ROUTINE MOTION** was served upon the above listed attorney of record as addressed by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **March 1, 2012**, with proper postage prepaid.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION



| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**ROUTINE MOTION**

NOW COMES the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, by and through their attorneys KONICEK & DILLON, P.C., hereby moves this Court to vacate any technical default heretofore entered against said Defendants and leave be given to file an Appearance and Jury Demand, *instanter*. Further, leave is requested to file a responsive pleading with twenty-one (21) days and in support thereof, states as follows:

1. The Defendants recently retained Konicek & Dillon, P.C. to represent them in this matter.

2. Konicek & Dillon, P.C. requires an additional twenty-one (21) days to file a responsive pleading to this Complaint.

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, respectfully request that this Court enter an Order allowing them twenty-one (21) days to file a responsive pleading.

Respectfully submitted,

Attorney for Defendants

Daniel F. Konicek
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
(630) 262-9655

CC E.W.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**ROUTINE ORDER**

*THIS CAUSE COMING TO BE HEARING* on the Motion of Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, by and through their attorneys, KONICEK & DILLON, P.C., due notice having been given and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that any Order of Technical Default heretofore entered against said Defendants be and hereby is waived; 4283

IT IS FURTHER ORDERED that the said Defendants be and hereby are granted leave to file their Appearance and Jury Demand, *instanter;* 4234 3/8

IT IS FURTHER ORDERED that said Defendants be and hereby granted leave to file an answer or otherwise plead to Plaintiff's Complaint at Law within 21 days of this Order, on or before March 29, 2012. 4234 3/29

CMC DATE 3-15-12 7c stand 4335

Enter:

Judge Randye A. Kocan

MAR - 8 2012

Circuit Court - 1509

Daniel F. Konicek
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT-LAW DIVISION

CC KG

McDonald, Mark )

Plaintiffs )

-v- )

Law offices of Poponch et al )

Defendants )

NO: 12 L 01916

Motion Call "H" Time: 9:45 Line#: 40

Judge Randye A. Kogan

## CASE MANAGEMENT ORDER

*** * (Please check off all pertinent paragraphs and circle proper party name) * ***

(8230) ____ 1. Category #1(18-mo. discovery) (8232) X 1A.Category #2 (28 Mo. Discovery)

(4231) ____ 2. Written & (f)( 1) and (f)(2) discovery to be issued by 3/29/12 or deemed waived;

(4296) ____ 3. Written & 213(f)(1) and (2) discovery to be answered by 5/29/12;

(4218) ____ 4. Oral discovery & 213(f)(1) and (2) depositions to be completed by ____;

(4288) ____ 5. Subpoenas for treating physicians' deps to be issued by ____ or deemed waived;

(4218) ____ 6. Treating physicians depositions to be completed by ____;

(4206) ____ 7. (Plaintiff) or (Defendant) or (Add. Party) shall answer 213 (f)(3) Interrogatories by ____;

(4218) ____ 8. Plaintiff's 213(f)(3) witnesses' depositions to be completed by ____;

(4218) ____ 9. Defendant's 213(f)(3) witnesses' depositions to be completed by ____;

(4218) ____ 10. Add. party's 213(f)(3) witnesses' depositions to be completed by ____;

(4295) ____ 11. All fact discovery, SCR 213(f)(1) and/or SCR 213(f)(2) discovery is closed. (Circle all applicable)

(4619) X 12. The matter is continued for subsequent Case Management Conference on 5/29/12

at 10:00 AM/PM in Room 2209 for:

(A)____ Proper Service (B)____ Appearance of Defendants (C)____ Case Value

(D)____ Pleadings Status (E)____ Discovery Status (F)____ Pre-Trial/Settlement

(G)____ Mediation Status (H)____ Trial Certification/ (I) ____Other

4253

3/22/12 - Π to provide list / Mtg 3/29/12 Δ to subpoena 4288 medical records. 3/29/12 Parties to propound discovery. All requests to be in by 4/27/12. All discovery to be answered by 5/29/12 4296

(4005)____13. Case is DWP'd. (4040) ____The case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009.

(4331)____14. Case stricken from CMC Call (4284) ____Motion Stricken or Withdrawn from Call (4330) ____Case stricken from Motion Call.

Firm Dates 4293 for Party Depos 3.29.12

NAME: Rebekah Williams / Romanucci & Blandin ENTER:

ADDRESS: 33 N LaSalle St

PHONE: 312-458-1000

ATTY ID#: 35875

ATTY FOR PARTY: Π

Judge Randye A. Kogan MAR 15 2012 Circuit Court - 1509

RANDYE A. KOGAN, Associate Judge

**NOTICE:**

*** COPIES OF ALL PRIOR CMC ORDERS MUST BE BROUGHT TO ALL CMC COURT DATES BYALL ATTORNEYS!!**

*** FAILURE OF ANY PARTY TO COMPLY WITH THIS CMC ORDER WILL BEA BASIS FOR SCR 219(C) SANCTIONS. FAILURE OF ANY PARTY TO ENFORCE THIS CMC ORDER WILL CONSTITUTE A WAIVER OF SUCH DISCOVERY BY THAT PARTY.**

*** ALL CASES ARRIVING ON THE TRIAL CALL IN ROOM 2005 MUST HAVE ALL DISCOVERY IN LINES 2 THROUGH 11 COMPLETED.**

*** A COPY OF THIS ORDER IS TO BE SENT TO EACH PARTY BY HIS/HER COUNSEL WITHIN TEN (10) DAYS OF EACH CMC COURT DATE.**

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

2012 MAR 29 PM 4:20
DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children,
Plaintiff,
vs.
LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH,
Defendants.

No. 12 L 000196

M
M.V.

**NOTICE OF MOTION**

TO: Michael E. Holden
Romanucci & Blandin,LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

*PLEASE TAKE NOTICE* that on April 6th, 2012 at ~~9:00~~ 9:15 a.m., or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Kogan** or any judge sitting in his/her stead in **Courtroom 2209** or in the courtroom usually occupied by him/her at the **Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois**, and shall then and there present the Defendants' MOTION TO TRANSFER PURSUANT TO *FORUM NON CONVENIENS*; a copy of which is attached hereto and hereby served upon you.

Amanda J. Hamilton
Attorney for Defendants

Daniel F. Konicek
Amir R. Tahmassebi
Amanda J. Hamilton
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

## CERTIFICATE OF SERVICE

The undersigned states that the foregoing **NOTICE and MOTION** were served upon the above listed attorney of record as addressed by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **March 30, 2012**, with proper postage prepaid.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |



M.V.

MOTION TO TRANSFER PURSUANT TO *FORUM NON CONVENIENS*

NOW COME the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, by and through their attorneys KONICEK & DILLON, P.C., hereby move this Court to enter an order transferring this matter to McHenry County pursuant to Illinois Supreme Court Rule 187 and *forum non conveniens*.

FACTS

1. Plaintiff Mark McDonald alleges he retained the Law Offices of Thomas J. Popovich, James P. Tutaj, and Thomas J. Popovich (collectively, the "Popovich Defendants") to represent him in his capacity acting as Special Administrator of the Estate of Julie McDonald to prosecute a wrongful death claim in Walworth County, Wisconsin.

2. Plaintiffs further allege that, on and before June 29, 2010, Plaintiffs were residents of Elkhorn, Wisconsin, in Walworth County. It is undisputed that the underlying wrongful

death claim, the prosecution of which forms the basis of Plaintiffs' legal malpractice claim, accrued and was filed in Walworth County, Wisconsin.

3. It is undisputed that the Popovich Defendants' principal place of business is located in McHenry, Illinois, which is located in McHenry County, Illinois. (See Exhibit A, Affidavit of James P. Tutaj).

4. It is further undisputed that any and all of the work performed by the Popovich Defendants relating to the underlying wrongful death claim was performed in McHenry County, Illinois. (See Exhibit A, Affidavit of James P. Tutaj).

## ARGUMENT

### I. MCHENRY COUNTY IS THE MORE CONVENIENT FORUM FOR THIS ACTION

5. *Forum non conveniens* is an equitable doctrine that pre-supposes the existence of more than one forum with jurisdiction over the parties and the subject matter. *Bland v. Norfolk & W. Ryag* 116 Ill.2d 217, 239 (Ill. 1987).

6. When deciding a *forum non conveniens* motion, the court should consider the convenience of the parties and the likely witnesses, the relative ease of access to documentary evidence and all of the other practical considerations that make a trial, easy, expeditious, and inexpensive. *Dawdy v. Union Pacific R.R. Co* , 207 Ill.2d 167, 172 (2003); *Kahn v. Enterprise Rent-A-Car*, 355 Ill.App.3d 13 (1st Dist. 2004).

7. A defendant seeking transfer is not required to show that the plaintiff's choice of forum is inconvenient; rather, transfer is allowed where the defendant's choice is the substantially more appropriate forum. *Czarnecki v. Uno-Ven Co.*, 339 Ill.App.3d 504, 508 (1st Dist. 2003).

8. Under the doctrine, a court may transfer a case or decline jurisdiction of a case because there is another forum "that can better serve the convenience of the parties and the ends of justice." *Vinson v. Allstate*, 144 Ill.2d 306, 310 (1991) (citations omitted).

9. The Illinois Supreme Court has identified both private interest and public interest factors that a Court is to consider in deciding whether to transfer based on *forum non conveniens*. *Griffith v. Mitsubishi Aircraft Inter., Inc.*, 136 Ill.2d 101, 105-106 (1990).

10. The Court is to weigh those factors and determine whether on balance, another forum would be more convenient. *See First Nat'l Bank v. Guerine*, 198 Ill.2d 511, 515 (2002).

**A. The private interest factors all favor transfer to McHenry County**

11. In Illinois, the private interest factors include (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive, for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises (if appropriate). *First American Bank v. Guerine*, 198 Ill.2d 511, 516 (2002).

12. In this case, McHenry County is a more convenient forum for the parties.

13. Litigating this case in Cook County would result in undue hardship and significant expense upon the Popovich Defendants, as their principal place of business is located in McHenry County, approximately 70 miles away from Cook County. (See **Exhibit A**, Affidavit of James P. Tutaj).

14. Upon information and belief, Plaintiffs are residents of Walworth County, Wisconsin. Cook County is approximately 65 miles farther away from Walworth County than McHenry County.

15. McHenry County would therefore be a more convenient forum for both parties, as litigating this case in McHenry County would decrease the amount of time the parties would need to spend traveling.

16. Additionally, the relative ease of access to evidence is greater in McHenry County than Cook County.

17. In order to prevail in a cause of action for attorney malpractice, the plaintiff must plead and prove 1) an attorney-client relationship that establishes a duty on the part of the attorney; 2) a negligent act or omission constituting a breach of that duty; 3) proximate cause establishing that "but for" the attorney's breach, the plaintiff would have prevailed in the underlying action; and 4) actual damages. *Preferred Personnel Services, Inc. v. Meltzer, Purtill and Stelle, LLC*, 387 Ill.App.3d 933, 939 (1st Dist. 2009). In order to establish proximate cause, the plaintiff must prove the existence of a valid underlying cause of action. *Sheppard v. Kroll*, 218 Ill.App.3d 254 (1st Dist. 1991).

18. It is well established that a legal malpractice plaintiff must plead and prove the "case-within-a-case," where the plaintiff must establish that but for the defendant's legal malpractice, the underlying case would have been resolved in the plaintiff's favor. *See Governmental Interinsurance Exchange v Judge*, 221 Ill.2d 195, 200 (2006). Therefore, litigation of the "case within a case" is required in order to prosecute a legal malpractice claim. *Id.*

19. Here, the "case within a case" involves the prosecution of a wrongful death claim in Walworth County, Wisconsin where all of the work performed for the prosecution of the case was performed in McHenry County, Illinois.

20. Therefore, all of the testimonial, documentary, and real evidence adduced in the underlying case would be located either in Wisconsin or at the Popovich Defendants' office in McHenry County. (See **Exhibit A**, Affidavit of James P. Tutaj).

21. Additionally, as all of the work performed for the prosecution of the underlying case was performed in McHenry County, there is absolutely no connection between this legal malpractice case and Cook County.

22. Accordingly, all three private interest factors weigh in favor of McHenry County being a more convenient forum than Cook County, and this legal malpractice case should be transferred to McHenry County pursuant to *forum non conveniens*.

**B. The public interest factors also weigh in favor of transfer to McHenry County**

23. The public interest factors include (1) the interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already congested forums. *First American Bank v. Guerine*, 198 Ill.2d at 516.

24. In this instance, Cook County has little interest in this controversy.

25. Plaintiffs do not reside in Cook County, the Popovich Defendants' principal place of business is not in Cook County, and the underlying lawsuit which is the subject matter of this legal malpractice claim did not take place in Cook County.

26. None of the allegations contained within Plaintiffs' Complaint are alleged to have occurred in Cook County.

27. The underlying action took place in Walworth County, Wisconsin and the alleged negligent representation took place in McHenry County, Illinois. (See **Exhibit A**, Affidavit of James P. Tutaj).

28. Additionally, as this is not a localized Cook County controversy, it is unfair to impose the cost of trial and jury duty upon the citizens of Cook County. *Burns v. A.P. Andue.*, 326 Ill. App.3d 624, 628 (5th Dist. 2001) (noting the insufficient connection with the plaintiff's chosen forum to justify imposing jury duty on the citizens of that county).

29. There is no sufficient connection with Cook County, and therefore, it is unfair to subject the citizens of Cook County to the financial and temporal costs of this matter.

30. Finally, Cook County's docket would be further burdened by the added litigation of this case.

31. Accordingly, all three public interest factors weigh in favor of McHenry County being a more convenient forum than Cook County, and this legal malpractice case should be transferred to McHenry County pursuant to *forum non conveniens*.

## CONCLUSION

32. The public and private interest factors weigh heavily in favor of McHenry County being the more convenient forum for this case.

*WHEREFORE*, the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, respectfully request this Honorable Court enter an order granting their Motion to Transfer pursuant to *forum non conveniens*, transfer this matter

to McHenry County, require Plaintiff to bear the costs of the transfer, and for all other relief this Court deems fair under the circumstances.

Respectfully submitted,

Amanda J. Hamilton

Attorneys for the Popovich Defendants

Daniel F. Konicek
Michael P. Hannigan
Amanda J. Hamilton
KONICEK & DILLON P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

Ke[redacted] Nygren, Sheriff of McHenry County, Woods[redacted]k, IL
2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720
*Civil Process Proof of Service*

Court Number **2012L000196** Docket Number: **SO-CIV-12-000181**

Case Name **MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL**

Paper Type. **SUMMONS/COMPLAINT FOREIGN**

Court: **COOK**

Person Served **TUTAJ, JAMES P** DOB Race Ethn. Sex

Business Name

Additional Name Information:

Address. **3416 W ELM ST** Apt/Unit.
**MCHENRY, IL 60050**
Second Address/Work

2104

FILED-1
12 MAR 30 AM 11:27
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION
DOROTHY BROWN
CLERK

Substitute Service **False**
Name of Person Accepting Service
,
Date of Birth Race Relationship Sex Ethnicity
,
, IL

Service Information:

Date Received **01/10/2012** Status: **Served** Status Date **1/11/2012 9:30:00AM**

How Served **SERVED PERSONALLY** Reason

Comment **M/W AGE 47.**

Deputy **SO6627 - MARZANO, WILLIAM**

Deputy's Signature

FEES SERVICE & RETURN

| | |
|---|---|
| MLG | $15 00 |
| 8275 | $31 65 |
| Total Fees | **$46.65** |

Kevin Nygren, Sheriff of McHenry County, Woodstock, IL
2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720
*Civil Process Proof of Service*

Court Number **2012L000196** Docket Number. **SO-CIV-12-000181**

Case Name. **MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL**

Paper Type. **SUMMONS/COMPLAINT FOREIGN**

Court: **COOK**

Person Served: **POPOVICH, THOMAS J** DOB. Race Ethn Sex:

Business Name

Additional Name Information

Address **3416 W ELM ST** Apt/Unit
**MCHENRY, IL 60050**

Second Address/Work

3104

FILED - 1
12 MAR 30 AM 11:27
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION
DOROTHY BROWN CLERK

Substitute Service **False**
Name of Person Accepting Service

Date of Birth. Race Relationship. Sex. Ethnicity

, IL

Service Information

Date Received. **01/10/2012** Status. **Served** Status Date **1/11/2012 9:30:00AM**

How Served **SERVED PERSONALLY** Reason:

Comment: **M/W AGE 47.**

Deputy: **SO6627 - MARZANO, WILLIAM**

Deputy's Signature:

FEES SERVICE & RETURN

| | |
|---|---|
| 8275 | $31 65 |
| MLG | $15 00 |
| Total Fees | **$46.65** |

Ke[redacted] Nygren, Sheriff of McHenry County, Woods[redacted]k, IL
2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720
*Civil Process Proof of Service*

Court Number **2012L000196** Docket Number: **SO-CIV-12-000181**

Case Name **MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL**

Paper Type: **SUMMONS/COMPLAINT FOREIGN**

Court: **COOK**

---

Person Served , DOB Race Ethn Sex

Business Name **LAW OFFICES OF THOMA J POPOVICH PC**

Additional Name Information:

Address **64 E CRYSTAL LAKE AV** Apt/Unit.
**CRYSTAL LAKE, IL 60014**
Second Address/Work.

,

FILED-L
12 MAR 30 AM 11:27
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION
DOROTHY BROWN
CLERK

Substitute Service **False**
Name of Person Accepting Service
,
Relationship:
Date of Birth. Race Sex: Ethnicity
,
, IL

Service Information:

Date Received **01/10/2012** Status **Served** Status Date **1/11/2012 8:45:00AM**

How Served. **CORPORATE** Reason

Comment **SERVED THRU ATTORNEY CURT REHBERG M/W AGE 47.**

Deputy **SO6553 - BERO, DON**

Deputy's Signature _____

---

FEES: SERVICE & RETURN

| | |
|---|---|
| 8275 | $31.65 |
| MLG | $14 00 |
| Total Fees: | **$45.65** |

FILED
2012 APR -3 PM 3:57
CIRCUIT COURT OF COOK COUNTY, ILLINOIS LAW DIVISION
DOROTHY BROWN CLERK

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

33331
2871
23004

**NOTICE OF FILING**

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

*PLEASE TAKE NOTICE* that on **April 3,2012**, we filed with the Cook County Circuit Court Clerk's office our **Exhibit "A" (Affidavit of Tutaj) to our Motion to Transfer pursuant to *Forum Non Conveniens*** on behalf of the Defendants; a copy of which is attached hereto and served upon you.

