

From: Julia Williams juliawilliams@clintonlaw.net 
Subject: Dulberg v Popovich et al; Mast Deposition
Date: July 10, 2020 at 2:57 PM
To: Paul Dulberg pdulberg@comcast.net
Cc: Mary Winch marywinch@clintonlaw.net, Ed Clinton ed@clintonlaw.net

JW

Dear Paul,

Attached please find Hans Mast deposition transcript.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P: 312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.



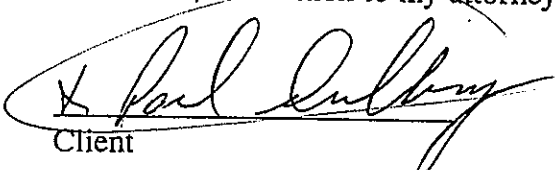
Dulberg Hans
Mast d...25.zip

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~40%~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: 

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

Exhibit 1

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith



COPY
FILED
MAY 15 2012
KATHARINE M. KEEFE
McHENRY CTY. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

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

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)

Defendants.)

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
7/18/2012 AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
7/18/2012 AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

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

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

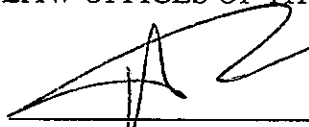
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

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

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

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

PAUL DULBERG,)
)
 Plaintiff,)
)
 vs.) No.:
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
 Defendants.)

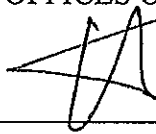
AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.
2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed \$50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

MEMORANDUM

TO: Tom, Marla, Diana and Alarie
FROM: Hans
DATE: December 5, 2011
SUBJECT: PAUL DULBERG - NEW CLIENT

HAM
B/c the accident
occurred on their premises,
their H.O. must pay
will cover the
bill's.

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11



Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took an EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn \$12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

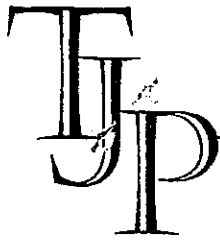
Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

FAXED

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

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

**RE: Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire
McHenry County Case: 12 LA 178**

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,



HANS A. MAST

smq

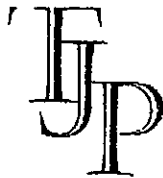
Exhibit 4
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

**** Transmit Conf. Report ****

P.1
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Oct 22 2013 12:24pm

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The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
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THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

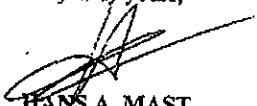
RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,


HANS A. MAST

smq

WAUKEGAN OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, IL 60085

POP 000193

XFINITY Connect

hansmast@comcast.net

+ Font Size -

Re: Medical depositions**From :** Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions**To :** Paul Dulberg <pdulberg@comcast.net>**Cc :** Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon's acts.

Both of these issues are strongly contested in your case.

As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.

As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether you had a fully recovery or not.

Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn't really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.

Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury. Think about these issues. I will provide you Dr. Sagerman's summary soon.

Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans, Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind. I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better. Let me know, Thanks, Paul

Paul Dulberg 847-497-4250 Sent from my iPad

Exhibit

5

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 5, 2013 at 9:46:33 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: **Re: 3 pm meeting**

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

<http://www.sdmmag.com/articles/print/success-stories-in-integrating-video-surveillance>

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:

no chance, sorry

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
Subject: Re: 3 pm meeting

Also,

Any chance the hospital (centegra) has video of their parking lots?
This could disprove David's claim of talking before entering the ER.

Thanks,

Paul

Paul Dulberg
847-497-4250

Sent from my iPad

On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:

No need to bring anything, your mom is welcome...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
Subject: 3 pm meeting

Hi Hans,

Curious if I should bring anything with me at 3 pm?

Mind if my Mom comes along?

Thanks and see you soon,

Paul

Paul Dulberg
847-497-4250

Sent from my iPad

Exhibit

6

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

XFINITY Connect

hansmast@comcast.net

+ Font Size -

Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net>

Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John**To :** Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

>

> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

>

> Sent from my iPhone

>

>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

>>

>> Only 5, That's not much at all.

>> Is this a take it or leave it or do we have any other options?

>>

>> If you want a negligence case for the homeowners ask what happened immediately after the accident.

>>

>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

>>

>> They all left me out in the yard screaming for help while they were busy making sure they were covered.

>>

>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

>>

>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

>>

>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

>>

>> I'm not happy with the offer.

>>

>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.

>>

>> Paul

>>

>> Paul Dulberg

>> 847-497-4250

>> Sent from my iPad

>>

>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

>>>

>>> Im waiting to hear from John. I tried calling him last week, but no one answered.

