From: **Paul Dulberg** Paul_Dulberg@comcast.net
Subject: 2nd amended complaint draft
Date: December 4, 2018 at 2:20 PM
To: The Clinton Law Firm juliawilliams@clinton law.net
Cc: ed Clinton ed@clinton law.net

PD

Hi Julia and Ed,

Please find the two file attachments named working.pdf and comment on complaint.txt
Comment on complaint.txt contains a color code explanation for what is in working.pdf.

Also, I have attached the order in which the judge decided what was stricken along with the transcripts that will be needed to decipher the courts order.

Please feel free to contact me with any and all questions you may have.

I'm sorry this took me longer than expected to do.

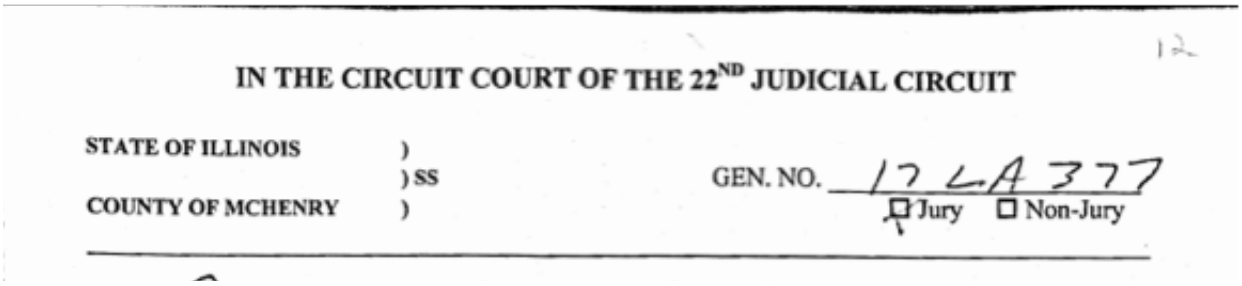
Thank you both,
Paul

Paul Dulberg
847-497-4250

comment on complaint.txt

PDF

Working.pdf



IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

Hi Julia,

Below are notes on the pdf that was attached.
It contains my thoughts on possible changes and edits.
Please forgive my sloppyness.

From items 1 to 49 red font is something that Dulberg added to the original. These are only suggestions and we will defer to your judgement as to whether these comments will become permanent.

A few notes on item 50:

The judge has already ruled on most of these. The judge's comments can be seen in the order he issued and the transcripts of the hearing.

We color-code each item listed like this:

black font means he has already agreed to the item

orange font means he needs more inforamtion to allow the item to stand

green font means the judge called the item conclusory

blue font means the judge has called the item redundant

red are our comments on an item

We changed the order of the list to put the black font ones first (since the judge is already in agreement with these). black is followed by brown (because judge may allow them if more information is provided). Green is next (which the judge called conclusory). Blue items are last (because the judge sees them as redundant).

We also wrote what the judge said about some of the items in red after the item. These are direct quotes from the transcript.

Notes on item k: k and f rewritten are basically the same thing

Notes on item f: F is to be rewritten as shown and combined with k

Notes on item g: combine with j or drop as redundant. Judge already

agreed to j.

Notes on item h: h was reworded to remove redundancy

Further notes:

WHy are there two item 14?

Why two item 15?

item 51 is mistkenly listed as item 37

item 34 was changed

Numbers and letters are out of order from me adding comments etc...

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 17 LA 377**
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I
LEGAL MALPRACTICE

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for MAST's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams")(Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, Cook County, Illinois "the Property").

9. David Gagon is Caroline's son and Williams's stepson.

9.1 On May 22, 2011 the McGuire's purchased a chainsaw that was first used on June 28, 2011, the day DULBERG was injured.

10. On June 28, 2011, at the McGuire property, the McGuires provided Gagnon with the chainsaw.

11. Dulberg was invited on the property to see if he wanted the wood.

12. Gagnon was operating the chainsaw to remove branches from a tree and cut it down on the Property.

13. William physically assisted with cutting down the tree and later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.

15. Caroline asked Dulberg to assist Gagnon.

13. Dulberg assisted Gagnon with cutting.

14. Gagnon was acting on behalf of Caroline and William and at their direction.

14. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

15. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

15. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

16. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

17. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

18. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

19. **Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.**

20. **Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained expert in operating the chainsaw.**

21. **Gagnon was operating the chain saw in close proximately to Dulberg.**

22. **Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.**

23. **Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.**

24. **Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.**

25. **Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.**

26. **Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, loss of use of his right arm, and other damages.**

27. **In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. Exhibit A.**

28. **Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. Exhibit B.**

29. Mast and Popovich entered into an attorney client relationship with Dulberg.

30. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

31. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

32. The claims against Gagnon were resolved later through binding mediation with new counsel.

33. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son.