Attorney for Defendants

Daniel F. Konicek
Amir R. Tahmassebi
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

**CERTIFICATE OF SERVICE**

The undersigned states that the foregoing **Notice** and **Exhibit "A" – Affidavit of Tutaj** was served upon the above-listed attorney by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **April 3, 2012**, with proper postage prepaid.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**AFFIDAVIT OF JAMES P. TUTAJ IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER PURSUANT TO *FORUM NON CONVENIENS***

I, James P. Tutaj, submit my sworn affidavit and state that:

1. I am an attorney licensed to practice law and I have personal knowledge of the facts contained herein.

2. I am an attorney at the Law Offices of Thomas J. Popovich, and our principal law office is located at 3416 West Elm Street in McHenry, in McHenry County, Illinois.

3. Mark McDonald came to my office in McHenry County to retain me to represent the Estate of Julie McDonald in pursuing a wrongful death claim. Mark McDonald and I negotiated and executed the engagement agreement in my office in McHenry County, Illinois. All face-to-face discussions concerning the wrongful death claim occurred either in Walworth County, Wisconsin or in McHenry County, Illinois.



Exhibit
A

4. All of the work performed by me, Thomas J. Popovich, or by the Law Offices of Thomas J. Popovich pertaining to the underlying wrongful death claim was performed in McHenry County, Illinois.

5. The underlying wrongful death case was filed and litigated in Walworth County, Wisconsin.

6. All of the testimonial, documentary, and real evidence pertaining to the underlying wrongful death claim is located either in Walworth County, Wisconsin or in McHenry County, Illinois.

7 All of the potential fact witnesses for the underlying wrongful death claim and for this legal malpractice claim are located either in Walworth County, Wisconsin or in McHenry County, Illinois.

8. McHenry County is a more convenient forum for this legal malpractice case.

9. Litigating this case in Cook County would result in undue hardship and significant expense upon the defendants and independent witnesses.

*Further affiant sayeth naught...*

*Respectfully Submitted,*

James P. Tutaj

Subscribed and sworn to
before me this 2 day
of Aug., 2012.

Notary Public

OFFICIAL SEAL
SHEILA M QUINLAN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/13/14

35875

FILED-3

2012 APR 13 AM 10:49

DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**PLAINTIFFS' SCR 213(f)(1),(2), and (3) INTERROGATORIES**
**DIRECTED TO ALL DEFENDANTS**

3080

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through is attorneys, ROMANUCCI & BLANDIN, LLC, and pursuant to Illinois Supreme Court Rule 213(f), propounds the following interrogatories to be answered by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, individually, within 28 days:

1. As to "lay witnesses" as defined by Illinois Supreme Court Rule 213(f)(1):

   a. Furnish the identity and address of each lay witness who will testify at trial and state the subjects the fact testimony expected to be elicited from each lay witness at trial; and

   b. Please also set forth the subjects of any lay opinion testimony you expect to elicit from each lay witness identified in 1(a) above.

**ANSWER:**

2. As to "independent expert witnesses" as defined by Illinois Supreme Court Rule 213(f)(2):

a. Furnish the identity and address of each independent expert witness who will testify at trial and state the subjects on which the independent expert witness will testify at trial; and

b. Please also state the opinions you expect to elicit at trial from each independent expert witness identified in 2(a) above.

**ANSWER:**

3. As to "controlled expert witnesses" as defined by Illinois Supreme Court Rule 213(f)(3):

a. Furnish the identity and address of each controlled expert witness who will testify at trial and also state whether such witness is the party, the party's current employee or the party's retained expert; and

b. For each controlled expert witness identified in 3(a) above, please state or provide the following:

i. The subject matter on which the witness is expected to testify at trial;

ii. The conclusions and opinions of the witness and the bases for each such conclusion or opinion;

iii. The qualifications of the witness, including a curriculum vita and/or resume, if any; and

iv. any reports of the witnesses regarding this case.

**ANSWER:**

The requesting plaintiff(s) also call(s) upon the person(s) to whom these interrogatories are directed to seasonably supplement the answers to interrogatories as additional information becomes available in accordance with Supreme Court Rule 213(i).

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
Attorney for Plaintiffs

Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 N. LaSalle St.
Suite 2000
Chicago, IL 60602
Tel: (312) 458-1000
Fax: (312) 458-1004
Attorney No.: 35875

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
2012 APR -5 AM 10: 43
DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**PLAINTIFF'S REQUEST TO PRODUCE TO ALL DEFENDANTS**

3342

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through his attorneys, ROMANUCCI & BLANDIN, LLC, and, pursuant to Illinois Supreme Court Rule 214, propounds the following Requests to Produce to Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, to be answered within twenty-eight (28) days:

1. The statement of any party, which is in the possession or control of some person or entity other than himself or his attorney or insurer.

2. The statement of any other witness or person having knowledge of any facts relevant to the occurrence complained of in this lawsuit, or the injuries and damages alleged.

3. The statement of any witness or person having knowledge of any facts relevant to the facts and circumstances of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, or the injuries and damages alleged therein.

4. Any and all medical records in your possession regarding the Julie McDonald including, but not limited to, the treatment of Julie McDonald rendered by any defendant in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, including medical records, medical reports, x-rays, laboratory reports, test results, progress notes, nurses' notes,

physicians' notes, work sheets, clinic sheets, flow chart and any and all other records of any kind and sort.

5. Any and all texts, medical literature, journals, articles, authoritative writing or similar matters upon which you intended to use or rely upon in your prosecution of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, or that the defendants relied in defense of the allegations made therein.

6. All photographs, slides, motion pictures or video tapes taken of Julie McDonald either prior to, during or subsequent to the treatment complained of in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

7. Complete, unedited, and unabridged copies of any and all accident, incident and/or investigative reports, records or memoranda prepared in conjunction with or as a result of the occurrence set forth in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

8. Any and all accident reports, investigative reports, inspection reports and/or e-mail transcriptions, computer generated materials pertaining to the injuries sustained by Julie McDonald, Mark McDonald, and/or their family, containing factual material concerning the date of the occurrence which was the subject matter of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

9. A list giving the names, addresses, and speicialties of all expert witnesses and/or consultants you retained or consulted in your investigation or prosecution of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

10. A list giving the names, addresses and specialties of all expert witnesses (other than non-treating, purely consultant experts who are not to testify at trial), you intend to rely upon in this matter, omitting all persons already listed above.

11. Copies of any and all reports from any experts regarding or relating to the subject matter of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

12. Copies of any and all reports from any experts regarding or relating to the subject matter of this litigation.

13. A complete curriculum vitae for the defendant physicians in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, including professional education, professional teaching experience, professional work experience and professional publications.

14. Any and all reports, memorandum, files, statements, interview reports, interviews, tape recorded reports or other materials taken or obtained by the risk management department or by agents, independent contractors or employees on behalf of the risk management department of any persons, individuals, employees, and/or non-employees regarding the incident which was the subject of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

15. Any and all reports, memorandum, files, statements, interview reports, interviews, tape recorded reports or other materials taken or obtained by the defendants or by agents, independent contractors or employees on behalf of the defendants of any persons, individuals, employees, and/or non-employees regarding the incident which is the subject of this litigation.

16. Any and all insurance policies and/or agreements, both primary and excess, any and all insurance certificates which provide coverage relative to this case, or provide the policy limits for all policies and/or agreements both primary and excess that were in effect on the date of the occurrence.

17. It is further requested that each party and/or its attorney in compliance with this request for production shall furnish an affidavit stating whether the production is complete in accordance with this request as provided in Illinois Supreme Court Rule 214.

18. The full and complete file relative to *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, maintained by defendants, including without limitation, client agreement, attorney notes, contracts, correspondence, interview notes, investigation documents, pleadings, discovery, research performed, expert reports, medical records of Julie McDonald, medical bills of Julie McDonald, invoices, deposition transcripts, reports of proceedings, and/or any other document kept in the regular course of business regarding your representation of Mark McDonald with regard to *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

19. Any and all documents regarding any disciplinary proceedings commenced against Thomas J. Popovich or James P. Tutaj.

20. Any and all calendar or diary entries regarding *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393 made at any time during the course of your representation of Mark McDonald.

21. Any and all lists, documents, calendars, or other document used by you to track statutes of limitation for cases you have undertaken which reflect *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

22. Any and all lists, documents, calendars, or other document used by you to track service of defendants on cases filed by you which reflect *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.\

If any documents requested are no longer in existence, state whether it (a) is missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) has been otherwise disposed of, and in each instance explain the circumstances surrounding the reason for and manner of such disposition and state the date or approximate date thereof.

If any document called for in this request has been destroyed intentionally at any time during the past ten years, such document should be identified and the reasons and date of its destruction noted.

If any document called for in this request are not produced because of claim of privilege, work product or trade secret, those documents should be fully described along with a statement of why they are not being produced.

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
Attorney for Plaintiff

Stephan D. Blandin
Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 N. LaSalle St.; Suite 2000
Chicago, IL 60602
Tel: (312) 458-1000
Fax: (312) 458-1004
Attorney No.: 35875

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

2012 APR -5 AM 10: 42

DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children,

Plaintiff,

v.

LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH,

Defendants,

No.: 12 L 00196

C.C. AS.

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**NOTICE OF FILING**

TO: Daniel F Konicek
Konicek & Dillon, P.C.
21 W. State Street
Geneva, IL 60134

PLEASE TAKE NOTICE that on **April 5, 2012**, we have filed the following with the Circuit Court of Cook County, Law Division **Plaintiff's Interrogatories to Defendants, Plaintiff's Requests to Produce to Defendants, and Plaintiff's 213(f) Interrogatories to Defendants**, copies of which are attached hereto.

Michael E. Holden
ROMANUCCI & BLANDIN
33 North LaSalle Street - Suite 2000
Chicago, Illinois 60602
312-458-1000
312-458-1004 Fax
Attorney No. 35875

**PROOF OF SERVICE**

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. April 5, 2012 with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109. I certify that the statements set forth herein are true and correct.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |



**INTERROGATORIES TO DEFENDANTS,**
**LAW OFFICES OF THOMAS J. POPOVICH, P.C., THOMAS J. POPOVICH AND JAMES P. TUTAJ**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through is attorneys, ROMANUCCI & BLANDIN, LLC, and pursuant to Illinois Supreme Court Rule 213, propounds the following interrogatories to be answered by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, individually, within 28 days:

Definitions

When used in these Interrogatories, the following terms or any synonym therefore are intended to and shall be interpreted as indicted:

"**Person**" means any natural person, firm, corporation, partnership, joint venture or other form of business entity;

**"Identify"** and to state the **"identity of",** when referring to an individual **person**, means to state the name, current address, telephone number, place of employment or last known place of employment of the person about whom the information is sought.

**"Identify"** and to state the **"identity of"**, when referring to a **document,** means to state the following information relative to each document:

1. Its date;
2. Its title, if it has one;
3. All identifying numbers, if any;
4. All other identifying or categorizing designations and a brief description of it (such as letter, memorandum, manuscript, notes, etc.);
5. Its subject matter;
6. The identity of each person who wrote, signed initialed, dictated or otherwise participated in the preparation of the document;
7. The identity of the person who is in custody or control of the document;
8. Any other designation necessary to sufficiently identify the document so that a copy of it may be ordered or obtained from the person in possession or control of the document.

**"Document"** As used herein, the term "document" is synonymous in meaning and equal in scope to the usage of this term in Supreme Court Rule 201(b), including, without limitation, electronic or computerized data compilations or any information that is fixed in a tangible form or stored in a medium from which it can be retrieved and examined. A draft or non-identical copy is a separate document within the meaning of this term. "Document" also includes and refers to any file or any container holding or which once held any documents, as well as to any writing or printing which might appear on such file or container.

**"You"** and **"Defendant"** shall mean the defendant answering these interrogatories, including Defendants, Law Offices of Thomas J. Popovich, P.C., James P. Tutaj, and/or Thomas J. Popovich. And also shall embrace and include in addition to Defendants, and Defendants' insurance carriers and attorneys, all agents, servants, employees, or representatives of Defendants, private investigators or other who are in possession of or may have obtained information for or on behalf of Defendants.

**"Witness"** shall embrace and include any person, whether discovered in the course of investigation, preparation for trial, or otherwise, who has, or claims to have, any knowledge of any relevant fact or issue with respect to this lawsuit whether such witness is considered to be an eye witness, liability witness, medical witness, vocational rehabilitation witness, damages witness, expert witness, or some other type of witness.

Interrogatories

1. State the name, address, and capacity of the person answering these interrogatories.

**ANSWER:**

2. Were you named or covered under any policy or policies of liability insurance, including umbrella and excess liability coverage, at the time of the care and treatment at issue in this matter? If so, state for each policy:

a. The name and address of the insurance company holding such policy;

b. The policy number;

c. The effective policy period;

d. The maximum liability limits for each person and each occurrence, including umbrella and excess liability coverage; and

e. The name insured(s) under the policy.

**ANSWER:**

3. Set forth the details of your education and postgraduate training, including the names and addresses of all undergraduate and graduate schools attended, the dates of graduation, and the degree(s) received (in lieu of a written response to this interrogatory, a current resume and/or CV, including the responsive information, may be provided).

**ANSWER:**

4. Set forth each of the states, provinces, and foreign countries in which you are presently, or ever have been professionally licensed to practice law. As to each, state:

a. The inclusive dates of licensure;

b. The license or bar number; and

c. If such licenses is no longer active, the date and reason for termination of such license.

**ANSWER:**

5. Has your license(s) to practice law in any state, province, or foreign country ever been suspended or revoked for any reason, or has any disciplinary action ever been taken against you in reference to you license? If so, the specific disciplinary action taken against you, the date of any such suspension, revocation, or disciplinary action, the reason for the suspension, revocation, or disciplinary action, the period of time for which the suspension, revocation, or disciplinary action was effective, and the name and address of the disciplinary entity taking such action.

**ANSWER:**

6. With respect to the Law Offices of Thomas J. Popovich, state:

a. The address and telephone number of each location at which the Law Offices of Thomas J. Popovich presently maintains an office or has maintained an office in the last 10 years;

b. A description of the functions carried out at each office or other place of business; and

c. The nature of the Law Office of Thomas J. Popovich's principal area of practice and the period in which it has conduct that business.

**ANSWER:**

7. State whether the Mark McDonald and/or his family was recommended and/or referred to you, and, if so, state by whom.

**ANSWER:**

8. State whether you or the Law Offices of Thomas J. Popovich undertook to provide legal representation to Mark McDonald regarding a medical malpractice/wrongful death action arising out of the death of Julie McDonald. If so, state the date you were retained, the nature of such representation, whether there exists a written contract or agreement reflecting such retention, and the date such representation terminated.

**ANSWER:**

9. State the names and address of each individual who participated in the investigation, evaluation, preparation, and handling of any aspect of any claim of the Plaintiff, including all: attorneys and former attorneys; secretaries and former secretaries; paralegals and former paralegals; law clerks and former law clerks; and any other individuals who in any way participated in the handling of this case on behalf of the Plaintiff, or on behalf of you and/or your law firm. Additionally, for each individual identified state whether the individual is currently employed by you, and, if not, provide a last known address.

**ANSWER:**

10. State the time, date, and place of each meeting between you and Mark McDonald, and for each, state:

a. The subject matter discussed;
b. The sum and substance of all conversations; and
c. The dates of all correspondence that mentions any meeting, attaching copies of all such correspondence.

**ANSWER:**

11. State whether any formal legal action was filed on behalf of Mark McDonald by you, and state:

a. The caption and case number of the action;

b. The names and firm names of all attorneys who provided legal services for those actions;

c. The dates and substance of all correspondence between you and the Plaintiff;

d. The substance of all conversations, whether in person or by telephone, giving the dates and times of the conversations; and

e. The title and date of all pleadings for each legal action.

**ANSWER:**

12. Did any other attorney take over the case from you? If so, state:

a. The name of the attorney;

b. The date that the attorney took over the case;

c. The circumstances under which the attorney took over the case;

d. The outcome, including dates of take over, and conclusion of the case; and

e. Whether the case was settled, discontinued, or dismissed.

**ANSWER:**

13. State as to each occasion when you or any employee of the Law Office of Thomas J. Popovich, P.C., had any conversation with Mark McDonald that related in any way to the subject matter of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, including:

a. The date, time, and place of the conversation;

b. The substance of each conversation, indicating who said what; and

c. The identity of any witness to the conversation.

**ANSWER:**

14. State as to each occasion you or any employee of the Law Office of Thomas J. Popovich, P.C., had any conversation with a defendant or any person claiming to represent a defendant, including insurance companies and attorneys, in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, against which a claim was filed on behalf of Mark McDonald, including in your answer:

a. The name and address of the person with whom the conversation took place;

b. The date and time of day of the conversation;

c. The place or location where the conversation took place;

d. The substance of the conversation, including who said what; and

e. The identity of any witness to the conversation.

**ANSWER:**

15. Are you in possession of the full and complete file, including all correspondence, investigation, discovery documents, pleadings, court orders, contracts, powers of attorney, authorizations, attorney notes, deposition transcripts, reports of proceedings, research performed, invoices, medical records, medical bills, and/or any other document kept in the regular course of business regarding your representation of Mark McDonald with regard to *McDonald v. Aurora Health Care, Inc.*? If not, state what part of file you claim is no longer in your possession, the reason any part of the file is no longer in your possession, the date you first discovered it to no longer be in your possession, the name and address of the person or entity currently in possession of said file, and, if lost or misplaced, state what efforts you have made to locate it.

**ANSWER:**

16. State whether you or anyone from the Law Offices of Thomas J. Popovich ever informed Mark McDonald of the dismissal of *McDonald v. Aurora Health Care, Inc.* If so, state:

a. The date of such notification;

b. The method of such notification, i.e., whether in-person, by telephone, by letter, etc.;

c. The names of any person claiming to have made such notification;

d. What was said to or written to Mark McDonald regarding such dismissal; and

e. The names of any persons who claim to have been present during such notification.