>>>

>>> In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

Exhibit**7**

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

>>>

>>> Let me know what you think..

>>>

>>> Hans

>>> ----- Original Message -----

>>> From: Paul Dulberg <pdulberg@comcast.net>

>>> To: Hans Mast <hansmast@comcast.net>

>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

>>> Subject: Dave's Best and oldest friend John

>>> Hans,

>>> Just spoke with John Choyinski again about talking with you.

>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.

>>> I believe he will try and call sometime tomorrow.

>>> Paul

>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.

>>> Paul Dulberg

>>> 847-497-4250

>>> Sent from my iPad

CICERO, FRANCE, BARCH & ALEXANDER, P.C.

A Professional Corporation

Attorneys at Law

6323 EAST RIVERSIDE BOULEVARD

ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER
CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700

FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of \$5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipate any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,



RONALD A. BARCH

RB:mj\37ltr.HAM

cc Tom Malatia (Claim No. 13-2779-11)
Encl.

Exhibit 8

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the \$5,000 offer. Paul wants to read the depositions of the McGuire's and also wants us to order his and Dave's deposition to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's depositions. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

Exhibit 9

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

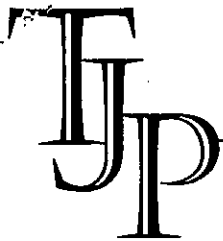
On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGurie's and he is willing to take their \$5,000 settlement offer.

Exhibit 10

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280

www.popovichlaw.com

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

FAXED
12/27

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

December 26, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your \$5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,


HANS A. MAST

smq

Exhibit 11
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

POP 000670

WAUKEGAN OFFICE
210 NORTH MARTIN LUTHER
KING JR. AVENUE
WAUKEGAN, IL 60085

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and BILL
MCGUIRE, and CAROLINE MCGUIRE
and BILL MCGUIRE, Individually,

Defendants.

Case No. 12 LA 178

**ANSWER TO PLAINTIFF'S INTERROGATORIES TO
DEFENDANTS BILL MCGUIRE AND CAROLYN MCGUIRE**

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

Defendants, BILL MCGUIRE AND CAROLYN MCGUIRE (improperly named Caroline),
by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to
Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER: William "Bill" McGuire
1016 W. Elder Avenue
McHenry, IL 60051
Married: Carolyn
DOB: July 29, 1952

Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051
Married: Bill
November 26, 1946

Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.

Exhibit 13
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
----------------	---	--

David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
--	--

At Time Of

Occurrence:	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
--------------------	--	--

After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
---------------	---	--

David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
--	--

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:
- a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;
 - b. Who owned the chain saw at the time of Plaintiff's alleged injury;
 - c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

- a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.
 - b. Bill McGuire was the owner of the chain saw on the date of the occurrence.
 - c. David Gagnon had Bill McGuire's permission to use the chain saw.
11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:
- a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;
 - b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;
 - c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

- a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not know how often he has used chain saws in the past.
- b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

- c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.
12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

- 15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.

Auto-Owners Insurance Company

Policy No. 48-010-965-01

Eff.: May 9, 2011 thru May 9, 2012

Personal Liability (Each Occurrence): \$300,000.00

Medical Payments (Each Person): \$1,000.00

16. Do you have any information:

- (a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;
- (b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

- a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
- b. See answer to Interrogatory No. 16(a).
- c-d. No.

17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

- (a) The subject matter on which the opinion witness is expected to testify;
- (b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
- (c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
- (d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

- a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.
- b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

- c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.
- d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.
- e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.
- f. Investigation continues.

Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

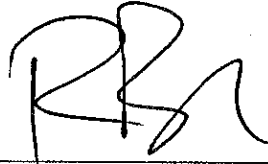
ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By



RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

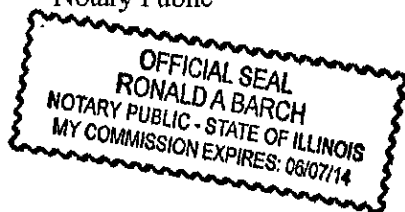
STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL MCGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire
Bill McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

RBA
Notary Public



STATE OF ILLINOIS

)

) SS

COUNTY OF WINNEBAGO

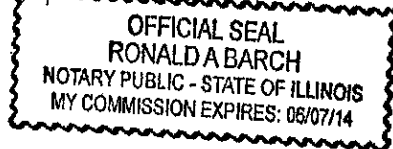
)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire
Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

[Signature]
Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was
served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid,
at Rockford, Illinois, at 5:00 o'clock p.m. on 9/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
 COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
 McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff(s),

CASE NO. 12LA000178

VS.