34. In late 2013, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

35. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as Group Exhibit C.)

36. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as Group Exhibit C.)

37. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

38. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. Exhibit D (Settlement). Mast also told Dulberg that Gagnon's Insurance policy limit was $100,000.

39. From November 2013 onwards, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lead DULBERG to believe that the matter was being properly handled. Mast also reassured Dulberg and his family members that he would be able to receive the full amount of any eventual recover from Gagnon.

40. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as Exhibit E.)

41. **MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.**

42. **The McGuires owed their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.**

43. **Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires. Dulberg, who was injured, disabled and unable to work with household bills stacking up, realized the medical bills and attorney fees would leave him with very little if anything and decided to file for bankruptcy protection. Mast then tried to get Dulberg to enter into a mediation with Gagnon with a $50,000 cap. At this point Dulberg severed the relationship with Mast.**

44. **In December of 2016, Dulberg was ordered by the Bankruptcy Trustee into a binding mediation related to his claims against Gagnon.**

45. **In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.**

46. **Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally. Due to the Binding Mediation Agreement into which the Bankruptcy Trustee ordered Dulberg, Dulberg could not collect more from Gagnon. The bankruptcy trustee took the money and paid Dulberg's debt in full (it was a 100% solvent bankruptcy).**

47. **Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.**

48. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

49. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

50. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of Dulberg, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed Dulberg that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

j) Coerced Dulberg, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Mast failed to explain to Dulberg the necessary facts for him to make an informed decision as to the McGuires. (Judge said: doesn't tell me what those necessary facts were) The necessary facts are: MAST told DULBERG and another family member at a meeting in which DULBERG was trying to decide whether to accept the MCGUIRE's offer of $5,000 that because the restatement of torts 318 is not applicable in Illinois, DULBERG had no case against the MCGUIRES and that the MCGUIRES did not have to offer any settlement at all. DULBERG asked MAST to cite case law that shows why the MCGUIRES were not at least partially liable for DULBERG'S injury, and MAST cited Tilscher v Spangler, a case which confirms that restatement of torts 318 is not applicable in Illinois. At the same meeting MAST also informed DULBERG that the MCGUIRES made an offer of $5,000 to be nice (they did not have to offer anything) and if DULBERG did not accept the offer it would be withdrawn and the MCGUIRES will ask for summary judgement. MAST informed DULBERG that the presiding judge would grant the MCGUIRES a summary judgement dismissing the case against them, leaving DULBERG with no settlement at all from the MCGUIRES. Mast, "The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills."

See Hans Mast2-201.pdf attached.

l) Failed to properly explain to Dulberg all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter; (THE COURT: (l) there might be some facts in there, but I'm not sure what they are, so I'm going to strike it. I mean, there might be a factual basis to support what

they're getting at, but I don't know what it is. I don't think it's supported, so I think it's a conclusion) Mast failed to inform Dulberg and a family member that accepting the offer would severely limit any recovery later. The proof will be in Dulberg and his family members testimony.

b) Failed to thoroughly investigate ` liability issues against property owners of the subject property; (Judge said this was a conclusion) I am not sure why this is separate from 50 a.)

f) Failed to explain to Dulberg the current accepted law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property. The necessary facts are: MAST told DULBERG and another family member at a meeting in which DULBERG was trying to decide whether to accept the MCGUIRE's offer of $5,000 that because the restatement of torts 318 is not applicable in Illinois, DULBERG had no case against the MCGUIRES and that the MCGUIRES did not have to offer any settlement at all. DULBERG asked MAST to cite case law that shows why the MCGUIRES were not at least partially liable for DULBERG'S injury, and MAST cited Tilscher v Spangler, a case which confirms that restatement of torts 318 is not applicable in Illinois. At the same meeting MAST also informed DULBERG that the MCGUIRES made an offer of $5,000 to be nice (they did not have to offer anything) and if DULBERG did not accept the offer it would be withdrawn and the MCGUIRES will ask for summary judgement. MAST informed DULBERG that the presiding judge would grant the MCGUIRES a summary judgement dismissing the case against them, leaving DULBERG with no settlement at all from the MCGUIRES. See Hans Mast2-201.pdf attached.

g) Improperly urged Dulberg to accept a settlement from the property owners, and dismissed them from all further responsibility; (Judge said this was a conclusion) This is no different than j (conclusion) drawn from j which the judge accepted as fact. Should this be added to j) or left alone since the judge already accepted j?

h) Failed to treat the McGuires and their liability as a very necessary party to the litigation; (Judge said this was a conclusion) rewrote to remove redundancy

i) Falsely advised Dulberg throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that Dulberg had no choice but to accept the settlement; (Judge said this was a conclusion)

m) Continually reassured Dulberg that the course of action as to the property owners was proper and appropriate; (Judge said this was a conclusion) Same as i? Possibly remove, why use these?)

o) Were otherwise negligent in their representation of Dulberg. (Judge said this was a conclusion) this is a catch all for possible issues learned during discovery.