**ANSWER:**

17. State whether you or anyone from the Law Offices of Thomas J. Popovich ever advised Mark McDonald that you or the Law Offices of Thomas J. Popovich may have committed professional malpractice and/or that Mark McDonald should seek other counsel with regard to any claims he may have against you or the Law Offices of Thomas J. Popovich. If so, state:

a. The date of such notification;

b. The method of such notification, i.e., whether in-person, by telephone, by letter, etc.;

c. The names of any person claiming to have made such notification;

d. What was said to or written to Mark McDonald regarding such dismissal; and

e. The names of any persons who claim to have been present during such notification.

**ANSWER:**

18. State whether you were licensed in the State of Wisconsin at the time you represented Mark McDonald with regard to *McDonald v. Aurora Health Care, Inc., et al.* If yes, state the date you were first licensed to practice law in the State of Wisconsin, your license number, and whether such license has ever been suspended or revoked. If no, state whether you retained local counsel to assist in prosecuting *McDonald v. Aurora Health Care, Inc., et al.*, and provide the name and address of any local counsel you retained.

**ANSWER:**

19. State whether you or any attorney from the Law Offices of Thomas J. Popovich ever applied for or were ever admitted *pro hac vice* by the Supreme Court of Wisconsin and/or the Circuit Court of Walworth County, Wisconsin for purposes of prosecuting *McDonald v. Aurora Health Care, Inc., et al.* If so, state the name of each attorney so admitted and the date of such application or admission.

**ANSWER:**

20. State whether you claim to have filed *McDonald v. Aurora Health Care, Inc., et al*, within the applicable statute of limitations. If yes, state the reason you claim such filing was within the statute of limitations for said claim, and provide the citation to any legal authority you believe supports any such claim.

**ANSWER:**

21. State whether you placed summons for service with regard to each Defendant named in *McDonald v. Aurora Health Care, Inc., et al.* For each, state:

a. The name and address of the person you sought to be served for each defendant;

b. The agency or entity with whom service was placed;

c. Whether each defendant was served with summons;

d. The date each you claim each defendant was served with summons; and

e. Whether you obtained an alias summons for any defendant.

**ANSWER:**

22. State whether you obtained any information concerning Julie McDonald's medical history and treatment, and, if so, state:

a. Whether you obtained the information from plaintiffs;

b. Whether you obtained information from a person other than the plaintiffs, and, if so, the name, address and relationship to the plaintiffs of each person;

c. The date and place the information was obtained;

d. Whether you made any record of the information, and, if so, identify each record made; and

e. Whether you received any actual medical records, and, if so, identify the records and from whom each record was obtained.

**ANSWER:**

23. State whether you subpoenaed any records concerning plaintiff's injury which was the subject matter of your representation and state:

a. Who was subpoenaed;

b. The records or documents specified in the subpoena;

c. The date the subpoena was served;

d. The date the subpoena was complied with; and

e. Specifically, what documents and/or records were obtained, and attach a copy of them.

**ANSWER:**

24. List the names and addresses of all individuals who participated in, witnessed, or have knowledge of the care and treatment of Julie McDonald with regard to the allegations in the case of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

**ANSWER:**

25. State whether you have obtained a statement from any person, firm or corporation, or their agents, servants, representatives or employees, relevant to *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, and, if so, state:

a. The date the statement was obtained;

b. The name and current address of the person who gave the statement;

c. If written, whether the statement was signed by that person;

d. If oral, the name and current address of the person who obtained the statement;

e. If recorded, the name and address of the present custodian of the recording;

f. The identity of and attach true and exact copies of each statement; and

g. The substance of all oral or recorded statements, and attach a transcript of each recorded statement.

**ANSWER:**

26. Set forth the nature of any other damages or losses originally claimed to have been suffered by Mark McDonald and/or his family in the case of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, and for each damage or loss, set forth the following:

a. Its monetary value as determined by you;

b. How the monetary figure was arrived at and/or computed; and

c. What testimony and/or evidentiary item you intended to rely upon at trial to prove the damages and/or losses.

**ANSWER:**

27. State the manner in which you intended to prove at trial the negligence of the prior defendant and provide:

a. If proof was to be offered by testimony, the name(s) and address(es) of the witness(es), state the substance of the witness(es') anticipated or actual testimony, and whether the witness(es) testified at trial; and

b. If proof was intended to be offered in any other manner, i.e., documents, records, memoranda, etc., identify and attach each document, record or memoranda.

**ANSWER:**

28. For each document withheld from production (in reference to the request for production of documents served at the same time as these interrogatories) on the grounds of alleged attorney/client or work product privilege, identify:

a. The type of privilege claimed;

b. The person(s) who prepared the document;

c. The place, date, and manner of recording or otherwise preparing the document;

d. The recipient(s) of the document;

e. The basis for the claim of privilege; and

f. The portions of the document as to which privilege is claimed.

**ANSWER:**

29. State whether you have obtained a statement from any person, firm or corporation, or their agents, servants, representatives or employees, relevant to the subject matter of this litigation, and, if so, state:

a. The date the statement was obtained;

b. The name and current address of the person who gave the statement;

c. If written, whether the statement was signed by that person;

d. If oral, the name and current address of the person who obtained the statement;

e. If recorded, the name and address of the present custodian of the recording;

f. The identity of and attach true and exact copies of each statement; and

g. The substance of all oral or recorded statements, and attach a transcript of each recorded statement.

**ANSWER:**

30. State the full name, address, date of birth, title, and position of each person (other than those heretofore listed) who has knowledge of any of the facts and circumstances, injuries, or damages regarding either *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, or this cause of action.

**ANSWER:**

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
Attorney for Plaintiff

Stephan D. Blandin
Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 N. LaSalle St.; Suite 2000
Chicago, IL 60602
Tel: (312) 458-1000
Fax: (312) 458-1004
Attorney No.: 35875

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

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2012 APR -5 AM 10: 43

DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

C.C.
AS.

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**NOTICE OF FILING**

TO: Daniel F Konicek
Konicek & Dillon, P.C.
21 W. State Street
Geneva, IL 60134

PLEASE TAKE NOTICE that on **April 5, 2012**, we have filed the following with the Circuit Court of Cook County, Law Division **Plaintiff's Requests to Admit to Defendants**, copies of which are attached hereto.

Michael E. Holden
ROMANUCCI & BLANDIN
33 North LaSalle Street - Suite 2000
Chicago, Illinois 60602
312-458-1000
312-458-1004 Fax
Attorney No. 35875

**PROOF OF SERVICE**

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. April 5, 2012 with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

FILED-3

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

2012 APR 5 AM 9: 43

DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**REQUESTS TO ADMIT DIRECTED TO DEFENDANTS, LAW OFFICES OF THOMAS J. POPOVICH, P.C., THOMAS J. POPOVICH AND JAMES P. TUTAJ**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through is attorneys, ROMANUCCI & BLANDIN, LLC, and pursuant to Illinois Supreme Court Rule 216, propounds the following Requests to Admit to be answered by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, individually, within 28 days. **WARNING: If you fail to serve the response required by Rule 216 within 28 days after you are served with this paper, all the facts set forth in the requests will be deemed true and all the documents in the requests will be deemed genuine.**

**REQUEST NO. 1:** Admit or deny that Julie McDonald died on November 16, 2005.

**RESPONSE:**

**REQUEST NO. 2:** Admit or deny that any cause of action arising out of medical malpractice and/or wrongful death against Dr. Galvani and/or Auroa Health Care, Inc. accrued on November 16, 2005.

**RESPONSE:**

**REQUEST NO. 3:** Admit or deny that Wisconsin procedural and substantive law applied to any claim arising out of the death of Julie McDonald.

**RESPONSE:**

**REQUEST NO. 4:** Admit or deny that the statute of limitations for a medical malpractice cause of action in the State of Wisconsin is 3 years from the date the injured party knew or should have known of the negligence.

**RESPONSE:**

**REQUEST NO. 5:** Admit or deny that statute of limitations for a wrongful death cause of action in the State of Wisconsin is 3 years from the date of the injured person's death.

**RESPONSE:**

**REQUEST NO. 6:** Admit or deny that the medical malpractice statute of limitations relative to any claim for medical malpractice resulting in the death of Julie McDonald began to run on November 15, 2005.

**RESPONSE:**

**REQUEST NO. 7:** Admit or deny that the wrongful death statute of limitations relative to any claim for wrongful death arising out of the death of Julie McDonald began to run on November 15, 2005.

**RESPONSE:**

**REQUEST NO. 8:** Admit or deny that *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393, was filed on March 17, 2009.

**RESPONSE:**

**REQUEST NO. 9:** Admit or deny that *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393 was filed after the statute of limitations for wrongful death or medical malpractice in the State of Wisconsin had expired.

**RESPONSE:**

**REQUEST NO. 10:** Admit or deny that James P. Tutaj was the attorney who signed the complaint in *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393 which was filed in the Circuit Court of Walworth County, Wisconsin.

**RESPONSE:**

**REQUEST NO. 11:** Admit or deny that James P. Tutaj was not licensed to practice law in the State of Wisconsin prior to March 17, 2009.

**RESPONSE:**

**REQUEST NO. 12:** Admit or deny that Thomas J. Popovich was not licensed to practice law in the State of Wisconsin prior to March 17, 2009.

**RESPONSE:**

**REQUEST NO. 13:** Admit or deny that neither Thomas J. Popovich or James P. Tutaj were admitted *pro hac vice* in the State of Wisconsin for the purposes of filing or prosecuting *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393.

**RESPONSE:**

**REQUEST NO. 14:** Admit or deny that, following filing of *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393, service on Theodore Galvini, M.D., was not completed until February 25, 2010.

**RESPONSE:**

**REQUEST NO. 15:** Admit or deny that *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393 was dismissed as to Theodore Galvni for lack of service on Dr. Galvini.

**RESPONSE:**

**REQUEST NO. 16:** Admit or deny that *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393 was dismissed on June 26, 2010 due to James Tutaj not being admitted in the State of Wisconsin.

**RESPONSE:**

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
One of Plaintiff's Attorneys

Antonio M. Romanucci
Stephan D. Blandin
Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602
Tel: (312) 458-1000
Fax: (312) 458-1004
Attorney No.: 35875

Order (2/24/05) CCG 000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS (7)

CC E.W.

McDONALD

v.

LAW OFFICES OF POPOVICH et al.

No. 12 L 196

**ORDER**

MATTER COMING BEFORE THE COURT FOR PRESENTATION OF DEFENDANTS' MOTION TO TRANSFER PURSUANT TO FORUM NON CONVENIENS, PLAINTIFF HAVING NOT RECEIVED THE EXHIBITS CITED THEREIN, IT IS HEREBY ORDERED:

(1) DEFENDANTS' MOTION IS ENTERED AND CONTINUED TO APRIL 20, 2012 AT 9:00 AM FOR ENTRY OF A BRIEFING AND/OR DISCOVERY SCHEDULE ON THE MOTION. 6007 4619

(2) DEFENDANTS TO PROVIDE PLAINTIFF WITH EXHIBITS CITED IN THEIR MOTION FORTHWITH 1253

Judge Randye A. Kogan
ENTERED: APR - 6 2012
Circuit Court - 1509

Atty. No.: 37199

Name: M. CORSI

Atty. for: DEFENDANTS

Address: 21 WEST STATE ST

City/State/Zip: GENEVA IL 60134

Telephone: (630) 262-9655

Dated: _____

Judge _____ Judge's N

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

# CONTESTED MOTION BRIEFING ORDER – "H"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CC E.W.

McDONALD )
Plaintiff(s) ) NO: 12 L 196
) "H" Judge Randye A. Kogan
LAW OFFICES OF PODVICH, et al.
Defendant(s) )

**ORDER**

This cause coming on for entry of a briefing schedule on the Motion of Defendants, for ____2-615 Dismissal, ____2-619 Dismissal, ____Rule 103(b) Dismissal, ____In Camera Inspection, ____2-1005 Summary Judgment, or X Other Motion (TRANSFER BASED ON FORUM NON CONVIENES),

**IT IS HEREBY ORDERED AS FOLLOWS:**

(4231) 1. The Response of PLAINTIFF is due on 5/18/12

(4231) 2. The Reply of DEFENDANTS is due on 6/8/12

(4217/4619) 3. The case is set for Status & CMC on 6/18/12 at 11:00 AM;

(6271) 4. All courtesy copies, briefs, pleadings, full transcripts of depositions, and exhibits will be submitted on the Status date only, and will be in compliance with the applicable Motion Judges' Rules;

(6280) 5. Materials submitted after a ruling date is scheduled will not be accepted nor considered in the ruling;

(6285) 6. Other: _____

****MOTIONS WITH INCOMPLETE COURTESY COPIES WILL BE DENIED****

Judge Randye A. Kogan
APR 20 2012
ENTER:
Circuit Court - 1509

Atty No: 35875
Atty Name: M. Holden / R&B
Atty For: P
Address: 33 N. LaSalle St.
City: Chicago, IL 60602
Telephone: 312-263-8622

RANDYE A. KOGAN
ASSOCIATE JUDGE NO.

FILED-3
2012 APR 27 PM 3:22
DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

CC
S.P.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

3321

**NOTICE OF MAILING/**
**CERTIFICATE OF SERVICE**

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

The undersigned states that a copy of Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH's **ANSWERS TO PLAINTIFF'S REQUESTS TO ADMIT** were served upon the above listed attorney, together with this **CERTIFICATE OF SERVICE**, depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **April 27, 2012**, with proper postage prepaid.

Daniel F. Konicek
Michael J. Corsi
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | ORIGINAL |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | 3321 2871 |

FILED - G

**NOTICE OF MAILING/**
**CERTIFICATE OF SERVICE**

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

The undersigned states that a copy of Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH's **ANSWERS TO PLAINTIFF'S REQUESTS TO ADMIT** were served upon the above listed attorney, together with this **CERTIFICATE OF SERVICE**, depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **April 27, 2012**, with proper postage prepaid.

Daniel F. Konicek
Michael J. Corsi
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

C.C.
YS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED-1
2012 MAY 22 PM 4:20
DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

3331
3372
2810
3298

## NOTICE OF FILING

To: Konicek & Dillon, P.C.
21 W. State St.
Geneva, IL 60134
603.262.9655

PLEASE TAKE NOTICE that on May 22, 2012 we have filed the following with the Circuit Court of Cook County, Law Division, **Plaintiff's Response Defendant's Motion to Transfer Pursuant to Forum Non Conveniens** copies of which are attached hereto.

ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street - Suite 2000
Chicago, Illinois 60602
312-458-1000
312-458-1004 Fax
Attorney No. 35875

## PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, on May 23, 2012 prior to 5:00 p.m., with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED - 1

2012 MAY 22 PM 4:21

DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 L 00196 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

CC M.O.D.

**PLAINTIFF'S COMBINED RESPONSE TO DEFENDANTS' MOTION TO TRANSFER BASED ON *FORUM NON CONVENIENS***

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through his attorneys, ROMANUCCI & BLANDIN, LLC., and as his response to the Motion to Transfer Pursuant to *Forum Non Conveniens* filed by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, states as follows:

**FACTS**

1. This is a legal malpractice action against Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH.

2. Plaintiff, MARK MCDONALD, retained the Law Offices of Thomas J. Popovich, James P. Tutaj, and Thomas J. Popovich to represent him in his capacity acting as Special Administrator of the Estate of Julie McDonald to prosecute a wrongful death claim in Walworth County, Wisconsin.

3. At all times relevant hereto, Defendants maintained an office at 212 W. Washington

St., Suite 808 in the City of Chicago, Cook County, Illinois and/or at 849 N. Franklin St., Suite 1409 in the City of Chicago, Cook County, Illinois.

4. The basis of this Legal Malpractice claim accrued from the underlying wrongful death claim. On November 15, 2005 Julie McDonald presented to Aurora Health Center in the City of Lake Geneva, Walworth County, Wisconsin, with a fever of 102.5 and was treated by Dr. Theodore Galvani. On that date, Dr. Galvani diagnosed Julie McDonald with strep throat and prescribed antibiotics, commonly known as Levoquin 750 mg. After taking the prescribed dose of Levaquin Julie McDonald went into anaphylactic shock and died. On November 16, 2005, an autopsy revealed that Julie McDonald died a Levaquin-induced anaphylactic shock.

5. Prior to November of 2008, Plaintiff, Mark McDonald hired Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C. to investigate and prosecute a medical malpractice case against Dr. Theodore Galvani and Aurora Health Center. After being retained by Plaintiff, Defendants, JAMES P. TUTAJ and THOMAS J. POPOVICH, were assigned to be the handling attorneys on the file. At no relevant time were Defendants, JAMES P. TUTAJ nor THOMAS J. POPOVICH licensed to practice law in the State of Wisconsin. Nor were the Defendants admitted to practice law on a *pro hac vice* basis. And, Defendants filed the law suit three (3) years after the running of the statute of limitations applicable to both medical malpractice actions and wrongful death actions in the State of Wisconsin. In the end, the suit was dismissed for lack of service on Dr. Galvani.

**STANDARD**

6. The doctrine of *forum non conveniens* is an equitable doctrine founded in considerations of fundamental fairness and sensible and effective judicial administration. *Woodward v. Bridgestone/Firestone, Inc.*, 368 Ill.App.3d 827, 831 (5th Dist. 2006) (citing *First American Bank v. Guerine*, 198 Ill.2d 511, 515 (2002)). It effectively allows a trial court to decline jurisdiction and direct the suit to an alternate forum with jurisdiction when litigating in the forum would better serve

the convenience of the parties and ends of justice. *Certain Underwriters of Lloyd's London v. Illinois Cent. R. Co.*, 329 Ill.App.3d 189 (2d Dist. 2002.)

7. When the issue of intrastate *forum non conveniens* arises, the focus of the trial court is on whether the case is being litigated in the most convenient county. *Lambert v. Goodyear Tire and Rubber*, 332 Ill.App.3d 373, 378 (1st Dist. 2002). The same considerations of convenience and fairness apply equally in deciding the issue of forum for a dismissal motion based on interstate *forum non conveniens* or a transfer motion based on intrastate *forum non conveniens*. *Torres v. Walsh*, 98 Ill.2d 338, 348 (1983).