DAVID GAGNON, Individually, and as
 Agent of CAROLINE MCGUIRE and
 BILL MCGUIRE, and CAROLINE
 MCGUIRE and BILL MCGUIRE,
 Individually,

Defendant(s).

Exhibit 14

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
 DOB: 4/3/1697

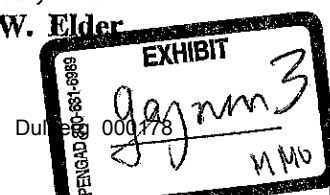
2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

- (a) Witnessed or claims to have witnessed the occurrence in question.
- (b) Was present or claims to have been present at the scene immediately before said occurrence.
- (c) Was present or claims to have been present immediately after said occurrence.
- (d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder



Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ^{BACKED} front of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

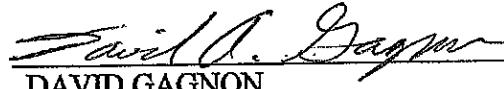
- (b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.
- (c) For each controlled expert witness, identify:
 - (i) the subject matter on which the witness will testify;
 - (ii) the conclusions and opinions of the witness and the bases therefor;
 - (iii) the qualifications of the witness; and
 - (iv) any reports prepared by the witness about the case.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

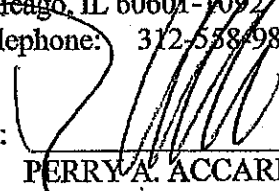
Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-538-9821

By: 

PERRY A. ACCARDO

Firm No.: 46878

E-MAIL ADDRESS:

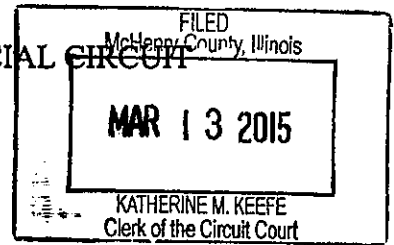
ILLINOISLEGAL@ALLSTATE.COM

Attorney Bar No.: 6228720

Attorney for Defendant(s):

David Gagnon

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS



PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

DAVID GAGNON, Individually, and as
Agent of CAROLINE McGUIRE and BILL
McGUIRE and CAROLINE McGUIRE
and BILL McGUIRE, Individually,

Defendants.

COPY

NOTICE OF MOTION

TO: ***VIA FIRST CLASS MAIL:***

Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

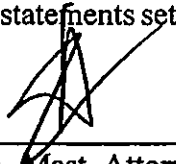
VIA CERTIFIED MAIL:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.



Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

Exhibit 15
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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City, State,

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IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

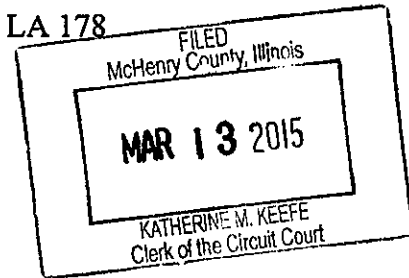
Plaintiff,

vs.

DAVID GAGNON, Individually, and as
Agent of CAROLINE McGUIRE and BILL
McGUIRE and CAROLINE McGUIRE
and BILL McGUIRE, Individually,

Defendants.

No. 12 LA 178



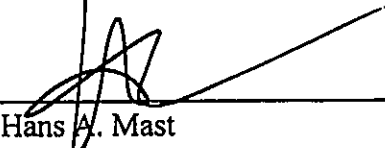
MOTION TO WITHDRAW AS COUNSEL

NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.
2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,



Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

1 STATE OF ILLINOIS)
2 COUNTY OF MCHENRY) SS:

3 IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
4 MCHENRY COUNTY, ILLINOIS

5 PAUL DULBERG,)
6)
7 Plaintiff,)
8)
9 -vs-) No. 17 LA 377
10)
11 THE LAW OFFICES OF THOMAS)
12 POPOVICH and HANS MAST,)
13)
14 Defendants.)
15)

11
12 The remote videoconference deposition of
13 HANS MAST, appearing remotely from McHenry County,
14 Illinois, called by the Plaintiff for examination,
15 pursuant to subpoena and pursuant to the Code of
16 Civil Procedure of the State of Illinois, and the
17 Rules of the Supreme Court thereof, pertaining to the
18 taking of depositions, for the purpose of discovery,
19 taken before Barbara G. Smith, appearing remotely
20 from Will County, Illinois, Certified Shorthand
21 Reporter and Notary Public within and for the County
22 of Cook and State of Illinois, commencing at the hour
23 of 10:00 a.m. on the 25th day of June, A.D., 2020.
24

REMOTE APPEARANCES:

THE CLINTON LAW FIRM, By
MS. JULIA C. WILLIAMS
111 West Washington Street, Suite 1437
Chicago, Illinois 60602
(312) 357-1515
(312) 201-0737 (Facsimile)
juliawilliams@clintonlaw.net

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, By
MR. GEORGE FLYNN
150 South Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3622
(312) 431-3670 (Facsimile)
gflynn@karballaw.com

On behalf of the Defendants.