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to Dulberg, for example hiring a liability expert; (Judge said this is redundant of a)

n) Failed to retain a liability expert to prove Dulberg's damages; (Judge said this is redundant of a and c)

51. That Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over

$300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

_____

Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

Dubberg

VS.

Popovich + Most

FILED
McHenry County, Illinois
SEP 12 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 9-12-18 Plaintiff's Attorney Sara Walczyk Defendant's Attorney George Flynn

ORDER

This matter coming to be heard on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, it is hereby ordered:

1) Defendants' motion is granted as more fully described on the record and below.

2) Paragraphs ~~2 and~~ 31(b), (c), (f), (g), (h), (i), (k), (l), (m), (n), and (o) are stricken as conclusions or being redundant.

3) Plaintiff is granted leave to replead by October 10, 2018. Defendants' to file a responsive pleading by November 7, 2018.

4) Status hearing on November 13, 2018 at 9:00 a.m.

Prepared by: George Flynn
Attorney for: Defendants
Attorney Registration No.: 6239349 Judge:

STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants.	No. 17 LA 377

ELECTRONICALLY RECORDED Report of Proceedings had in the above-entitled cause before The Honorable Thomas A. Meyer, Judge of the Circuit Court of McHenry County, Illinois, on the 12th day of September, 2018, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

CLAUSEN MILLER, PC, by:
MR. GEORGE K. FLYNN,

on behalf of the Defendants.

THE COURT: Counsel, which one you on?

MR. FLYNN: Dulberg.

THE COURT: Is opposing counsel here?

MR. FLYNN: She's not. I received an email. She said she was going to be late. She's in Waukegan.

THE COURT: I'm sorry, how late?

MR. FLYNN: I'm not sure how late, Judge. She said she's in Waukegan. Mr. Gooch was apparently ill today, so she's going to be covering today's hearing.

THE COURT: And she's in Waukegan now?

MR. FLYNN: She's in Waukegan. Originally thought she might be able to be here by 10:30, but she said the judge stepped up 15 minutes late on her other matter, so --

THE COURT: I mean, that's about an hour drive.

MR. FLYNN: The email I received was -- I was in the car as well, so 10 or 15 minutes ago.

THE COURT: Okay. See if you can email her and find out if we can get an ETA.

MR. FLYNN: Okay.

THE COURT: And we'll work from there.

MR. FLYNN: Okay. Thanks, Judge.

THE COURT: Thank you.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

THE COURT: Okay. Counsel, if you can approach. So Dulberg versus Mast.

MR. FLYNN: Good morning, Your Honor. George Flynn on behalf of the defendants. I did -- I received communication from counsel. She was walking to her car at the Waukegan courthouse at 11 -- I'm sorry, at 10:10, and she indicated that her GPS estimated she would arrive here at one hour and six minutes.

THE COURT: 11:30-ish. Fair?

MR. FLYNN: Fair.

THE COURT: All right. Well, rather than delay this, I'm going to rule from the bench based upon my review of the amended complaint and consideration of the briefs in support of and opposition to.

I'm going to strike the complaint. The basis of my decision is I think the complaint states a cause of action, but there are so many things in there that are unsupported by factual allegations that I think it best just to deal with them now rather than at a later date. I reviewed -- and I'm looking for the specific allegations of negligence within the amended complaint. I felt that in paragraph 31, subparagraph (a) included

enough of a fact that I -- I'm going to tell you the ones I think can stand. Then I'm going to strike the rest of them and try to explain it. I think paragraph (a) gave me enough of a fact that I would allow it to stand. I felt that (b) was a conclusion; (c) was redundant of (a); (d) I was going to allow to stand, it alleges something; (e) I was going to allow to stand; (f) is a conclusion, it's not a fact -- Where are we? -- (g) I'm just going to strike, it's a conclusion; (h), it's a conclusion, strike it; (i) it's a conclusion, strike it; (j) I'm going to allow to stand; (k) I'm -- I'm going to strike. It says there were necessary facts, but doesn't tell me what those necessary facts were. I think an allegation of coercion can stand, but I'm not quite sure what it is we're alleging.

MR. FLYNN: So just to clarify, Judge, you're ruling that there can be an allegation of coercion, but it's not supported by facts here --

THE COURT: Yeah.

MR. GLYNN: -- under the 615 standard?