8. When ruling on a *forum non conveniens* motion, the trial court must weigh a variety of private and public interest factors. *First American Bank v. Guerine*, 198 Ill.2d 511, 516 (2002).

9. The private interest factors include: (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; (3) the availability of compulsory process to secure attendance of unwilling witnesses; (4) the cost to obtain the attendance of willing witnesses; and (5) the possibility of viewing the premises, if appropriate; and all other practical problems that make a trial of a case easy, expeditious, and inexpensive. *Dawdy v. Union Pacific R.R.*, 207 Ill.2d 167, 172 (2003).

10. The relevant public interest factors include: (1) the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; (2) the unfairness of imposing jury duty upon residents of a county with no connection to the litigation; and (3) and the interest in having local controversies decided locally. *Id.* at 173. Court congestion, however, is a "relatively insignificant factor." *Brown v. Cottrell, Inc.*, 374 Ill.App.3d 525, 534 (5th Dist. 2007).

11. A further consideration is the forum which the plaintiff has chose to file the complaint. A plaintiff's right to select the forum is a substantial one that should rarely be disturbed unless there are public and private factors that weigh strongly in favor of transfer or dismissal. *Id.* at

517 (emphasis added). The trial court must weigh the totality of the circumstances of the case and determine whether the defendant has proven that the balance of factors strongly favors transfer or dismissal. *First American Bank*, 198 Ill.2d at 518 (emphasis added).

**ARGUMENT**

12. In the case at bar, Defendants cannot show that the balance of factors strongly favors transfer. As such, Defendants' Motions should be denied.

13. Although Cook County is not Plaintiff's home forum, Defendants have significant ties to Cook County, and the plaintiff's right to select the forum is a substantial one that should rarely be disturbed. *First American* Bank, 198 Ill.2d at 517. At all relevant times, Defendants maintained a law office at 212 W. Washington St., Suite 808 in the City of Chicago, Cook County, Illinois and/or at 849 N. Franklin St., Suite 1409 in the City of Chicago, Cook County, Illinois

14. Further, as to the remaining private factors, which include: the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain the attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical problems that make a trial of a case easy, expeditious, and inexpensive, Defendant cannot show that they strongly favor dismissal. Dr. Galvani, the Defendant in McDonald's underlying medical malpractice/ wrongful death case maintains an office in Lake County, Illinois. Lake County is no closer to McHenry County than it is Cook County. As such, McHenry County is not a substantially more appropriate forum, and the case should remain in Cook County.

15. Defendant states that all of the work performed for the prosecution of the underlying case was performed in McHenry County, and that there is no connection between the underlying malpractice case and Cook County. However, the vast majority of the evidence in this matter will be documentary evidence which will be copied and provided in written discovery. The fact that the documentary evidence is currently located in McHenry County has little if any bearing on the issue

of convenience as the documents are readily portable. Likewise, there is absolutely no evidence that is exclusive to McHenry County other than potential witnesses who can be accommodated to ensure their attendance at trial. Further, the record suggests that there is a connection to Cook County, because at the time Plaintiff retained Defendants' legal services, Defendant had an office in Cook County. As such, McHenry had no more connection with the legal malpractice case than Cook County, and thus McHenry County is not a substantially more appropriate forum.

16. As to the public factors, Defendants cannot show that the public factors weigh strongly in favor of transfer. While, the Defendant correctly states that the underlying medical malpractice occurred in Walworth County, Wisconsin, the legal malpractice was committed by attorneys who practice both in Cook and McHenry counties. Assumingly, both McHenry and Cook counties have an interest in the controversy. It is implausible, if not disingenuous, to suggest that the residents of Cook County don't have a real and genuine interest in ensuring attorneys who practice in Cook County do not commit malpractice in the handling of their cases. Because of this interest, it is not unfair to impose the expense of trial and burden of jury duty on Cook County residents in this case. Again, the evidence shows that McHenry is not a substantially more appropriate forum for the litigation.

17. In regard to the administrative aspects of litigation in Cook County, as compared with litigation in McHenry County, there is no disputing that Cook County has substantially more cases filed than does McHenry County. However, Defendants do not provide any data to suggest that a case take substantially longer to reach resolution in Cook County than it does in McHenry County. The sheer volume of cases alone does not establish this. Further, as numerous courts have stated, court congestion, however, is a "relatively insignificant factor," particularly where the defendant fails to demonstrate that its proposed forum can resolve the case more quickly. *Brown*, 374 Ill.App.3d at 534; *First American Bank*, 198 Ill.2d at 516.

18. Defendants cannot show that the public and private interest factors, when viewed in the totality of the circumstances weigh strongly in favor of transfer. Unless the public and private interest factors weight heavily in favor of a transfer or dismissal, a forum non conveniens motion should be denied. *Brown*, 374 Ill.App.3d at 529. As such, Defendants' Motions should be denied.

WHEREFORE, Plaintiff, MARK MCDONALD, respectfully requests that this Honorable Court enter an order denying the Motions to Transfer Based on Forum Non Conveniens filed by Defendants, LAW OFFICE OF THOMAS J. POPOVICH, P.C., JAMES P.TUTAJ, and THOMAS J. POPOVICH, and for any further relief that this Court deems appropriate and just.

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
Attorney for Plaintiff

Stephan D. Blandin
Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 N. LaSalle St.
Suite 2000
Chicago, IL 60602
Tel: 312-458-1000
Fax: 312-458-1004
Attorney No.: 35875

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT-LAW DIVISION

CC E.W.

M C Donald, )

Plaintiffs )

-v- )

Law office, )

Defendants ) NO: 12 L 196

Motion Call "H" Time: _____ Line#:_____

Judge Randye A. Kogan

## CASE MANAGEMENT ORDER

*** * (Please check off all pertinent paragraphs and circle proper party name) * ***

(8230) _____ 1. Category #1(18-mo. discovery) (8232)_____1A.Category #2 (28 Mo. Discovery)

(4231) _____ 2. Written & (f)( 1) and (f)(2) discovery to be issued by _____ or deemed waived;

(4296) _____ 3. Written & 213(f)(1) and (2) discovery to be answered by_____;

(4218) _____ 4. Oral discovery & 213(f)(1) and (2) depositions to be completed by_____;

(4288) _____ 5. Subpoenas for treating physicians' deps to be issued by _____or deemed waived;

(4218) _____ 6. Treating physicians depositions to be completed by_____;

(4206) _____ 7. (Plaintiff) or (Defendant) or (Add. Party) shall answer 213 (f)(3) Interrogatories by_____;

(4218) _____ 8. Plaintiff's 213(f)(3) witnesses' depositions to be completed by_____;

(4218) _____ 9. Defendant's 213(f)(3) witnesses' depositions to be completed by_____;

(4218) _____10. Add. party's 213(f)(3) witnesses' depositions to be completed by _____;

(4295) _____11. All fact discovery, SCR 213(f)(1) and/or SCR 213(f)(2) discovery is closed. (Circle all applicable)

(4619) _____12. The matter is continued for subsequent Case Management Conference on_____

at _____AM/PM in Room 2209 for:

(A)____ Proper Service (B)____ Appearance of Defendants (C)____ Case Value

(D)____ Pleadings Status (E)____ Discovery Status (F)____ Pre-Trial/Settlement

(G)____ Mediation Status (H)____ Trial Certification (I)____ Other

6-18-12 11:00 to Stand 4335

(4005)_____13. Case is DWP'd. (4040) _____The case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009.

(4331) X 14. Case stricken from CMC Call (4284) _____Motion Stricken or Withdrawn from Call (4330) _____Case stricken from Motion Call.

NAME:_____

ADDRESS:_____

PHONE:_____

ATTY ID#:_____

ATTY FOR PARTY:_____

Associate Judge Randye A. Kogan
MAY 29 2012
Circuit Court - 1509

ENTER:

Randye A. Kogan

RANDYE A. KOGAN, Associate Judge

NOTICE:

* COPIES OF ALL PRIOR CMC ORDERS MUST BE BROUGHT TO ALL CMC COURT DATES BYALL ATTORNEYS!!

* FAILURE OF ANY PARTY TO COMPLY WITH THIS CMC ORDER WILL BEA BASIS FOR SCR 219(C) SANCTIONS. FAILURE OF ANY PARTY TO ENFORCE THIS CMC ORDER WILL CONSTITUTE A WAIVER OF SUCH DISCOVERY BY THAT PARTY.

* ALL CASES ARRIVING ON THE TRIAL CALL IN ROOM 2005 MUST HAVE ALL DISCOVERY IN LINES 2 THROUGH 11 COMPLETED.

* A COPY OF THIS ORDER IS TO BE SENT TO EACH PARTY BY HIS/HER COUNSEL WITHIN TEN (10) DAYS OF EACH CMC COURT DATE.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT-LAW DIVISION

CC KG

McDonald, )

Plaintiffs )

-v- )

Law Offices of Popowich, etal )

Defendants )

NO: 12 L 0196

Motion Call "H" Time: 10:00 Line#: 91

Judge Randye A. Kogan

CASE MANAGEMENT ORDER

* * (Please check off all pertinent paragraphs and circle proper party name) * *

(8230) _____ 1. Category #1(18-mo. discovery) (8232)_____1A.Category #2 (28 Mo. Discovery)

(4231) _____ 2. Written & (f)( 1) and (f)(2) discovery to be issued by _____ or deemed waived;

(4296) _____ 3. Written & 213(f)(1) and (2) discovery to be answered by_____;

(4218) _____ 4. Oral discovery & 213(f)(1) and (2) depositions to be completed by_____;

(4288) _____ 5. Subpoenas for treating physicians' deps to be issued by _____or deemed waived;

(4218) _____ 6. Treating physicians depositions to be completed by_____;

(4206) _____ 7. (Plaintiff) or (Defendant) or (Add. Party) shall answer 213 (f)(3) Interrogatories by_____;

(4218) _____ 8. Plaintiff's 213(f)(3) witnesses' depositions to be completed by_____;

(4218) _____ 9. Defendant's 213(f)(3) witnesses' depositions to be completed by_____;

(4218) _____ 10. Add. party's 213(f)(3) witnesses' depositions to be completed by _____;

(4295) _____ 11. All fact discovery, SCR 213(f)(1) and/or SCR 213(f)(2) discovery is closed. (Circle all applicable)

(4619) X 12. The matter is continued for subsequent Case Management Conference on 6/18/12

at 11:00 (AM)/PM in Room 2209 for:

(A)____ Proper Service (B)____ Appearance of Defendants (C)____ Case Value

(D)____ Pleadings Status (E)____ Discovery Status (F)____ Pre-Trial/Settlement

(G)____ Mediation Status (H)____ Trial Certification (I) ____Other 6007

Matter continued to 6/18/12; For Clerk status on Defendant's motion to transfer pursuant to non-conveniens

(4005)_____13. Case is DWP'd. (4040) _____The case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009.

(4331)_____14. Case stricken from CMC Call (4284) _____Motion Stricken or Withdrawn from Call (4330) _____Case stricken from Motion Call.

NAME: Cole Munvez / RtB Law

ADDRESS: 33 N. LaSalle #2000

PHONE: 312-458-1000

ATTY ID#: 35875

ATTY FOR PARTY: Pl

ENTER:

Judge Randye A. Kogan MAY 29 2012 Circuit Court - 1509

RANDYE A. KOGAN, Associate Judge

NOTICE:

* COPIES OF ALL PRIOR CMC ORDERS MUST BE BROUGHT TO ALL CMC COURT DATES BY ALL ATTORNEYS!!

* FAILURE OF ANY PARTY TO COMPLY WITH THIS CMC ORDER WILL BE A BASIS FOR SCR 219(C) SANCTIONS. FAILURE OF ANY PARTY TO ENFORCE THIS CMC ORDER WILL CONSTITUTE A WAIVER OF SUCH DISCOVERY BY THAT PARTY.

* ALL CASES ARRIVING ON THE TRIAL CALL IN ROOM 2005 MUST HAVE ALL DISCOVERY IN LINES 2 THROUGH 11 COMPLETED.

* A COPY OF THIS ORDER IS TO BE SENT TO EACH PARTY BY HIS/HER COUNSEL WITHIN TEN (10) DAYS OF EACH CMC COURT DATE.

37199

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

FILED - 4
2012 JUN 15 PM 2:23
DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

3331
2871
3298
3004

**NOTICE OF FILING**

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

*PLEASE TAKE NOTICE* that on **June 15, 2012**, we filed with the Cook County Circuit Court Clerk's office DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO TRANSFER PURSUANT TO *FORUM NON CONVENIENS*; a copy of which is attached hereto and served upon you.

Attorney for Defendants

Daniel F. Konicek
Amir R. Tahmassebi
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

**CERTIFICATE OF SERVICE**

The undersigned states that the foregoing **NOTICE** and **REPLY** was served upon the above listed attorney by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **June 15, 2012**, with proper postage prepaid.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO TRANSFER PURSUANT TO *FORUM NON CONVENIENS***

NOW COME Defendants, LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ AND THOMAS J. POPOVICH, by and through their attorneys KONICEK & DILLON, P.C., submit this Reply Memorandum in Support of Their Motion to Transfer on the basis of *Forum Non Conveniens.*

**ARGUMENT**

1. Plaintiff admits that Cook County is not the Plaintiff's home forum and that Plaintiff is not a resident of Cook County. When the plaintiff is foreign, assumption that his or her choice is convenient is much less reasonable, for purposes of applying the doctrine of forum non conveniens; because the central purpose of any forum non conveniens inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill.2d 167 (Ill. Sup. Ct. 2003). As such, when performing the balance of convenience and Plaintiff's choice, this should be taken into consideration.

2. Plaintiff admits that the office of Dr. Galvani; the defendant in McDonald's underlying medical malpractice/wrongful death case, maintains an office in Lake County, Illinois. In addition, Plaintiff wrongfully claims that Lake County is no closer to McHenry County than Cook County. This statement is simply untrue and can be proven wrong by any cursory view of a map depicting the Counties in Illinois. Additionally, the Cook County Courts are also farther from Lake County than the Courts are in McHenry County.

3. Plaintiff admits that the vast majority of the documentary evidence will be in McHenry County. It is substantially inconvenient to all Parties involved to transfer large quantities of original documents across Counties. This would only serve to inconvenience the involved Parties and obstruct the pursuit of justice.

4. Plaintiff repeatedly and incorrectly applies the rules of establishing jurisdiction in Cook County to those of *Forum Non Conveniens*. Plaintiff's claim that at the time of the underlying medical malpractice/wrongful death case, Defendants' had an office in Cook County which is irrelevant because it is undisputed that any and all of the work performed by the Popovich Defendants relating to the underlying medical malpractice/wrongful death claim was performed in McHenry County, Illinois. (See **Exhibit A**, Affidavit of James P. Tutaj) While the existence of the Cook County office may provide a grounds for a Court to exercise jurisdiction over the matter, that is not the question when addressing an issue related to forum non conveniens. Pursuant to the doctrine of forum non conveniens, a Court may decline to exercise jurisdiction over a case properly before it, whenever it appears that there is another forum that can better serve the convenience of litigants and promote ends of justice. *Lambert v. Goodyear*

*Tire and Rubber Co.*, 332 Ill.App.3d 373 (2002). In *Lambert*, this matter is in McHenry County not Cook County.

5. Plaintiff attempts to discredit the importance of court congestion, but fails to establish the secondary element involved in the analysis. Although the court's state that court congestion alone is not significant in determining proper forum, they cite that it is indeed "Appropriate to consider the congested conditions of the docket in the plaintiff's chosen forum." *Dawdy v. Union Pacific R.R. Co.*, 207 Ill.2d at 181 (2006). Furthermore, the First District Appellate Court in both *Allee v. Myers*, 349 Ill.App.3d 596 (2004) and *Kahn v. Enterprise Rent-A-Car Co.*, 355 Ill.App.3d 13 (2004), stated that the congestion of the Cook County Court "Is a great concern" in reversing the circuit courts' denial of motions to transfer those particular cases from Cook County (*Allee*, 812 N.E2d at 533; *Kahn*, 822 N.E.2d at 106).

6. Significantly, Plaintiff has offered no additional support for their response in the form of affidavits, interrogatory answers, or other documents. The record before this Court compels transfer.

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ AND THOMAS J. POPOVICH, respectfully request this Honorable Court to grant their Motion to Transfer on the basis of *Forum Non Conveniens*.

Daniel F. Konicek
Amir R. Tahmassebi
Lucas Sun
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

Respectfully submitted,

Attorney for the Defendants

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 L 000196 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**AFFIDAVIT OF JAMES P. TUTAJ IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER PURSUANT TO *FORUM NON CONVENIENS***

I, James P. Tutaj, submit my sworn affidavit and state that:

1. I am an attorney licensed to practice law and I have personal knowledge of the facts contained herein.

2. I am an attorney at the Law Offices of Thomas J. Popovich, and our principal law office is located at 3416 West Elm Street in McHenry, in McHenry County, Illinois.

3. Mark McDonald came to my office in McHenry County to retain me to represent the Estate of Julie McDonald in pursuing a wrongful death claim. Mark McDonald and I negotiated and executed the engagement agreement in my office in McHenry County, Illinois. All face-to-face discussions concerning the wrongful death claim occurred either in Walworth County, Wisconsin or in McHenry County, Illinois.



Exhibit
A

4. All of the work performed by me, Thomas J. Popovich, or by the Law Offices of Thomas J. Popovich pertaining to the underlying wrongful death claim was performed in McHenry County, Illinois.

5. The underlying wrongful death case was filed and litigated in Walworth County, Wisconsin.

6. All of the testimonial, documentary, and real evidence pertaining to the underlying wrongful death claim is located either in Walworth County, Wisconsin or in McHenry County, Illinois.

7. All of the potential fact witnesses for the underlying wrongful death claim and for this legal malpractice claim are located either in Walworth County, Wisconsin or in McHenry County, Illinois.

8. McHenry County is a more convenient forum for this legal malpractice case.

9. Litigating this case in Cook County would result in undue hardship and significant expense upon the defendants and independent witnesses.

*Further affiant sayeth naught...*

*Respectfully Submitted,*

James P. Tutaj

Subscribed and sworn to
before me this 2 day
of April, 2012.

Notary Public

OFFICIAL SEAL
SHEILA M QUINLAN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/13/14

Order (2/24/05) CCG N0

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

C
E.W.