ALSO PRESENT: Mr. Paul Dulberg

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I N D E X

WITNESS EXAMINATION

HANS MAST

By Ms. Williams	5
By Mr. Flynn	76

E X H I B I T S

HANS MAST

DEPOSITION EXHIBIT MARKED FOR ID

No. 1	16
No. 2	17
No. 3	18
No. 4	26
No. 5	28
No. 6	32
No. 7	35
No. 8	36
No. 9	40
No. 10	46
No. 11	48
No. 12	49
No. 13	53
No. 14	55
No. 15	64

(All exhibits provided electronically
to the reporter.)

1 THE REPORTER: The attorneys participating
2 in this deposition acknowledge that I am not
3 physically present in the deposition room and that I
4 will be reporting this deposition remotely. They
5 further acknowledge that, in lieu of an oath
6 administered in person, the witness will verbally
7 declare his testimony in this matter is under penalty
8 of perjury. The parties and their counsel consent to
9 this arrangement and waive any objections to this
10 manner of reporting. Please indicate your agreement
11 by stating your name and your agreement on the
12 record.

13 MS. WILLIAMS: Julia Williams. I agree.

14 MR. FLYNN: George Flynn. I agree.

15 THE REPORTER: Will the witness kindly
16 present his government-issued identification by
17 holding it up to the camera for verification?

18 (Witness presents
19 government-issued identification
20 and identity is verified.)

21 THE REPORTER: Thank you.

22 HANS MAST,
23 called as a witness herein, having been first duly
24 sworn, was examined and testified as follows:

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EXAMINATION

BY MS. WILLIAMS:

MS. WILLIAMS: Okay, so this is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of Dulberg versus The Law Offices of Thomas Popovich, et al. This deposition is being taken for the purposes of discovery.

Q. Hans, can you state your name for the record, please?

A. Hans Mast.

Q. Have you had your deposition taken before?

A. Yes.

Q. And how many times?

A. I think two.

Q. And for what purpose?

A. Long, long time ago I think there was a malpractice case I was a witness on and a legal -- a medical malpractice case that turned into a legal malpractice case, not against me but against the office I was with.

Q. Okay. So you weren't named in the lawsuit as a defendant?

A. I might have been named. I might have been

1 named, but I was somebody that appeared on a motion.
2 I think I got out eventually.

3 Q. Okay, and then -- And then -- Sorry. And
4 then you said you think twice, so do you know
5 approximately what year that medical malpractice case
6 that turned into a legal malpractice case, do you
7 know roughly what year that was?

8 A. '94 or something.

9 Q. Okay, and then the second time, what would
10 have that been?

11 A. It's not coming to me. It was another legal
12 case. I don't remember the details.

13 Q. Okay --

14 A. There -- Go ahead.

15 Q. More than 10 years? I'm sorry, I didn't
16 mean to interrupt you.

17 A. Yes.

18 Q. We can go over the -- I'm going to try not
19 to interrupt you, you're going to try not to
20 interrupt me. You've taken depositions before, I'm
21 sure we can get into that and appreciate you
22 answering orally, all of those typical things that
23 apply, and I'll try not to interrupt you too much.
24 Have you ever -- Other than the one time you just

1 identified, have you ever been sued other than this
2 suit for legal malpractice?

3 A. No.

4 Q. Do you recall any other details about that
5 medical malpractice lawsuit that turned into a legal
6 malpractice suit? Do you know what the basis of the
7 suit was?

8 A. It was a medical malpractice case that I
9 think lost on a summary judgment motion and they
10 were -- the client was suing the office and I think I
11 got involved in it because I was on a motion.

12 Q. Were you the one that drafted the summary
13 judgment motion?

14 A. I don't think so. I don't really remember
15 clearly back then, but I don't think I did.

16 Q. Okay.

17 A. I think I argued -- I might have argued it.
18 I don't remember.

19 Q. Okay. Have you -- Have you taken
20 depositions before?

21 A. Yes.

22 Q. Roughly how many depositions do you think
23 you've taken in your legal career?

24 A. Lots. Lots.

1 Q. Hundreds?

2 A. Probably.

3 Q. Oh, I'm sorry, I forgot to do this, but I
4 think we saw your room. It's just you and George
5 Flynn in the room with you, correct?

6 A. Yes.

7 Q. And there's no one else in the room and if
8 there were, you would identify them, correct?

9 A. Yes.

10 Q. And you don't have any devices or anything
11 with you? You're not communicating with anyone
12 during this deposition other than the attorney in the
13 room with you, correct?