THE COURT: Yeah.

MR. GLYNN: Okay.

THE COURT: (l) there might be some facts in there,

but I'm not sure what they are, so I'm going to strike it. I mean, there might be a factual basis to support what they're getting at, but I don't know what it is. I don't think it's supported, so I think it's a conclusion. I'll strike -- (m) is a conclusion, I'll strike it; (n) is I think duplicative of (a) and (c); and (o) is just a conclusion.

I will allow them to replead because I think the ones I've -- and I hate to make you the note-taker, but it saves you a return trip, and I was going to ask questions, but these -- this is what I felt about the allegations in the complaint. I think there is -- this -- for going -- as far as going forward is concerned, if there were more paragraphs that weren't conclusions, I might have allowed the complaint to stand and just strike -- strike them on their face rather than go through the trouble of re-pleading. Unfortunately, most of the paragraphs were conclusions that I felt had to be stricken, and I'm dealing with that now. As a result, I'm striking the complaint.

Plaintiff gets to re-plead and the -- and if they just -- and if they limit it to the ones I've allowed to stand that I've advised you about that I think are adequate, then I'm going to -- I would deny

future 615 based on the same concepts.

Does that make sense?

MR. FLYNN: I -- without having gone through each of the subparagraphs, yes, I understand the Court's ruling. I think that the general theme of our motion was that the plaintiff hasn't set forth what a breach of any duty would have been as far as the McGuires and what legal standard they would have been held to and how they breached that.

THE COURT: I think --

MR. GLYNN: Just because they're a land owners and an accident happened on their property doesn't mean they're liable on this.

THE COURT: And I -- actually, I take that back. I agree, but I think that there was enough implicit in the allegations that I still felt that there was going to be an adequate cause of action, and to clarify what I said earlier, I would agree that they've got to explain that better, but it's -- I probably -- since I'm striking the complaint, I'm going to direct them to do that. I felt that I could read enough in here to understand what they were getting at, that I wouldn't have struck the complaint solely on that basis.

Does that answer your question?

MR. FLYNN: I think so.

THE COURT: Okay. There's a lot to unpack here, but I think that there are enough allegations and enough of an understanding of where they're going that I think they're going to be able to state a cause of action, at least insofar as 2-615 is concerned.

We'll see what they say in their new complaint. Do you want to give them 28 days --

MR. FLYNN: Sure.

THE COURT: -- to file?

What would you like to do? Twenty-eight after or --

MR. GLYNN: Yes.

THE COURT: Okay. So let's put the case out 60 days. That will each give you plenty of time, and that will take us to November 13th. That is a Tuesday. Does that day work for you?

MR. FLYNN: Yes.

THE COURT: Okay. And for purposes of the record, we were advised that -- about 10:15 that plaintiff's counsel was about an hour drive away having been detained in Waukegan. As a result, I just decided to -- rather than continuing the hearing and going through the process I just did, I would provide my ruling and save

everybody some effort.

Questions?

MR. FLYNN: 9:00 o'clock status on November 13th?

THE COURT: Yes.

Mr. Dulberg, any questions? I don't really want you to get substantively involved because you're represented, but do you want any clarification of anything I just said?

MR. DULBERG: Clarification, no. But I will say that I don't think that we should have to try the case in the pleading.

THE COURT: And you don't have to. And that's not what I've said. That's not what he said. But there are certain allegations that I didn't feel were adequate and that's the basis of my dismissal.

MR. DULBERG: (Inaudible).

THE COURT: I don't want you to argue too much because, again, you've got an attorney and I don't want to involve you. I just -- Do you have any questions?

MR. DULBERG: No.

THE COURT: Okay. All right. Counsel, if you could draft the order.

MR. FLYNN: I will, Judge, based on my -- the note-taking that I did, and can I reference the

transcript. This is recorded, I believe, --

THE COURT: Yeah.

MR. FLYNN: -- correct?

THE COURT: Yeah, that's fine.

MR. FLYNN: Okay.

THE COURT: Yeah, I think they're going to need the transcript probably to get through all that.

MR. FLYNN: Fair enough.

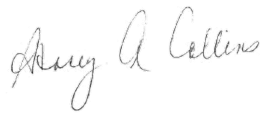
THE COURT: Okay? Thank you.

MR. FLYNN: Thank you, Judge.

(Which was and is all of the evidence offered at the hearing of said cause this date.)

STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

I, Stacey A. Collins, an Official Court Reporter for the Circuit Court of McHenry County, State of Illinois, do hereby certify that I reported in shorthand the proceedings had in the above entitled cause and that the foregoing is a true and correct transcript of all the proceedings heard.



Stacey A. Collins, CSR
Official Court Reporter
License No. 084-002377