McDonald

v.

Law Offices of Popovich

No. 12 L 196

ORDER

In accordance with the rules, clerk status reset for July 2nd @ 11:00 am for movant to provide a complete set of courtesy copies to the court

4/8/19
4253

Atty. No.: 37199

Name: Lucas Sun

Atty. for: Defendat

Address: 21 W. State

City/State/Zip: Geneva IL

Telephone: 630 262 9655

(f) 630 262 9659

Associate Judge Randye A. Kogan

ENTERED:

JUN 18 2012

Circuit Court – 1509

Dated: _____

Judge

Judge's No

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ORIGINAL - COURT FILE

# RULING DATE ORDER – "H"

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

McDonald
**Plaintiff(s)**

Popovich
**Defendant(s)**

**NO:** 12 L 196
**Calendar "H"**
**Judge Randye A. Kogan**

## ORDER

This cause coming before this Court for ruling on the Motion(s) of forum non conveniens for _____ 2-615 Dismissal, _____ 2-619 Dismissal, _____ 2-1005 Summary Judgment, or _____ Other Motion (_____), the Movant representing that all courtesy copies, briefs, pleadings, full transcripts of depositions, and exhibits, in compliance with the applicable Motion Judges' Rules, have been submitted to this Court.

**IT IS HEREBY ORDERED:**

(4217) (4619) The above-captioned matter is set for oral ruling and case management on August 6 at 11:30A.M.

****MOTIONS WITH INCOMPLETE COURTESY COPIES WILL BE DENIED****

Atty No: 37899
Atty Name: Lucas Sun
Atty For: Defendant
Address: 21 W. State
City: Geneva
Telephone: 6302629655

ENTER:

Judge Randye A. Kogan
JUL 2 - 2012
Circuit Court - 1509

RANDYE A. KOGAN
ASSOCIATE JUDGE

NO.

Order (2/24/05) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

McDonald, et. al.

v.

Popowich, et. al.

No. 12 L 196

ORDER

This matter coming before the Court for defendants motion to transfer based on forum non conveins, IT IS SO ORDERED:

1. The Court having read all the submissions and weighed both the public and private interest factors determines that transfer of this matter to McHenry County, Illinois is appropriate 4007 4011
2. This case is dismissed and transfered by the Clerk to McHenry County for further proceedings
3. The Clerk of the Court, Circuit Court of Cook County is Ordered to Transfer this case to McHenry County

Atty. No.: 37199

Name: Amer Tahmasseb

Atty. for: Defendants

Address: 21 W. State St.

City/State/Zip: Geneva, IL 60134

Telephone: (630) 262 9655

ENTERED:

Dated: AUG 06 2012

Associate Judge Randye A. Kogan

Judge

Judge's No

Circuit Court – 1509

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

STATE OF ILLINOIS ) ss
**COUNTY OF COOK )**

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, in and for the State of Illinois, and the keeper of the Records, files and sea thereof, do hereby certify the above and Foregoing to be true, perfect and complete transcript of record as per Order entered August 6, 2012 transferring this cause from the Circuit Court of Cook County, Illinois, to the Circuit Court of McHenry County, Illinois in a certain cause now pending in said Court, McDonald Mark The Plaintiff and Law Offices of Thomas Popovich P.C. the Defendants

IN WITNESS WHEREOF, I have hereunto set my hand,
And affixed the seal of said Court, in said County,
September 19, 2012

DOROTHY BROWN

Clerk of the Circuit Court, Court of Cook County

**CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT**

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

LINE 13 ON CR 204 CALL

FILED
McHenry County, Illinois
OCT 17 2012

McDonald vs. Popovich, et al.

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

Date 10-17-12 Plaintiff's Attorney G. DeBoni / Romanucci - Blandin Defendant's Attorney A. Hamilton / Konicek + Dillon

**ORDER**

This matter coming before the Court for initial status, the Court being fully advised, IT IS HEREBY ORDERED:

1. Plaintiff is granted until November 15, 2012 to file an Amended Complaint; and

2. Defendants shall file a Responsive pleading by December 13, 2012.

Prepared by: A. Hamilton / Konicek + Dillon

Attorney for: Defendants

Attorney Registration No.: 6301098

Judge

# IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
# McHENRY COUNTY, ILLINOIS

FILED

OCT 19 2012

KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

| | | |
|---|---|---|
| **Mark McDonald, etc., et al** | ) | |
| | ) | |
| v | ) | **Case No. 12LA326** |
| | ) | |
| **Law Offices of Thomas J. Popovich, et al.)** | | |

## ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

_____Motion for Substitution of Judge: ____ by Right ____ for Cause

_X_ Recusal/Judicial Conflict (Reason) _____*Defendant Popovich is a personal friend*_____

_____Other: _____

**IT IS ORDERED:** that the above entitled case is referred to the office of the Presiding Judge for reassignment.

Dated: _____Oct. 17, 2012_____ Michael J. Caldwell
JUDGE

## ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge;

**IT IS HEREBY ORDERED** that, pursuant to assignment by the office of the Chief Judge, this cause is reassigned for _____

_____

_X_ Assigned to the Civil Division, Courtroom 201 (Judge Thomas A. Meyer currently assigned to that division/courtroom).

_____Assigned to the Honorable_____.

_____Case transferred to the Chief Judge for reassignment to a judge outside of McHenry County.

Dated: 10-19-12 Michael Sullivan
Chief Judge

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: _____20____

_____

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

McDonald
v.
Poboick

Case No. 12CA326

ORDER OF RECUSAL OR ORDER FOR SUBSTITUTION OF JUDGE

FILED
OCT 19 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK

Reason for Reassignment:

☐ Motion for Substitution of Judge: ☐ by Right ☐ for Cause

☒ Recusal/Judicial Conflict (Reason): friends with Defendant

☐ Other: _____

**IT IS ORDERED:** that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: _____

JUDGE

## ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; **IT IS HEREBY ORDERED** that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

Status on November 7, 2012 at 9:15am

☒ Assigned to the Civil Division, Courtroom 202

(Judge Michael J. Chmiel currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 10-19-12

Michael J. Sullivan, Chief Judge

Michael Holden
33 N. LaSalle St. Ste 2000
Chicago, IL 60602

Daniel Konicek
21 W. State St
Geneva, IL 60134

Proof of Service
The undersigned certifies that a copy of the forgoing document was served upon all parties of record by way of mail, fax or hand delivery on: 10-19-2012

**CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT**

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

Line 13

GEN. NO. 12 LA [redacted] 326

☒ Jury ☐ Non-Jury

McDonald vs. Paparich, et al.



Date 11-7-12 Plaintiff's Attorney [redacted] Romanucci + Blandin Defendant's Attorney A. Hamilton / Konicek + Dillon

**ORDER**

This matter coming to be heard for initial status, the Court being fully advised, IT IS HEREBY ORDERED:

① ~~[redacted]~~

This matter continued to January 17, 2013 at 9:00am. CR 202 for status on whether either party will be requesting recusal.

Prepared by: A. Hamilton / Konicek + Dillon

Attorney for: Defendants

Attorney Registration No.: 6302098

Judge [signature]

ORIGINAL

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



| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**ANSWER TO COMPLAINT AT LAW**

NOW COME the Defendants LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, (collectively the "Popovich Defendants") by and through their attorneys KONICEK & DILLON, P.C. and for their Answer to Plaintiff's Complaint At Law, states as follows:

**GENERAL ALLEGATIONS**
**PARTIES**

1. On November 28, 2011, Plaintiff, MARK MCDONALD, was appointed as Special Administrator of the Estate of Julie Ann McDonald by the Circuit Court of Walworth, County, Wisconsin, for purposes of filing and prosecuting this action (A copy of the Letters of Special Administration is attached hereto as Exhibit A).

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 1 of Plaintiffs' Complaint at Law.**

2. On and before June 29, 2010, Plaintiff, MARK MCDONALD, was a resident of the City of Elkhorn, Walworth County, Wisconsin.

**ANSWER:** **Upon information and belief, the Popovich Defendants admit the allegations of Paragraph 2 of Plaintiffs' Complaint at Law.**

3. On and before June 29, 2010, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., was a professional corporation created by and under the laws of the State of Illinois.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 3 of Plaintiffs' Complaint at Law.**

4. On and before June 29, 2010, and at all times relevant hereto, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., maintained an office at 212 W. Washington St., Suite 808 in the City of Chicago, Cook County, Illinois and/or at 849 N. Franklin St., Suite 1409 in the City of Chicago, Cook County, Illinois.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 4 of Plaintiffs' Complaint at Law.**

5. On and before June 29, 2010, and at all times relevant hereto, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C. was a law firm consisting of attorneys licensed to practice law in the State of Illinois, and was actively practicing law in the area of medical malpractice litigation.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 5 of Plaintiffs' Complaint at Law. Further answering, the Popovich Defendants state that Attorney John A. Kornak was an attorney employed by the Law Offices of Thomas J. Popovich, P.C. and was licensed to practice law in the State of Wisconsin. Further answering, some of the attorneys at the Law Offices of Thomas J. Popovich, P.C., including attorney Thomas J. Popovich and attorney James P. Tutaj, have previously, on occasion, been admitted to practice law in Wisconsin on a *pro hac vice* basis.**

6. On and before June 29, 2010, and at all times relevant hereto, Defendant, JAMES

P. TUTAJ was an attorney, licensed to practice law in the State of Illinois, and practiced law as a partner, member, principal, or associate with the Law Offices of Thomas J. Popovich, P.C.

**ANSWER: The Popovich Defendants admit the allegations of Paragraph 6 of Plaintiffs' Complaint at Law.**

7. On and before June 29, 2010, and at all times relevant hereto, Defendant, THOMAS J. POPOVICH, was an attorney, licensed to practice law in the State of Illinois, and practiced law as a partner, member, principal, or associate with Law Offices of Thomas J. Popovich, P.C.

**ANSWER: The Popovich Defendants admit the allegations of Paragraph 7 of Plaintiffs' Complaint at Law.**

**FACTS**

8. On November 15, 2005, Julie McDonald presented to Aurora Health Center in the City of Lake Geneva, Walworth County, Wisconsin with a fever of 102.5 and was seen by Dr. Theodore Galvani.

**ANSWER: The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 8 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.**

9. On said date, Dr. Galvani diagnosed Ms. McDonald with strep throat. Dr. Galvani prescribed antibiotics, commonly known as Levaquin 750 mg.

**ANSWER: The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 9 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.**

10. On November 15, 2005, after taking the prescribed dose of Levaquin, Ms. McDonald went into anaphylactic shock and died.

**ANSWER:** **The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 10 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.**

11. On November 16, 2005, an autopsy revealed that Ms. McDonald died of a Levaquin-induced anaphylactic shock.

**ANSWER:** **The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 11 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.**

12. At the time of her death, Julie McDonald left surviving her, Plaintiff, MARK MCDONALD, her surviving husband, Cole McDonald, her surviving adult son, Micaela McDonald, her adult daughter, Sydney McDonald, her adult daughter, Ian McDonald, her minor son, Quinlan McDonald, her minor son, and Chloe McDonald, her minor daughter.

**ANSWER:** **The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 12 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.**

13. Under Wisconsin law, Plaintiff, MARK MCDONALD, and his minor children, Ian McDonald, Quinlan McDonald, and Chloe McDonald were the beneficiaries of any recovery made arising out of a wrongful death/survival action.

**ANSWER:** **Paragraph 13 of Plaintiffs' Complaint at Law is a legal conclusion. Further answering, the Popovich Defendants state that upon information and belief, Mark McDonald was the surviving spouse of Julie McDonald and that Ian McDonald, Quinlan McDonald, and Chloe McDonald were Julie McDonald's surviving children at the time of Julie McDonald's death.**

14. Prior to November of 2008, Plaintiff, Mark McDonald hired Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C. to investigate and prosecute a medical malpractice case against Dr. Theodore Galvani and Aurora Health Center.

**ANSWER:** **The Popovich Defendants state that the retention agreement is the best evidence of the relationship between Plaintiff Mark McDonald and the Law Offices of Thomas J. Popovich, P.C., and to the extent that Paragraph 14 of Plaintiffs' Complaint at Law deviates from that agreement, the Popovich Defendants deny the same.**

15. After being retained by Plaintiff, Defendants, JAMES P. TUTAJ and THOMAS J. POPOVICH were assigned to be the handling attorneys on the file.

**ANSWER:** **The Popovich Defendants state that the retention agreement is the best evidence of the relationship between Plaintiff Mark McDonald and Defendants, and to the extent that Paragraph 15 of Plaintiffs' Complaint at Law deviates from that agreement, the Popovich Defendants deny the same.**

16. The statute of limitations for medical malpractice actions filed in the State of Wisconsin is 3 years; from the date the injured party knew or should have known of the negligence.

**ANSWER:** **Paragraph 16 of Plaintiffs' Complaint at Law is a legal conclusion. Further answering, the Popovich Defendants deny that Paragraph 16 of Plaintiffs' Complaint at Law fully and accurately describes the law in Wisconsin as it pertains to medical malpractice actions.**

17. The statute of limitations for wrongful death actions filed in the State of Wisconsin is 3 years; from the date of the injured person's death.

**ANSWER:** **Paragraph 17 of Plaintiffs' Complaint at Law is a legal conclusion. Further answering, the Popovich Defendants deny that Paragraph 17 of Plaintiffs' Complaint at Law fully and accurately describes the law in Wisconsin as it pertains to wrongful death actions.**

18. At no time relevant hereto, was Defendant, JAMES P. TUTAJ admitted to practice law in the State of Wisconsin.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 18 of Plaintiffs' Complaint at Law but further answering state that Defendant James P. Tutaj has, on multiple occasions, been admitted to practice law in the State of Wisconsin on a *pro hac vice* basis.**

19. At no time relevant hereto was Defendant, THOMAS J. POPOVICH admitted to practice law in the State of Wisconsin.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 19 of Plaintiffs' Complaint at Law but further answering state that Defendant Thomas J. Popovich has, on multiple occasions, been admitted to practice law in the State of Wisconsin on a *pro hac vice* basis.**

20. At no time relevant hereto were any attorneys retained or employed by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., licensed to practice law in the State of Wisconsin.

**ANSWER:** **The Popovich Defendants deny the allegations of Paragraph 20 of Plaintiffs' Complaint at Law.**

21. At no time relevant hereto, did Defendants, LAW OFFICES OF THOMAS J. POPOVICH, JAMES P. TUTAJ, or THOMAS J. POPOVICH, contract with, hire, or otherwise retain an attorney who was admitted to practice law in the State of Wisconsin for the purpose of investigating, filing, or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

**ANSWER:** **The Popovich Defendants deny the allegations of Paragraph 21 of Plaintiffs' Complaint at Law.**

22. At no time relevant hereto were the Defendants, JAMES P. TUTAJ, or THOMAS J. POPOVICH admitted to the Circuit Court of Walworth County, Wisconsin on a *pro hac vice* basis for the propose of filing or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 22 of Plaintiffs' Complaint at Law as stated. Further answering, the Popovich Defendants state that Attorney John A. Kornak was an attorney employed by the Law Offices of**

**Thomas J. Popovich, P.C. and was licensed to practice law in the State of Wisconsin.**

23. At no time relevant hereto were any attorneys retained or employed by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., admitted to the Circuit Court of Walworth County, Wisconsin on a *pro hac vice* basis for the purpose of filing or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 23 of Plaintiffs' Complaint at Law as stated. Further answering, the Popovich Defendants state that Attorney John A. Kornak was an attorney employed by the Law Offices of Thomas J. Popovich, P.C. and was licensed to practice law in the State of Wisconsin.**

24. On March 17, 2009, Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, and LAW OFFICES OF THOMAS J. POPOVICH filed a medical malpractice action, captioned *McDonald v. Aurora Health Care, Inc., et al.*, in the Circuit Court of Walworth County, Wisconsin, Case No. 2009 CV 000393.

**ANSWER:** **The Popovich Defendants state that the complaint is the best evidence of the document and date referenced in Paragraph 24 of Plaintiffs' Complaint at Law and to the extent Paragraph 24 of Plaintiffs' Complaint at Law deviates from that complaint, the Popovich Defendants deny the same.**

25. Said complaint was filed more than 3 years after the running of the statutes of limitations applicable to both medical malpractice actions and wrongful death actions in the State of Wisconsin.

**ANSWER:** **The Popovich Defendants deny the allegations contained within Paragraph 25 of Plaintiffs' Amended Complaint at Law.**

26. Said complaint was signed and filed by an attorney who was not licensed to practice law in the State of Wisconsin.

**ANSWER:** **The Popovich Defendants deny the allegations of Paragraph 26 of Plaintiffs' Complaint at Law.**

27. On July 8, 2009, a certificate of non-service with respect to Dr. Galvini was returned to the Circuit Court of Walworth County, stating that Dr. Galvani was not served with a copy of the complaint and summons for the above referenced action.

**ANSWER:** **The Popovich Defendants state that the certificate is the best evidence of the document and date referenced in Paragraph 27 of Plaintiffs' Complaint at Law and to the extent Paragraph 27 of Plaintiffs' Complaint at Law deviates from the certificate, the Popovich Defendants deny the same.**

28. Between July 8, 2009 and February 16, 2010, no further efforts were made by Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, and LAW OFFICE OF THOMAS J. POPOVICH, P.C. to effectuate service upon Dr. Galvani.

**ANSWER:** **The Popovich Defendants deny the allegations of Paragraph 28 of Plaintiffs' Complaint at Law. Further answering, the Popovich Defendants state that an Amended Complaint was filed and an Alias Summons was issued and served up Dr. Galvani.**

29. On February 16, 2009, an order of dismissal was entered in *McDonald* v. *Aurora Health Care, Inc.*, with respect to Dr. Galvani, stating that Dr. Galvani would be dismissed due for a lack of service and lack of prosecution.