14 A. And you and who else is on this meeting.

15 Q. Okay. I'm sorry, let me rephrase. Is there
16 anyone that I don't know that you are communicating
17 with that I wouldn't know?

18 A. Not that I'm aware of.

19 Q. Okay. If you take any notes or otherwise
20 communicate with people during the deposition, we
21 just ask that those notes be produced. Okay. Did
22 you do anything to prepare for the deposition today?

23 A. Well, I just saw some exhibits you sent
24 George. I didn't really prepare them. I looked them

1 over briefly.

2 Q. Did you review any of the other files that
3 have been produced in this case?

4 A. No.

5 Q. Did you review any notes?

6 A. No.

7 Q. Any other documents?

8 A. No.

9 Q. Did you meet with anyone --

10 A. Other than George?

11 Q. -- to prepare? Other than George.

12 A. No.

13 Q. And you did meet with George, I'm
14 assuming. I don't want to know the contents of that
15 meeting, but you met with George to prepare?

16 A. Not very long.

17 Q. Okay. Did you talk to anyone else about
18 today's deposition prior to the deposition today?

19 A. No.

20 Q. Where did you go to law school?

21 A. Kent.

22 Q. And what year did you graduate?

23 A. '91.

24 Q. And were you admitted to practice in

1 Illinois that same year?

2 A. Yes.

3 Q. And have you -- Are you admitted to practice
4 anywhere else?

5 A. No.

6 Q. Have you ever been reprimanded or
7 disciplined by any courts?

8 A. No.

9 Q. Have you ever been publicly reprimanded or
10 disciplined by any oversight body, such as the ARDC?

11 A. No.

12 Q. When did you start practicing?

13 A. '91.

14 Q. And where did you start?

15 A. In Rockford.

16 Q. With a firm?

17 A. Yeah, Cacciatore.

18 Q. And how long were you there?

19 A. About a year and a half.

20 Q. And what kind of work did you do there?

21 A. Personal injury, plaintiff.

22 Q. Have you done personal injury your entire
23 career?

24 A. No, I did some defense work.

1 Q. Okay. So you were at Cacciatore for a year
2 and a half and you were doing plaintiff's personal
3 injury work. What did you do after that?

4 A. I went to the Loggans firm in Chicago for
5 about 6 months.

6 Q. And what did you do there?

7 A. Plaintiff's.

8 Q. PI again, personal injury?

9 A. Yeah.

10 Q. And after that?

11 A. Judge and James in Park Ridge.

12 Q. And how long were you there?

13 A. 7 years, I think.

14 Q. Did you do plaintiff's personal injury there
15 as well?

16 A. No, that was defense.

17 Q. What kind of defense work?

18 A. Lots -- All kinds, municipal, tort.

19 Q. Did you defend personal injury cases while
20 you were there as well?

21 A. Yes.

22 Q. And then after that, where did you go?

23 A. Kemper, I think.

24 Q. And how long were you with Kemper?

1 A. I think a couple years. Maybe a little more
2 than that.

3 Q. And what kind of work did you do at Kemper?

4 A. Defense.

5 Q. Defense of what type of cases?

6 A. Lots of different kinds, auto accidents,
7 premises.

8 Q. Mostly torts though, negligence-type cases?

9 A. Yes.

10 Q. And then after Kemper?

11 A. I think Popovich was next.

12 Q. And how long were you with the Popovich
13 firm?

14 A. About 18 years, I think.

15 Q. And do you know what year you -- roughly
16 what year you joined Popovich?

17 A. 2001 maybe.

18 Q. And you were there for roughly 18 years you
19 think?

20 A. Yes.

21 Q. So you left maybe just last year?

22 A. In '18.

23 Q. 2018?

24 A. Yeah.

1 Q. And why did you leave Popovich?

2 A. To start on my own.

3 Q. And where are you now?

4 A. With Compton Law Group.

5 Q. I'll give you just a second to come back.

6 A. Yeah.

7 Q. And what types of -- I'm sorry, I'm going to
8 go back to the Popovich firm. What kind of cases did
9 you handle at Popovich's firm?

10 A. Plaintiff's personal injury, all kinds.

11 Q. And then at Compton, what kind of work do
12 you do?

13 A. Same thing, same kind of cases, plaintiff's
14 personal injury.

15 Q. So is it fair to say you've been doing
16 plaintiff's personal injury cases steadily throughout
17 your career?

18 A. Yeah, except for the time I was with the
19 defense offices.

20 Q. Okay. But you were still doing personal
21 injury, just on the defense side, not on the
22 plaintiff side?

23 A. Right.

24 Q. Okay. Did you answer discovery in this

1 case, in the malpractice case that we're -- the
2 Dulberg versus Thomas Popovich case?

3 A. I think I did.

4 Q. Do you remember -- Did you review discovery
5 in this case, do you recall?

6 A. Like I said, I think I answered some and
7 signed off on some, I just don't remember. I haven't
8 seen them recently.

9 Q. Okay. Okay. If you recall, do you remember
10 reviewing the documents that were produced in this
11 case?

12 A. I don't know what was produced.

13 Q. Okay.

14 A. I assume the file.

15 Q. Right. Okay, if I represented that the file
16 was produced, would that make sense to you? Can we
17 kind of agree that the file was produced?

18 A. Well, if you told me that.

19 Q. Okay. So when the file was produced, I
20 don't know if you recall, there were black -- some
21 black pages between the file. Do you remember any
22 discussions about that?

23 A. I didn't produce anything so and I haven't
24 reviewed what was produced, that wasn't my -- I was

1 in a different office when it was produced, I think.

2 Q. Okay. So Thomas Popovich would have had
3 possession of the file?

4 A. Right.

5 Q. You did not have possession of any documents
6 from the underlying case, from the Dulberg versus
7 Gagnon-McGuire case?

8 A. I didn't.

9 Q. Okay. So you would not have had access to
10 that file since you were with Thomas Popovich in
11 2018?

12 A. Once I left the firm, I have not had the
13 file.

14 Q. Okay. In this case did you produce emails
15 that you possessed or did you not have access to
16 those either?

17 A. I would -- I don't know what was produced,
18 again, by the Popovich firm. I don't know if they
19 had my emails, but I have a new email address. I
20 don't think it's the same as it was back then.

21 Q. Okay.

22 A. So I didn't produce anything.

23 Q. So you didn't produce any emails or
24 communications that -- in the -- from the underlying

1 case?

2 A. Not that I'm aware of. Unless I produced it
3 to Popovich and he produced it. I don't know how
4 that worked.

5 Q. Okay. When were you retained by Paul
6 Dulberg?

7 A. I don't recall. I'm assuming there's
8 paperwork that shows that.

9 Q. Yes. Let me upload a file here. Just give
10 me a second.

11 A. I don't think he retained me. I think he
12 retained Tom Popovich's office.

13 Q. Okay. I just uploaded a file that's titled
14 Dulberg Mast Dep Exhibit 1, if you can -- And,
15 George, you should have that as well -- and it should
16 be the retainer contract.

17 A. Yeah, I see it.

18 Q. Okay. So it's a contract for legal services
19 and it's marked POP, P O P, 000586 on the bottom,
20 just for reference, so this will be the first exhibit
21 in this deposition. Do you recognize this document?

22 A. I recognize what it looks like, yeah.

23 Q. Yeah, and it's the contract for legal
24 services and it's undated, it looks like.

1 A. That's what it looks like.

2 Q. Okay. I'm going to upload another exhibit.
3 So I'm uploading Exhibit 2, it's titled Dulberg Mast
4 Dep Exhibit 2, and this should be the original
5 complaint filed in the case of Dulberg versus Gagnon,
6 et al., 12 LA 178, filed in McHenry County. Do you
7 see that document?

8 A. Yeah. What I'm going off are an email I got
9 with all the exhibits attached, so I'm not -- that's
10 what I'm looking at.

11 Q. Okay.

12 A. It's a complaint and it says Exhibit 2.

13 Q. Right, okay. So our numbers may be a little
14 off, but the description should be correct. In that
15 complaint shows file stamp May 15, 2012?

16 A. Yeah, that's what it says.

17 Q. Okay, and so Mr. Dulberg would have hired
18 you sometime -- hired the Popovich firm sometime
19 prior to that, correct?

20 A. I'm assuming. I --

21 Q. Okay. Do you have any idea?

22 A. I'm sorry.

23 Q. I'm sorry, I didn't mean to interrupt you.
24 Go ahead.

1 A. Go ahead.

2 Q. Do you have any idea about -- Do you have
3 any idea about what timeframe he would have hired --
4 retained you?

5 A. I really, again, I don't have an independent
6 recollection of it. I think there's probably a memo
7 out there of me meeting with him, too.

8 Q. Okay. Actually, I think there is. Okay, I
9 just uploaded Dulberg Mast Dep Exhibit No. 3 and the
10 top says -- it's titled, "Intake Memo." At the top
11 it says, "Memorandum," it's Popovich, it says
12 POP00961 and 000962. Do you recognize this document?