**ANSWER:** **The Popovich Defendants state that the order is the best evidence of the document and date referenced in Paragraph 29 of Plaintiffs' Complaint at Law and to the extent Paragraph 29 of Plaintiffs' Complaint at Law deviates from the order, the Popovich Defendants deny the same.**

30. On March 9, 2010, Dr. Galvani was dismissed from said action.

**ANSWER:** **The Popovich Defendants state that the order is the best evidence of the document and date referenced in Paragraph 30 of Plaintiffs' Complaint at Law and to the extent Paragraph 30 of Plaintiffs' Complaint at Law deviates from the order, the Popovich Defendants deny the same.**

31. On June 29, 2010, on hearing on the Aurora Health Center's motion to dismiss, the Circuit Court of Walworth County, Wisconsin the Court found that *McDonald v. Aurora Health Care, Inc.* shall be dismissed due to the filing of the matter by an attorney not admitted to practice law in the State of Wisconsin.

**ANSWER:** **The Popovich Defendants state that the order is the best evidence of the dismissal and date referenced in Paragraph 31 of Plaintiffs' Complaint at Law and to the extent Paragraph 31 of Plaintiffs' Complaint at Law deviates from the order, the Popovich Defendants deny the same.**

32. On July 15, 2010, an order dismissing said action was entered.

**ANSWER:** **The Popovich Defendants state that the order is the best evidence of the document and date referenced in Paragraph 32 of Plaintiffs' Complaint at Law and to the extent Paragraph 32 of Plaintiffs' Complaint at Law deviates from the order, the Popovich Defendants deny the same.**

33. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., take any action to vacate or alter said dismissal orders.

**ANSWER:** **The Popovich Defendants deny the allegations contained in Paragraph 33 of Plaintiffs' Complaint at Law.**

34. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., notify Plaintiff, MARK MCDONALD of the dismissal.

**ANSWER:** **The Popovich Defendants deny the allegations contained in Paragraph 34 of Plaintiffs' Complaint at Law.**

35. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., inform Plaintiff, MARK MCDONALD, that legal malpractice may have been committed.

**ANSWER:** **The Popovich Defendants admit that they did not "inform Plaintiff, Mark McDonald, that legal malpractice may have been committed" and, further answering, specifically deny that legal malpractice was committed.**

36. At no time following dismissal did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., advise Plaintiff, MARK MCDONALD to consult with an attorney regarding any potential malpractice.

**ANSWER:** **The Popovich Defendants admit that they did not "advise Plaintiff Mark McDonald to consult with an attorney regarding any potential malpractice" and, further answering, specifically deny that legal malpractice was committed.**

COUNT I

*(McDonald v. Law Offices of Thomas* J. *Popovich* - Legal Malpractice)

1 - 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count I, as though fully set forth herein.

**ANSWER:** **The Popovich Defendants incorporate and adopt their Answers to Paragraphs 1-36 of the General Allegations of Plaintiffs' Complaint at Law as and for their Answer to Paragraphs 1-36 of Count I of Plaintiffs' Complaint at Law as though fully set forth herein.**

37. At all times relevant herein, Defendant, James P. Tutaj, was an employee, agent, and/or servant of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 37 of Count I of Plaintiffs' Complaint at Law.**

38. At all times relevant herein, in handling the matter of *McDonald* v. *Aurora Health Center, Inc., etal.*, Defendant, James P. Tutaj, was acting within the scope of his employment with Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 38 of Count I of Plaintiffs' Complaint at Law.**

39. At all times relevant herein, Defendant, Thomas J. Popovich, was an owner, partner, principal, and/or shareholder of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 39 of Count I of Plaintiffs' Complaint at Law.**

40. At all times relevant herein, Defendant, Thomas J. Popovich, was an employee, agent, and/or servant of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 40 of Count I of Plaintiffs' Complaint at Law.**

41. At all times relevant herein, in handling the matter of *McDonald* v. *Aurora Health Center, Inc., et al.*, Defendant, Thomas J. Popovich, was acting within the scope of his agency, employment, and/or servant relationship with Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 41 of Count I of Plaintiffs' Complaint at Law.**

42. Upon being retained by Mark McDonald, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

**ANSWER:** **The Popovich Defendants deny that Paragraph 42 of Count I of Plaintiffs' Complaint at Law fully and accurately sets forth the duties imposed by an attorney-client relationship, deny that Paragraph 42 of Count I of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for**

**attorneys practicing in Illinois, and deny that Paragraph 42 of Count I of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois. Further answering, the Popovich Defendants admit that they owed Plaintiff Mark McDonald a duty of care.**

43. Notwithstanding said duty, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, committed one or more of the following negligent acts/or omissions:

a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;

b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;

c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;

d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;

e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;

f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;

g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;

h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;

i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;

j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;

k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or

l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.

**ANSWER:** **The Popovich Defendants deny the allegations contained within Paragraph 43 of Count I of Plaintiffs' Complaint at Law, including each and every allegation contained in subparagraphs "a" through "l," inclusive.**

44. On March 17, 2011, after obtaining a printout of the court docket from the Circuit Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald* v. *Aurora Health Center, Inc., el at.,* had been dismissed.

**ANSWER:** **The Popovich Defendants are without sufficient knowledge to admit or deny the date and the manner in which Plaintiff Mark McDonald "first learned" of the dismissal order and therefore the Popovich Defendants deny the allegations contained within Paragraph 44 of Count I of Plaintiffs' Complaint at Law and demand strict proof thereof.**

45. As a direct and proximate result of one or more of these negligent acts or omissions by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, Plaintiffs were denied their right to pursue the wrongful death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

**ANSWER:** **The Popovich Defendants deny the allegations contained within Paragraph 45 of Count I of Plaintiffs' Complaint at Law.**

46. As a further direct and proximate result of one or more of these negligent acts or omission by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs

were denied their right to recover significant money damages as a result of the death of Julie McDonald.

**ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 46 of Count I of Plaintiffs' Complaint at Law.**

*WHEREFORE*, **The Popovich Defendants deny that Plaintiffs are entitled to any relief whatsoever and respectfully request this Court enter judgment in their favor and award them any such further relief this Court deems just.**

COUNT II

(*McDonald v. James P. Tutaj* - Legal Malpractice)

1 - 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count II, as though fully set forth herein.

**ANSWER: The Popovich Defendants incorporate and adopt their Answers to Paragraphs 1-36 of the General Allegations of Plaintiffs' Complaint at Law as and for their Answer to Paragraphs 1-36 of Count II of Plaintiffs' Complaint at Law as though fully set forth herein.**

37. At all times relevant herein, Defendant, JAMES P. TUTAJ, was an employee, agent, and/or servant of Defendant, Law Offices of Thomas J. Popovich.

**ANSWER: The Popovich Defendants admit the allegations of Paragraph 37 of Count II of Plaintiffs' Complaint at Law.**

38. At all times relevant herein, in handling the matter of *McDonald* v. *Aurora Health Center, Inc., et al.*, Defendant, JAMES P. TUTAJ, was acting within the scope of his employment with Defendant, Law Offices of Thomas J. Popovich.

**ANSWER: The Popovich Defendants admit the allegations of Paragraph 38 of Count II of Plaintiffs' Complaint at Law.**

39. Upon being retained by Mark McDonald, Defendant, JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

**ANSWER:** **The Popovich Defendants deny that Paragraph 39 of Count II of Plaintiffs' Complaint at Law fully and accurately sets forth the duties imposed by an attorney-client relationship, deny that Paragraph 39 of Count II of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois, and deny that Paragraph 39 of Count II of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois. Further answering, the Popovich Defendants admit that they owed Plaintiff Mark McDonald a duty of care.**

40. Notwithstanding said duty, Defendant, JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, committed one or more of the following negligent acts/or omissions:

a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;

b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;

c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;

d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;

e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;

f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;

g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;

h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;

i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;

j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;

k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or

l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.

**ANSWER:** **The Popovich Defendants deny the allegations contained within Paragraph 40 of Count II of Plaintiffs' Complaint at Law, including each and every allegation contained in subparagraphs "a" through "l," inclusive.**

41. On March 17, 2011, after obtaining a printout of the court docket from the Circuit Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald* v. *Aurora Health Center, Inc. et al.*, had been dismissed.

**ANSWER:** **The Popovich Defendants are without sufficient knowledge to admit or deny the date and the manner in which Plaintiff Mark McDonald "first learned" of the dismissal order and therefore the Popovich Defendants deny the allegations contained within Paragraph 41 of Count II of Plaintiffs' Complaint at Law and demand strict proof thereof.**

42. As a direct and proximate result of one or more of these negligent acts or omissions by JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, Plaintiffs were denied their right to pursue the wrongful

death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

**ANSWER:** **The Popovich Defendants deny the allegations contained within Paragraph 42 of Count II of Plaintiffs' Complaint at Law.**

43. As a further direct and proximate result of one or more of these negligent acts or omission by JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs were denied their right recover significant money damages as a result of the death of Julie McDonald.

**ANSWER:** **The Popovich Defendants deny the allegations contained within Paragraph 43 of Count II of Plaintiffs' Complaint at Law.**

*WHEREFORE,* **The Popovich Defendants deny that Plaintiffs are entitled to any relief whatsoever and respectfully request this Court enter judgment in their favor and award them any such further relief this Court deems just.**

COUNT III

*(McDonald v. Thomas J. Popovich* - Legal Malpractice)

1 - 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count III as though fully set forth herein.

**ANSWER:** **The Popovich Defendants incorporate and adopt their Answers to Paragraphs 1-36 of the General Allegations of Plaintiffs' Complaint at Law as and for their Answer to Paragraphs 1-36 of Count III of Plaintiffs' Complaint at Law as though fully set forth herein.**

32. At all times relevant herein, Defendant, THOMAS J. POPOVICH, was an owner, partner, principal, and/or shareholder of Defendant, Law Offices of Thomas J. Popovich.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 32 of Count III of Plaintiffs' Complaint at Law.**

33. At all times relevant herein, Defendant, THOMAS J. POPOVICH, was an employee, agent, and/or servant of Defendant, Law Offices of Thomas J. Popovich.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 33 of Count III of Plaintiffs' Complaint at Law.**

34. At all times relevant herein, in handling the matter of *McDonald* v. *Aurora Health Center, Inc., et al.*, Defendant, THOMAS J. POPOVICH, was acting within the scope of his employment with Defendant, Law Offices of Thomas J. Popovich.

**ANSWER:** **The Popovich Defendants admit the allegations of Paragraph 34 of Count III of Plaintiffs' Complaint at Law.**

35. Upon being retained by Mark McDonald, Defendant, THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

**ANSWER:** **The Popovich Defendants deny that Paragraph 35 of Count III of Plaintiffs' Complaint at Law fully and accurately sets forth the duties imposed by an attorney-client relationship, deny that Paragraph 35 of Count III of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois, and deny that Paragraph 35 of Count III of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois. Further answering, the Popovich Defendants admit that they owed Plaintiff Mark McDonald a duty of care.**

36. Notwithstanding said duty, Defendant, THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas]. Popovich, committed one or more of the following negligent acts/or omissions:

a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;

b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;

c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;

d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;

e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;

f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;

g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;

h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;

i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;

j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;

k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or

l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.

**ANSWER:** **The Popovich Defendants deny the allegations contained within Paragraph 36 of Count III of Plaintiffs' Complaint at Law, including each and every allegation contained in subparagraphs "a" through "l," inclusive.**

37. On March 17, 2011, after obtaining a printout of the court docket from the Circuit Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald* v. *Aurora Health Center, Inc., et al.* had been dismissed.

**ANSWER: The Popovich Defendants are without sufficient knowledge to admit or deny the date and the manner in which Plaintiff Mark McDonald "first learned" of the dismissal order and therefore the Popovich Defendants deny the allegations contained within Paragraph 37 of Count III of Plaintiffs' Complaint at Law and demand strict proof thereof.**

38. As a direct and proximate result of one or more of these negligent acts or omissions by THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, Plaintiffs were denied their right to pursue the wrongful death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

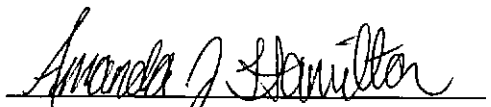
**ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 38 of Count III of Plaintiffs' Complaint at Law.**

39. As a further direct and proximate result of one or more of these negligent acts or omission by THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs were denied their right recover significant money damages as a result of the death of Julie McDonald.

**ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 39 of Count III of Plaintiffs' Complaint at Law.**

*WHEREFORE,* **The Popovich Defendants deny that Plaintiffs are entitled to any relief whatsoever and respectfully request this Court enter judgment in their favor and award them any such further relief this Court deems just.**

Respectfully submitted,



Attorney for the Popovich Defendants

Daniel F. Konicek (#6205408)
Amir R. Tahmassebi (#6287787)
Amanda J. Hamilton (#6306098)
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
630.262.9655

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

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**AFFIDAVIT**

I, JAMES P. TUTAJ, individually and on behalf of LAW OFFICES OF THOMAS J. POPOVICH, P.C., being first duly sworn under oath, certify that all denials based on insufficient knowledge are true in that I do not have personal knowledge sufficient to form a belief.

JAMES P. TUTAJ, individually and on behalf of LAW OFFICES OF THOMAS J. POPOVICH, P.C.

SUBSCRIBED and SWORN to before me this 13 day of December, 2012.

Pamela A. Pecka
Notary Public

OFFICIAL SEAL
PAMELA A. PECKA
Notary Public - State of Illinois
My Commission Expires May 24, 2015

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

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**AFFIDAVIT**

I, THOMAS J. POPOVICH, individually and on behalf of LAW OFFICES OF THOMAS J. POPOVICH, P.C., being first duly sworn under oath, certify that all denials based on insufficient knowledge are true in that I do not have personal knowledge sufficient to form a belief.

THOMAS J. POPOVICH, individually and on behalf of LAW OFFICES OF THOMAS J. POPOVICH, P.C.

SUBSCRIBED and SWORN to before me this 13th day of December, 2012.

Pamela A. Pecka
Notary Public

OFFICIAL SEAL
PAMELA A. PECKA
Notary Public - State of Illinois
My Commission Expires May 24, 2015

ORIGINAL

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



| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**NOTICE OF FILING**

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

*PLEASE TAKE NOTICE* that on **December 13, 2012**, we mailed to be filed with the McHenry County Circuit Court Clerk's office our **ANSWER TO COMPLAINT AT LAW** on behalf of the Defendants; a copy of which is attached hereto and served upon you.

Daniel F. Konicek (#6205408)
Amir R. Tahmassebi (#6287787)
Amanda J. Hamilton (#6306098)
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
630.262.9655

Amanda J. Hamilton
Attorney for Defendants

**CERTIFICATE OF SERVICE**

The undersigned states that the foregoing **NOTICE** and **ANSWER** were served upon the above-listed attorney by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **December 13, 2012**, with proper postage prepaid.

Martha Hudon

ORIGINAL

CERS

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

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

FILED
JAN 14 2013
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

**NOTICE OF MAILING/**
**CERTIFICATE OF SERVICE**

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

The undersigned states that copies of **DEFENDANT JAMES P. TUTAJ'S FIRST SET OF INTERROGATORIES TO PLAINTIFF, DEFENDANT JAMES P. TUTAJ'S FIRST SET OF PRODUCTION REQUESTS TO PLAINTIFF,** and **RULE 213(f) INTERROGATORIES TO PLAINTIFF,** were served upon the attorney listed above, together with this **Certificate of Service,** by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **January 11, 2013,** with proper postage prepaid.

Daniel F. Konicek (#6205408)
Amir R. Tahmassebi (#6287787)
Amanda J. Hamilton (#6306098)
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
630.262.9655

Amanda J. Hamilton
Attorney for Defendants

LINE 4

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

FILED
McHenry County, Illinois
JAN 17 2013
KATHERINE M. KEEFE
Clerk of the Circuit Court

McDonald vs. Paparich

Date 1-17-13 Plaintiff's Attorney Romanucci + Blandin Defendant's Attorney A. Hamilton/Konicek + Dillon

**ORDER**

This matter coming before the Court for status, the Court being fully advised, IT IS HEREBY ORDERED:

(1) This matter is continued to March 21, 2013 at 9:15am. CR 202 for status on the completion of written discovery.

Prepared by: A. Hamilton/Konicek + Dillon

Attorney for: Defendants

Attorney Registration No.: 6306098

Judge

D15

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



| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**PLAINTIFF'S RULE 213(f) DISCLOSURES**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through his attorneys, ROMANUCCI & BLANDIN, LLC, in answering the Rule 213(f) interrogatories of the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH, pursuant to Supreme Court Rule 213, states as follows:

**213(f)(1) Disclosures:**

*Plaintiffs hereby set out for its own witnesses, as if fully written out herein, the identity, testimony and disclosure of each and every lay witness disclosed under Rule 213(f)(1) by every other party in this case, including the defendant(s). Plaintiffs reserve the right to call each and every such lay witness disclosed by every other party to this action in accordance with the Rule 213 disclosures regarding those lay witnesses identified by every other party to this litigation.*

*If counsel or any other attorney objects to the authenticity or foundation of any record, photograph or document at trial and said objection is sustained, plaintiffs' counsel will call record keepers to testify that these records, documents, and/or photographs which are prepared, generated and stored in the ordinary course of business, that the copies of those records and photographs which were produced are authentic, and true and accurate and lay all further foundation testimony for the admission of each record, photograph and/or document, including that the photographs are fair and accurate representations of the items depicted.*

*If counsel or any attorney objects to the authenticity or foundation of sworn deposition testimony in this case, or if witnesses refuse to acknowledge answers provided in said deposition, plaintiff reserves the right to call court reporters from each such deposition to establish needed foundation authenticity, the witness' prior deposition testimony, or other testimony.*

*To the extent that any witness identified herein as a "lay witness" is later construed by the court as an "independent" or "controlled" expert witness, then that witness and testimony is hereby disclosed as "independent" and/or "controlled" expert witness and testimony pursuant to Rule 213(f)(2) or Rule 213(f)(3).*

*The Plaintiffs reserve the right to call and hereby discloses each and every witness who has or will provide deposition testimony in this case, in plaintiff's case-in-chief at trial, or in rebuttal. Plaintiffs expect each witness will testify at trial consistently with the content of any deposition given by him/her testimony.*

**Mark McDonald**
**221 Winsor Street**
**Elkhorn, WI 53121**

Mark McDonald is the Plaintiff in this matter and is expected to testify regarding the pre-occurrence and post-occurrence events and facts of the subject occurrence, including his observations of the medical care Julie McDonald received prior to her death, as well as the facts and circumstances surrounding her death. He will also testify regarding his pain, suffering, and damages proximately caused by the occurrence, including any financial detriment proximately resulting from the subject occurrence. Further, Mr. McDonald is expected to testify as to conversations with physicians regarding their care and treatment of Julie McDonald prior and subsequent to the occurrence. Mr. McDonald is expected to testify as to conversations and correspondence with Defendants regarding their handling of the legal matters attached to the subject occurrence. He is expected to testify consistent with any deposition given in this matter.

**Cole McDonald**
**221 Winsor Street**
**Elkhorn, WI 53121**

Cole McDonald is the eldest son of the Plaintiff in this matter and is expected to testify regarding the impact the loss of his mother has had on his life. Further, Cole is expected to testify regarding his loss of love, society, and affection due to the death of his mother. He is expected to testify consistent with any deposition given in this matter.

**Micaela McDonald**
**709 8th Avenue South East Apt #4**
**Minneapolis, MN 55414**

Micaela McDonald is the eldest daughter of the Plaintiff in this matter, and is expected to testify regarding the impact the loss of her mother has had on her life. Further, Micaela is expected to testify regarding her loss of love, society, and affection due to the death of her mother. She is expected to testify consistent with any deposition given in this matter.

**Sydney McDonald**
**221 Winsor Street**
**Elkhorn, WI 53121**

Sydney McDonald is the daughter of the Plaintiff in this matter and is expected to testify regarding the impact the loss of her mother has had on her life. Further, Sydney is expected to testify regarding her loss of love, society, and affection due to the death of her mother. She is expected to testify consistent with any deposition given in this matter.

**Ian McDonald**
**221 Winsor Street**
**Elkhorn, WI 53121**

Ian McDonald is the son of the Plaintiff in this matter and is expected to testify regarding the impact the loss of his mother has had on his life. Further, Ian is expected to testify regarding his loss of love, society, and affection due to the death of his mother. He is expected to testify consistent with any deposition given in this matter.

**Chloe McDonald**
**221 Winsor Street**
**Elkhorn, WI 53121**

Chloe McDonald is the youngest daughter of the Plaintiff in this matter and is expected to testify regarding the impact the loss of her mother has had on her life. Further, Chloe is expected to testify regarding her loss of love, society, and affection due to the death of her mother. She is expected to testify consistent with any deposition given in this matter.

**Quinlan McDonald**
**221 Winsor Street**
**Elkhorn, WI 53121**

Quinlan McDonald is the youngest son of the Plaintiff in this matter and is expected to testify regarding the impact the loss of his mother has had on his life. Further, Quinlan is expected to testify regarding his loss of love, society, and affection due to the death of his mother. He is expected to testify consistent with any deposition given in this matter.

**Beth Sweeney**
**26 Winsor Street**
**Elkhorn, WI 53121**
**(262) 745-3765**

Beth Sweeney is a neighbor and friend of the McDonald family and is expected to testify regarding the pre-occurrence and post-occurrence events and facts of the subject occurrence, including her observations of the medical care Julie McDonald received prior to her death, as well as the facts and circumstances surrounding her death. She is expected to testify consistent with any deposition given in this matter.

**Tom Popovich**
**3416 W. Elm Street**
**McHenry, IL 60050**

Tom Popovich is a Defendant and will be called as an adverse witness, pursuant to ILCS 5/2-1102. Mr. Popovich previously represented the Plaintiff in the initial Complaint against Aurora Health Care. He is expected to testify regarding his handling of the Plaintiff's legal matters, as well as any facts or circumstances regarding the subject occurrence. He is expected to testify consistent with any deposition given in this matter.

**James Tutaj**
**3416 W. Elm Street**
**McHenry, IL 60050**

James Tutaj is a Defendant and will be called as an adverse witness, pursuant to 735 ILCS 5/2-1102. Mr. Tutaj previously represented the Plaintiff in the initial Complaint against Aurora Health Care. He is expected to testify regarding his handling of the Plaintiff's legal matters, as well as any facts or circumstances regarding the subject occurrence. He is expected to testify consistent with any deposition given in this matter.

**213(f)(2) Disclosures:**

*Plaintiffs expressly adopt its responses above (lay witnesses) and below (controlled expert witnesses) as part of his/her response of his/her Rule 213(f)(2) disclosures. Insofar as the matters expressed in this Response to Rule 213(f)(2) disclosures are later construed by the court as including opinion testimony of either lay or controlled expert witnesses, then such testimony, factual basis, or expert opinion is hereby disclosed pursuant to and incorporated into the disclosures of plaintiffs' lay witnesses disclosure and/or controlled expert witnesses of Plaintiffs' disclosures herein referenced. To the extent any witnesses or testimony disclosed pursuant to this disclosure (independent expert witnesses) or controlled expert witnesses disclosure are later construed by the court as factual testimony, then those witnesses and their factual testimony is hereby incorporated herein as a portion of plaintiff's Rule 213(f)(1) disclosures.*

*The qualifications of the witnesses disclosed below are contained in their deposition transcripts, curriculum vitae, resumes and/or referred to in their deposition transcripts.*

*The report of the independent medical witness discussed below are contained within the medical records obtained during the discovery in this litigation from each respective physician or the medical witness. This Plaintiffs specifically reserve the right to discuss medical events, patient history, physical examinations, diagnosis, and any other aspect of the care rendered by each physician or other independent expert witness listed below; including issues of causation, permanency; and, future medical care.*

*Plaintiffs expressly reserve the right to call any fact, independent, or controlled opinion witnesses disclosed by defendant's counsel, or any other party to this litigation pursuant to Rule 213(f)(2), at the time of trial in defendant's case-in-chief, or at any other time, with respect to all facts, basis, and opinions disclosed in other parties' Rule 213(f)(2) answers or testified to in the witnesses' depositions.*

*The Plaintiffs reserve the right to call and hereby discloses each and every witness who has or will provide deposition testimony in this case, in plaintiffs' case-in-chief at trial, or in rebuttal. Plaintiffs expect each witness will testify at trial consistently with the content of his/her deposition testimony. With respect to treating physicians disclosed, plaintiffs anticipate that those physicians will testify consistently with their medical charting regarding history, the physical examination, plan, diagnosis and recommendations.*

*Plaintiffs hereby adopt each and every witness named by other party to the lawsuit, including the defendants, as if fully written out herein, including each and every independent expert witness disclosed by every other party in this case. Plaintiffs reserve the right to call each and every such independent expert witness disclosed by every other party to this action in accordance with Rule 213 witness identity and testimony disclosures relating to those independent expert witnesses identified by every other party to this litigation.*

**Theodore J. Galvani, M.D.**
**9703 Fox Bluff Lane**
**Spring Grove, IL 60081**

**Other Various Representatives from Aurora Health Center**
**3000 W. Montana Ave.**
**Milwaukee, WI 53215**

The abovementioned physician, as well as other representatives from Aurora Health Center, is expected to testify as to the facts and circumstances of the occurrence, his care and treatment of Julie McDonald prior to her death, and his general observations of the medical condition of Julie McDonald. Dr. Galvani is expected to testify as to the timeline of his treatment of Julie McDonald, his observations of her medical condition, the differential diagnosis arrived at for Julie McDonald, his ultimate diagnosis for her, and the treatment plan he put into place. It is anticipated that he will testify consistent with the answers to discovery generated in this matter, his medical records and charts for Julie McDonald, any other documents generated, and any deposition he has given in this matter.

These individuals will further testify regarding the following subject matter:

a) Their credentials, training, schooling, residencies, fellowships, memberships in professional societies and organizations, publications and research, and experience in treating symptoms such as those displayed by Julie McDonald;

b) All factual observations that these individuals made during their treatment of Julie McDonald, including all aspects of the factual and medical history that was gleaned, or was observed and/or interpreted in Julie McDonald's medical records and reports from other physicians and medical providers that provided care to Julie McDonald. In addition, they will testify that such records and reports are the type reasonably relied on by physicians and staff during the treatment and in forming opinions about the nature and extent of Julie McDonald's condition before her death;

c) All facts relating to the purpose for, details of, and observations made by them during all physical examinations performed on Julie McDonald;

d) All factual observations made by them during the treatment of Julie McDonald;

e) That the diagnosis, prognosis, and care and treatment plan arrived at by these individuals for Julie McDonald's condition and injuries was reasonable, necessary, and causally related to her symptoms.

**Eric Schmetter**
**3 East Geneva Street**
**Elkhorn, WI 53121**
**(262) 723-6466**

The abovementioned pharmacist, is expected to testify as to the facts and circumstances of the occurrence, his care and treatment of Julie McDonald prior to her death, and his general observations of the medical condition of Julie McDonald. Mr. Schmetter is expected to testify as to the timeline of his treatment of Julie McDonald and his observations of her medical condition. It is anticipated that he will testify consistent with the answers to discovery generated in this matter, his medical records and charts for Julie McDonald, any other documents generated, and any deposition he has given in this matter.

Mr. Schmetter will further testify regarding the following subject matter:

a) His credentials, training, schooling, residencies, fellowships, memberships in professional societies and organizations, publications and research, and experience in treating symptoms such as those displayed by Julie McDonald;

b) All factual observations that he made while treating Julie McDonald, including all aspects of the factual and medical history that was provided to Mr. Schmetter, or was observed and/or interpreted in Julie McDonald's medical records and reports from other physicians and medical providers that provided care to Julie McDonald prior to her death.

**Mark D. Molot, M.D.**
**Walworth County Coroner's Office**
**W4054 County Road NN**
**Elkhorn, WI 53121**

Dr. Molot is the pathologist who performed the autopsy of Julie McDonald. He is expected to testify consistent with his discovery deposition, his medical charts and records, along with his post-mortem examination of Julie McDonald, and his knowledge of Julie McDonald's pathological presentation upon examination. He will testify regarding the topics disclosed in the pathological records, reports, charts and films generated by, ordered by, or reviewed by him:

Dr. Molot will further testify regarding the following subject matter:

a) His credentials, medical training, schooling, residencies, fellowships, memberships in professional societies and organizations, publications and research, and experience in performing autopsies on patients similar to Julie McDonald;

b) All factual observations that he made during his post-mortem examination of Julie McDonald, including all aspects of the factual and medical history that was provided to Dr. Molot, or was observed and/or interpreted in Julie McDonald's medical records and reports from other physicians and medical providers that provided care to Julie McDonald prior to her death. In addition, he will testify that such records and reports are the type reasonably relied on by physicians during the post-mortem examination and in forming opinions about the pathology and/or cause of death for patients, and that such documentation is reliable;

c) All facts relating to the purpose for, details of, and observations made by Dr. Molot during his post-mortem examinations performed on Julie McDonald;

d) That his medical bills are usual, customary, and causally related to the post-mortem examination of Julie McDonald.

**213(f)(3) Disclosures:**

*Plaintiffs expressly adopt its responses to above, lay witnesses and independent expert witnesses, as part of his/her response to this interrogatory (controlled expert witnesses). Insofar as the matters expressed in this answer to Rule 213(f)(3) are later construed by the court as including opinion testimony of either independent or lay witnesses, then such testimony, factual basis, or expert testimony is hereby disclosed pursuant to and incorporated into the 213(f)(1) and/or 213(f)(2) disclosures of the plaintiffs. To the extent that any witness or testimony disclosed pursuant to independent expert witnesses disclosure and this, controlled expert disclosures, are later construed by this court as factual testimony, then that factual testimony is hereby incorporated herein as a portion of plaintiff's 213(f)(1) (lay witnesses) disclosures.*

*The qualifications of the witnesses disclosed below are contained in their deposition transcripts, curriculum vitae, resumes and/or referred to in their deposition transcripts. All of the opinions expressed by plaintiffs' witnesses listed below are based upon their individual education, training, experience and review of any applicable reference or other published materials for consultation, and that witness' review of materials pertinent to this particular case.*

*Plaintiffs hereby set out as additional witnesses, as though fully set forth herein, each and every one of the controlled expert witnesses of each and every other party, including defendants. Plaintiffs reserved the right to call each and every such controlled expert witness disclosed by every other party to this action in accordance with the Rule 213 disclosures regarding those controlled expert witnesses identified by every party to this litigation.*

**Plaintiffs will disclose 213(f)(3) controlled expert witnesses pursuant to the discovery schedule set by this court.**

Plaintiffs specifically reserve the right to supplement these disclosures as discovery in this matter progresses. Furthermore, Plaintiffs reserve the right to adopt any disclosures made by the Defendants in this matter, including any disclosures to be made in the future.

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
Attorney for Plaintiff

Stephan D. Blandin
Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North La Salle Street
Suite 2000
Chicago, Illinois 60602
Tel: (312) 458-1000
Fax: (312) 458-1004
Atty. No.: 35875

PROOS

**IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| v. | ) | No. 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, Defendants, | ) | |



**NOTICE OF MAILING/CERTIFICATE OF SERVICE**

TO: Daniel F. Konicek
Amanda J. Hamilton
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134

The undersigned states that copies of **Plaintiff's Answers to Defendants First Set of Interrogatories, Plaintiff's Response to Defendants First Set of Production Requests, and Plaintiff's Rule 213(f) Disclosures**, were served upon the attorney listed above, together with this Certificate of Service, by depositing same in the U.S. Mail located at Chicago, Illinois 60602, on February 19, 2013, with proper postage paid.

Stephan D. Blandin
Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 N. LaSalle St.
Suite 2000
Chicago, IL 60602
Tel: (312) 458-1000
Fax: (312) 458-1004
Attorney No.: 35875

Attorney for Plaintiff

RES

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

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |



**PLAINTIFF'S RESPONSE TO FIRST SET OF PRODUCTION REQUESTS**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through his attorneys, ROMANUCCI & BLANDIN, LLC, in responding to the production requests of the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH, pursuant to the applicable Illinois Supreme Court Rules:

1. **See attached CD.**
2. **Plaintiff did not specifically reference any documents in its Complaint at law. If there are documents Defendant believes were referenced in the Complaint at law, Plaintiff will produce any documents in its possession upon specific request.**
3. **Plaintiff is not in possession of said documents. Plaintiff reserves the right to seasonably supplement.**
4. **See attached CD.**
5. **Plaintiff is not in possession of said documents. Plaintiff reserves the right to seasonably supplement.**

6. **Plaintiff is not in possession of said documents. Plaintiff reserves the right to seasonably supplement.**

7. **See attached CD.**

8. **See attached CD.**

9. **None at this time. Plaintiff reserves the right to seasonably supplement.**

10. **Plaintiff is not in possession of said documents. Plaintiff reserves the right to seasonably supplement.**

11. **Plaintiff is not in possession of said documents. Plaintiff reserves the right to seasonably supplement.**

12. **None at this time. Plaintiff will make determinations regarding trial exhibits on a future date. Plaintiff reserves the right to seasonably supplement.**

13. **None at this time. Plaintiff reserves the right to seasonably supplement.**

14. **None at this time. Plaintiff reserves the right to seasonably supplement.**

15. **See attached CD.**

16. **None at this time.**

17. **See Attached.**

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
Attorney for Plaintiff

Stephan D. Blandin
Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North La Salle Street
Suite 2000
Chicago, Illinois 60602
Tel: (312) 458-1000
Fax: (312) 458-1004
Atty. No.: 35875

# VERIFICATION

The undersigned being first duly sworn upon oath and subject to penalty of perjury states that he has read the foregoing document, and the answers made herein are true in substance and in fact to the best of his belief and knowledge.

Mark McDonald

Subscribed and sworn to before me this,
the 19 day of February 2013.

Notary Public

OFFICIAL SEAL
MICHAEL HOLDEN
Notary Public - State of Illinois
My Commission Expires Aug 4, 2013

ORIGINAL

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



| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |

**NOTICE OF MAILING/**
**CERTIFICATE OF SERVICE**

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

The undersigned states that copies of **DEFENDANT JAMES P. TUTAJ'S SECOND SET OF INTERROGATORIES TO PLAINTIFF**, were served upon the attorney listed above, together with this **Certificate of Service**, by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **March 6, 2013**, with proper postage prepaid.

Daniel F. Konicek (#6205408)
Thomas J. Long (#6185763)
Amanda J. Hamilton (#6306098)
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
630.262.9655

Amanda J. Hamilton
Attorneys for Defendants

LINE #14
CIVIL CALL

**CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT**

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

McDonald vs. Paponich, et al

FILED
McHenry County, Illinois
MAR 21 2013
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date 3-21-13 Plaintiff's Attorney Romanucci & Blandin Defendant's Attorney A. Hamilton / Kanicek & Dillon

**ORDER**

This matter coming to be heard for status on written discovery, the Court being fully advised, IT IS HEREBY ORDERED:

1. This matter is continued to July 10, 2013 at 9:15 am, CR 202 for status on written discovery and ~~Plaintiff's~~ party depositions.

Prepared by: A. Hamilton / Kanicek & Dillon

Attorney for: Defendants

Attorney Registration No.: 6306098

Judge

CLERS

**IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

FILED
MAR 25 2013
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

**NOTICE OF MAILING/**
**CERTIFICATE OF SERVICE**

TO: Daniel F Konicek
Konicek & Dillon, P.C.
21 W. State Street
Geneva, IL 60134

The undersigned states that copies of **Plaintiff's Answers to Defendant's Second Set of Interrogatories**, were served upon the attorney listed above, together with this Certificate of Service, by depositing same in the U.S. Mail located at Chicago, Illinois 60602, on **March 22, 2013**, with proper postage prepaid.

Michael E. Holden
ROMANUCCI & BLANDIN
33 North LaSalle Street - Suite 2000
Chicago, Illinois 60602
312-458-1000
312-458-1004 Fax
Attorney No. 35875

**PROOF OF SERVICE**

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. March 22, 2013 with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

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

| | | |
|---|---|---|
| MARK MCDONALD, Individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, Plaintiff, | ) | |
| vs. | ) | No. 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, Defendants. | ) | |



**NOTICE OF MAILING/**
**CERTIFICATE OF SERVICE**

TO: Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street
Suite 2000
Chicago, IL 60602

The undersigned states that copies of **DEFENDANTS' ANSWERS TO PLAINTIFF'S SCR 213(F)(1), (2) AND (3) INTERROGATORIES, ANSWERS TO PLAINTIFF'S INTERROGATORIES AND DEFENDANTS' ANSWERS TO PLAINTIFF'S REQUEST TO PRODUCE,** were served upon the attorney listed above, together with this **Certificate of Service**, by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **March 21, 2013**, with proper postage prepaid.