13 A. I -- It looks familiar.

14 Q. And it indicates that it's from you, so you
15 would have drafted this document, correct?

16 A. I would have dictated it, yeah.

17 Q. Okay, and it looks like you had a new client
18 meeting with Paul on December 1st of 2011?

19 A. That's what it says.

20 Q. Okay. Does that seem like that timeframe
21 would have been roughly correct?

22 A. I have no reason not to believe that's
23 accurate.

24 Q. Okay. So Paul retained you probably

1 sometime in December of 2011 and then you filed a
2 complaint around May 15, 2012?

3 A. That's what it appears.

4 Q. Okay. So can you just tell me what the case
5 against Mr. -- I'm sorry. Can you describe the case
6 between Paul Dulberg and David Gagnon, Caroline and
7 William McGuire?

8 A. What do you mean describe it? What it's
9 about?

10 Q. Yeah, basically what was it about?

11 A. An injury, a chain saw injury.

12 Q. Okay. Was there anything about the case
13 that was unique to you?

14 A. Other than it was a chain saw injury.

15 Q. Okay. What was your theory of that case?
16 What was your theory of liability in the case?

17 A. I think the -- Paul had claimed Dave struck
18 him with the chain saw.

19 Q. So was it just a negligence theory or was it
20 a strict liability or --

21 A. I believe it was negligence, if I recall
22 correct.

23 Q. Negligence against Gagnon, David Gagnon?

24 A. Yeah, and I think the McGuires actually were

1 named as well.

2 Q. And what was the theory as to the McGuires?

3 A. I think Paul had said that they were the
4 ones that owned and looked over the work that was
5 being done.

6 Q. Okay. So if they owned the chain saw and
7 were overseeing the work, what's the legal theory for
8 liability on that? Why would they be liable?

9 A. Under case law potentially there's liable --
10 liability for people that oversee and direct the
11 work.

12 Q. Okay, and is that a strict liability or is
13 it some other form of liability?

14 A. It would be negligence.

15 Q. So negligent oversight?

16 A. Potentially.

17 Q. Okay. Were there any other theories that
18 you were going to pursue or could be pursued?

19 A. Not that I recall.

20 Q. Okay. So a negligence claim against Gagnon
21 for negligently utilizing the chain saw and then a
22 negligence claim against McGuires for not -- for not
23 controlling his use of the chain saw, is that
24 accurate?

1 A. I don't recall the exact allegations, but I
2 think in a general theme that was what we were going
3 to try to prove.

4 Q. Okay. In the intake memo, do you want to go
5 back to that? There are some notes on this exhibit
6 that state -- it looks to me like it says, "Hans BC
7 the accident occurred on their premises, their HO med
8 pay will cover the bills," and then it's signed. Do
9 you recognize that handwriting?

10 A. Yeah, that would be Tom.

11 Q. Okay, and what does that note mean?

12 A. Medical coverage, medical payments coverage.

13 Q. So there -- So the McGuires -- When he says
14 their, is he referring to Caroline and Bill McGuire?

15 A. Well, I don't know what he's referring to.
16 I think what he's -- Well, he circled their names, so
17 that probably indicates what he's referring to.

18 Q. Okay. Would their -- Would their insurance
19 cover medical bills in an instance like this?

20 A. Possibly.

21 Q. Okay. Did you reach out to their insurance
22 company about covering any medical bills?

23 A. I don't recall if that was applicable or I
24 don't know -- I don't recall that issue.

1 Q. Okay.

2 A. Oh, uh, I think -- It just kicked me off.

3 MR. FLYNN: I got disconnected, too. It's
4 the Wi-Fi.

5 BY MS. WILLIAMS:

6 Q. Okay, we'll just wait a minute here.

7 A. I can hear you. I just can't see you.

8 Q. We'll wait a minute until you can get your
9 video back on.

10 MR. FLYNN: Julia, we think the Wi-Fi may
11 have dropped here in the office.

12 MS. WILLIAMS: Okay. Well, let's just give
13 it a minute and see.

14 MR. FLYNN: Okay.

15 (Whereupon, a break was taken,
16 after which the following
17 proceedings were had:)

18 MS. WILLIAMS: Okay. I think we're back on
19 the record. Barb, are you doing all right?

20 THE REPORTER: Yes.

21 BY MS. WILLIAMS:

22 Q. Okay. So we just went through the memo that
23 Tom made a note about insurance and your testimony
24 was that you don't recall whether you made any

1 requests to the McGuires' insurance to pay Paul's
2 medical bills; is that correct?

3 A. I don't remember, right.

4 Q. Okay. Back to the actual claims made. Do
5 you remember -- Do you recall what the defense was
6 for first Gagnon and then Bill -- William and
7 Caroline McGuire?