Daniel F. Konicek (#6205408)
Thomas J. Long (#6185763)
Amanda J. Hamilton (#6306098)
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
630.262.9655

Amanda J. Hamilton
Attorneys for Defendants

#19

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

McDonald

vs.

Paparich, et al

FILED
McHenry County, Illinois
JUL 10 2013
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date 7-10-13 Plaintiff's Attorney Romanucci & Blandin Defendant's Attorney A. Hamilton / Konicek & Dillon

**ORDER**

This matter coming to be heard for status, the Court being fully advised,

IT IS HEREBY ORDERED:

1. This matter is continued to October 7, 2013 at 9:15 am, CR 202 for status on completion of party depositions and of Illinois Supreme Court Rule 213(f)(1) lay witness depositions.

Prepared by: A. Hamilton / Konicek & Dillon

Attorney for: Defendants

Attorney Registration No.: 6301098

Judge

CH17

**IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | FILED<br>SEP - 9 2013<br>KATHERINE M. KEEFE<br>McHENRY CTY. CIR. CLK. |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**NOTICE OF CHANGE OF ADDRESS**

TO: All Counsel of Record
(See Attached Service List)

PLEASE BE ADVISED that effective August 26, 2013, our address is:

321 North Clark St.
Suite 900
Chicago, IL 60654
Tel: 312-458-1000
Fax: 312-458-1004

Michael E. Holden, Attorney for Plaintiff

Michael E. Holden
ROMANUCCI & BLANDIN, LLC
33 North LaSalle Street - Suite 2000
Chicago, Illinois 60602
312-458-1000
312-458-1004 Fax

## PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at or before the hour of 5:00 p.m. on __, 2013 with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

NOTF

**IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

FILED
SEP - 9 2013
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**NOTICE OF FILING**

TO: All Counsel of Record
(See Attached Service List)

PLEASE TAKE NOTICE that on . . __, **2013**, we have mailed the following to be filed with the Law Division of the Circuit Court of 22nd Judicial Circuit, McHenry County, Illinois, copies of which are attached hereto: **Notice of Change of Address**, copies of which are attached hereto.

Michael E. Holden
ROMANUCCI & BLANDIN
33 North LaSalle Street - Suite 2000
Chicago, Illinois 60602
312-458-1000
312-458-1004 Fax

## PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at or before the hour of 5:00 p.m. on __, 2013, with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

**SERVICE LIST**
McDonald, Mark
Court No.: 12 LA 326

Amanda Hamilton
Konicek & Dillon, P.C.
21 W. State Street
Geneva, IL 60134
(630)262-9655 (Office)
(630)262-9659 (Facsimile)
***Attorney for Defendants***

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

#18

FILED
McHenry County, Illinois
OCT - 7 2013

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

McDonald

vs.

Porovich, et al.

Date 10/7/13 Plaintiff's Attorney Romanucci & Blandin Defendant's Attorney Kovicek & Dillon

**ORDER**

This matter coming to be heard for status, the Court being fully advised on the matter;

IT IS HEREBY ORDERED:

① This matter is continued to January 6, 2014 at 9:15 am in Room 202 for status of completion of 213(f)(1) depositions and setting of 213(f)(2) depositions.

Prepared by: Michael E. Holden / R#3

Attorney for: Plaintiff

Attorney Registration No.: 6296752

Judge

#21
ord

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

FILED
McHenry County, Illinois
JAN - 6 2014
KATHERINE M. KEEFE
Clerk of the Circuit Court

STATE OF ILLINOIS } SS
COUNTY OF MCHENRY }

GEN. NO. 12 LA 326
☒ Jury ☐ Non-Jury

McDonald vs. Poparich, et al

Date 1/6/14 Plaintiff's Attorney M. Holden/Ramaucci-Blanchin Defendant's Attorney A. Hamilton / Konicek - Dillon

Agreed ORDER

This matter coming before the Court for status on 213(f)(1) depositions, the Court being fully advised, IT IS HEREBY ORDERED:

(1) This matter is continued to April 7, 2014 at 9:15 am, CR 202 for status on 213(f)(2) depositions and whether the parties would like to schedule a mediation or pre-trial settlement conference.

Prepared by: A. Hamilton
Attorney for: Defendants
Attorney Registration No.: 6301098

Judge

**CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT**

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

FILED
McHenry County, Illinois
APR - 7 2014
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 12 LA 326
☐ Jury ☐ Non-Jury

McDonald vs. Popovich, et al

Date 4-7-14 Plaintiff's Attorney M. Holden / Romanucci & Blandin Defendant's Attorney Long / Konicek & Dillon

**ORDER**

This matter coming to be heard for Status, due notice having been given and the Court being advised in the premises;

IT IS HEREBY ORDERED THAT:

the depositions of all Supreme Court Rule 213 (f)(2) witnesses are to be completed by 6/14/14, and

the matter is continued until 6/25/14 at 9:15 A for status and ~~possible~~ report on possible mediation.

Prepared by: Long / Konicek & Dillon
Attorney for: Defendants
Attorney Registration No.: 6185763

Judge

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

#26

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

FILED
McHenry County, Illinois
JUN 25 2014
Clerk of the Circuit Court

GEN. NO. 12 LA 326

☐ Jury ☐ Non-Jury

McDonald vs. Popovich, et al

Date 6-25-14 Plaintiff's Attorney Holden / Romanucci Blandin Defendant's Attorney Lange / Konicek : D. Hom

**ORDER**

This matter coming to be heard for status, due notice having been given and the Court being advised in the premises:

IT IS HEREBY ORDERED THAT:

the matter is continued until 9/24/14 at 9:15A for status on completion of mediation and status on Supreme Court 213 (f)(2). discovery.

Prepared by: Lange / Konicek : O'Hara

Attorney for: Defendants

Attorney Registration No.: 6185763

Judge Michael D. Chmiel

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT #17

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

FILED
McHenry County, Illinois
SEP 24 2014
KATHERINE M. KEEFE
Clerk of the Circuit Court

McDonald vs. Poporich

Date 9-24-14 Plaintiff's Attorney Holden / Romanucci - Blandin Defendant's Attorney A. Hamilton / Konicek - Dillon

**ORDER**

This matter coming before the Court for status on mediation and on Illinois Supreme Court Rule 213(f)(2) discovery, due notice having been given and the Court being fully advised on the premises,

IT IS HEREBY ORDERED:

① This matter is continued to November 6, 2014 at 9:15 am, CR 202 for status on completion of mediation and discovery.

Prepared by: A. Hamilton / Konicek - Dillon

Attorney for: Defendants

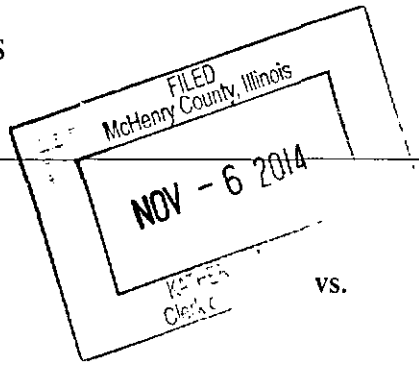
Attorney Registration No.: 6306098

Judge

#19 OK

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS




GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

McDonald vs. Popovich, et al.

Date 11-6-14 Plaintiff's Attorney M. Holden / Romanucci + Blandin Defendant's Attorney A. Hamilton / Konicek + Dillon

**ORDER**

This matter coming before the Court for status on discovery and completion of mediation, due notice having been given and the Court being fully advised on the premises; IT IS HEREBY ORDERED:

(1) This matter is continued to February 19, 2015 at 9:15 am, CR 202, for status on completion of second mediation and ~~[illegible]~~ setting of 213(f)(3) controlled expert witness schedule.

Prepared by: A. Hamilton / Konicek + Dillon

Attorney for: Defendants

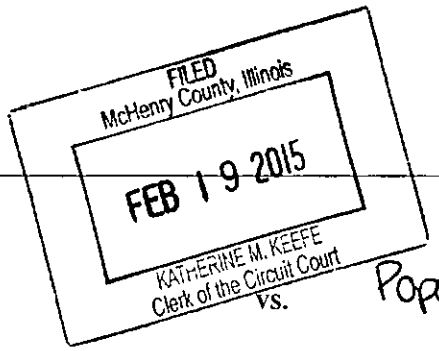
Attorney Registration No.: 6306098

Judge

#8 9:15 Call

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS } SS
COUNTY OF MCHENRY }




GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

McDonald vs. Popovich, et al

Date 2-19-15 Plaintiff's Attorney Romanucci + Blandin Defendant's Attorney A. Hamilton / Konicek + Dillon

**ORDER**

This matter coming to be heard for status on discovery and the completion of mediation, due notice having been given and the Court being fully advised on the premises, IT IS HEREBY ORDERED:

1. Plaintiff shall disclose all 213(f)(3) experts by March 27, 2015;
2. Plaintiff's 213(f)(3) experts shall be deposed by April 24, 2015;
3. Defendants shall disclose all 213(f)(3) experts by May 29, 2015;
4. Defendants' 213(f)(3) experts shall be deposed by June 26, 2015;
5. This matter is continued to July 8, 2015 at 9:15 am for a status on completion of all discovery and trial setting.
6. ~~This matter is set for jury trial~~ All discovery shall be completed by June 30, 2015.

Prepared by: A. Hamilton / Konicek + Dillon

Attorney for: Defendants

Attorney Registration No.: 6306098

Judge

**IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS** **********

| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**PLAINTIFF'S MOTION TO EXTEND**
**TIME TO DISCLOSE 213(F)(3) WITNESSES**

NOW COMES the Plaintiff, MARK MCDONALD, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through his attorneys, ROMANUCCI & BLANDIN, LLC, and moves this Honorable Court for an extension of time in which to disclose her 213(f)(3) witnesses in this matter. In support thereof, Plaintiff states as follows:

1. This is a legal malpractice action for the alleged malpractice committed in the handling of a medical malpractice action arising out of the death of Julie McDonald on November 16, 2005.

2. On February 19, 2015, this Court ordered Plaintiff to disclose 213(f)(3) witnesses by March 27, 2015.

3. Plaintiff's counsel has been diligent in attempting to retain testifying experts in this matter, but requires additional time to retain a expert pertaining to the underlying medical malpractice matter.

4. Plaintiff now asks for additional 30 days to disclose 213(f)(3) witnesses in order to allow for potential settlement of this matter before incurring further costs regarding expert witnesses.

WHEREFORE, Plaintiff, MARK MCDONALD, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, respectfully requests that this Honorable Court enter an order granting Plaintiff additional time in which to file its 213(f)(3) disclosures, and for any further relief this Court deems fair and just.

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: _____
Attorney for Plaintiff

Michael E. Holden
ROMANUCCI & BLANDIN, LLC
321 N. Clark St., #900
Chicago, IL 60654
Tel: (312) 458-1000
Fax: (312) 458-1004

Received 03-27-2015 02:33 PM / Circuit Clerk Accepted on 03-27-2015 02:47 PM / Transaction #1711120055 / Case #12LA000326

**IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**



| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**NOTICE OF FILING**

TO: Tom Long
Konicek & Dillon, P.C.
21 W. State Street
Geneva, Illinois 60134

PLEASE TAKE NOTICE that on **March 27, 2015**, we have electronically filed with the Circuit Court of 22nd Judicial Circuit, McHenry County, Illinois: **Plaintiff's Motion to Extend Time To Disclose 213(f)(3) Witnesses**, copies of which are attached hereto.

Michael E. Holden
ROMANUCCI & BLANDIN
321 N. Clark St.; Ste 900
Chicago, IL 60654
Tel: (312) 458-1000
Fax: (312) 458-1004
Email: March 27, 2015
Attorney No.: 35875

**PROOF OF SERVICE**

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 321 N. Clark Street, Chicago, Illinois, at 5:00 p.m. March 27, 2015 with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

ORD

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☐ Jury ☐ Non-Jury

McDonald vs. Porenich

FILED
McHenry County, Illinois
APR 15 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date 4/15/15 Plaintiff's Attorney Holden Defendant's Attorney Long

**ORDER**

This cause coming to be heard on Plaintiff's Motion to Extend Deadline to disclose 213(f)(3) witnesses. Plaintiff advising the Court that notice of this motion to defendant was returned by mail due to apparent damage to envelope. This matter is reset to April 23, 2015 at 9:15am in Courtroom 206. Should parties have an agreement in this matter, an agreed order reflecting that to 4/23 date be tendered may be provided to the court.

Prepared by: Michael Holden

Attorney for: P

Attorney Registration No.: 6296752

Judge

CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

ORD

STATE OF ILLINOIS }
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury

FILED
McHenry County, Illinois
APR 23 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

McDONALD vs. POPOVICH

Date 4/23/15 Plaintiff's Attorney M. Horden ROMANUCCI & BLANDIN Defendant's Attorney T. Lowe KENDEE & DILLON

**ORDER**

This matter coming to be heard on Plaintiff's Motion to Extend Time to Disclose 213(f)(3) Witnesses, due notice having been given & the Court fully advised on the matter;

IT IS HEREBY ORDERED THAT:

1. over defendant's objection, Plaintiff's Motion is granted. Plaintiff to disclose expert witnesses on or before May 14, 2015;
2. Plaintiff's experts to be deposed by June 13, 2015;
3. Defendants to disclose all 213(f)(3) experts by July 13 2015
4. Defendants' experts to be deposed by August 12, 2015;
5. The July 6, 2015 status date is stricken;
6. This matter is set for status on expert discovery and trial setting on September 10, 2015 at 9:~~15~~ AM in Room 202

Prepared by: M. Horden / R&B

Attorney for: TT

Attorney Registration No.: 6296752

Judge

**IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**



| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**PLAINTIFF'S MOTION TO VOLUNTARILY DISMISS CASE**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through his attorneys, ROMANUCCI & BLANDIN, LLC, and respectfully move this Honorable Court to voluntarily dismiss this cause of action, pursuant to 735 ILCS 5/2-1009, with leave to re-file this case within 1 year from the entry of the dismissal, pursuant to 735 ILCS 5/13-217. In support thereof, Plaintiff states as follows:

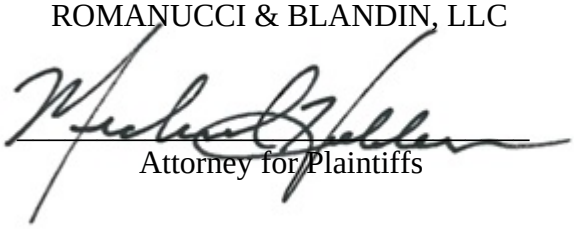
1. This is a legal malpractice case arising out of the dismissal of a wrongful death/medical malpractice action filed in Walworth County, Wisconsin by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH.

2. Plaintiff now wishes to voluntarily dismiss this cause of action, without prejudice, pursuant to 735 ILCS 5/2-1009.

3. Further, Plaintiff seekS leave to re-file their complaint within 1 year of the entry of the dismissal order, pursuant to 735 ILCS 5/13-217.

WHEREFORE, Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, respectfully requests that this Honorable Court enter an order voluntarily dismissing this cause of action, without prejudice, pursuant to 735 ILCS 5/2-1009 with leave to re-file this cause of action within 1 year from entry of the dismissal order, pursuant to 735 ILCS 5/13-217; and for any further relief this Honorable Court deems appropriate and just.

Respectfully Submitted,
ROMANUCCI & BLANDIN, LLC

By: 
Attorney for Plaintiffs

Michael E. Holden
ROMANUCCI & BLANDIN, LLC
321 N Clark Street, Suite 900
Chicago, IL 60654
Tel: (312) 458-1000
Fax: (312) 458-1004
Attorney No.: 17235

Received 05-14-2015 04:22 PM / Circuit Clerk Accepted on 05-15-2015 10:14 AM / Transaction #1711122891 / Case #12LA000326

**IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**



| | | |
|---|---|---|
| MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, | ) | |
| Plaintiff, | ) | |
| v. | ) | No.: 12 LA 326 |
| LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, | ) | |
| Defendants, | ) | |

**NOTICE OF MAILING FOR FILING**

TO: Tom Long
Konicek & Dillon, P.C.
21 W. State Street
Geneva, Illinois 60134

PLEASE TAKE NOTICE that on **May 14, 2015**, we have mailed the following pleading to be filed with the Circuit Court of 22nd Judicial Circuit, McHenry County, Illinois: **Plaintiff's Motion to Voluntarily Dismiss Case**, copies of which are attached hereto.

Michael E. Holden
ROMANUCCI & BLANDIN
321 N. Clark St.; Ste 900
Chicago, IL 60654
Tel: (312) 458-1000
Fax: (312) 458-1004
Email: March 27, 2015
Attorney No.: 35875

**PROOF OF SERVICE**

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 321 N. Clark Street, Chicago, Illinois, at 5:00 p.m. May 14, 2015 with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

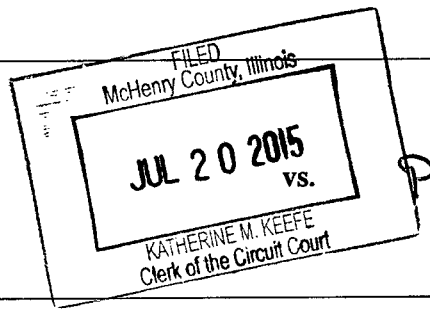
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT

ORD

STATE OF ILLINOIS
COUNTY OF MCHENRY } SS

GEN. NO. 12 LA 326

☒ Jury ☐ Non-Jury




McDonald vs. Popovich, et al.

Date 7/20/15 Plaintiff's Attorney M. HOLDEN Defendant's Attorney T-LANG

**ORDER**

This cause coming to be heard on Plaintiff's Motion to Voluntarily Dismiss Case, due notice having been provided & the court fully advised on the premises:

IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion to Voluntarily Dismiss Case is granted. This matter is voluntarily dismissed pursuant to 735 ILCS 5/2-1009, with leave to refile w/ in 1 year from entry of this order.
2. By agreement of the parties, cost contemplated under § 2-1009 are to be paid in the event that this matter is refiled.
3. The Status date of 9/10/15 at 9:15am is stricken.

Prepared by: MICHAEL HOLDEN

Attorney for: IT

Attorney Registration No.: 6296752

Judge