8 A. What do you mean by defense?

9 Q. What was their theory of defense in the
10 case, do you recall? As you understood it.

11 A. I mean, that's a big question. I mean,
12 they, like every case, they were denying what we were
13 alleging.

14 Q. Were they denying the facts? Did they
15 dispute the facts of the case?

16 A. Definitely.

17 Q. Okay. Do you recall what they were alleging
18 as far as the facts that were different from what you
19 were alleging?

20 A. I mean, I can probably answer that for --
21 with an hour -- an hour answer. There's a lot that
22 they were denying. There was a lot that, you know, I
23 mean, I'd have to -- I could look at their answer. I
24 could look at their deposition testimony, but, I

1 mean, that brings up a lot of issues.

2 Q. Okay. Let's -- Let me narrow it down a
3 little bit and try to get more to a point that will
4 be useful for our discussion. At some point, you had
5 recommended that Paul settle the case as to the
6 McGuires; is that correct?

7 A. Yeah.

8 Q. And what was the reasoning for settling the
9 case as to William and Bill McGuire?

10 A. Just risk, like you always discuss with any
11 settlement.

12 Q. Can you be a little more specific about what
13 type of risk?

14 A. Again, that's a long question but, I mean,
15 it's like any settlement, you're taking a risk if you
16 don't settle the case when you have issues that could
17 be problematic.

18 Q. Okay. When you say issues that can be
19 problematic, and I know it could be a very long
20 answer, but as much as you can, can you summarize
21 what you think those risks were?

22 A. Understanding it's a summary that, I mean, I
23 could probably answer that in a couple hours, but the
24 chance of recovery was in my view very slim if at all

1 because of lots of reasons, one, because of Paul's
2 testimony, Gagnon's testimony, the McGuires'
3 testimony. The evidence didn't seem to be something
4 that was going to allow us to prove the case against
5 the McGuires.

6 Q. Okay. What -- And, again, I understand this
7 is -- these are very long questions, but just in
8 summary, what were you going to need to prove the
9 case against the McGuires?

10 A. Now, again, understanding I would have to
11 put myself in my place where I was back at the time
12 that I fully evaluated this with Paul, but if I'm
13 just trying to come up with some thoughts now years
14 later the case law, I think, was against us. The
15 defense was going to file a motion for summary
16 judgment if we didn't work out some sort of
17 settlement that I felt they were going to win and the
18 testimony from all parties was not helpful to us.

19 Q. Okay. I'm going to move forward and then we
20 may come back to this a little bit. Do you recall
21 when the first time was that you talked to Paul about
22 settling the claims with the McGuires?

23 A. No, whenever -- You know, the defense
24 attorney would have reached out to me to ask for some

1 sort of demand, I assume.

2 Q. Did you make a demand at some point?

3 A. I think -- I think some of your paperwork
4 showed that I did.

5 Q. Okay. I just uploaded Dulberg Mast
6 Exhibit 4 and it says letter -- it's "Letter Re
7 Settlement," and that should be -- still be Exhibit 4
8 that was emailed around to Counsel so that you would
9 have it. And it is labeled POP192 and POP193. Do
10 you recognize those documents?

11 A. Wait. I think the Internet, maybe because
12 we were having problems, is the Internet went down,
13 so now my exhibits aren't pulling up. Can you try it
14 again? Do you have that, George?

15 MR. FLYNN: Yeah, here's the hard copy.

16 THE WITNESS: I'll look at the hard copy, so
17 what are you asking?

18 BY MS. WILLIAMS:

19 Q. Great. So it should be the document it has
20 letterhead on the top, Popovich letterhead on the
21 top, and at the bottom it's POP000192 and
22 POP000193.

23 A. Right.

24 Q. Do you recognize those documents?

1 A. I mean, they look familiar. Documents from
2 the Popovich firm, if that's what you're asking.

3 Q. Is that your signature?

4 A. Yes.

5 Q. So you would have drafted or caused this
6 letter to be drafted and sent?

7 A. It appears that way, yeah.

8 Q. And this is a demand letter where you make a
9 demand of \$7,500; is that correct?

10 A. Yes.

11 Q. Do you recall making that demand?

12 A. No.

13 Q. Do you recall if you talked to Paul prior to
14 making the demand?

15 A. I'm sure I would have.

16 Q. Okay. Do you recall -- Do you have any
17 memos or notes regarding that conversation with Paul?

18 A. I don't personally.

19 Q. Okay. If there were memos and notes, would
20 they be in Thomas Popovich's file?

21 A. It should.

22 Q. Okay. Do you recall any emails about the
23 demand -- the 7,500 demand?

24 A. I know there were lots of emails. I don't

1 know if this number is identified in those emails,
2 but, again, it would have been something I would have
3 talked to him about before making it.

4 Q. Okay. But at this time you don't know if
5 there are any memos, notes or emails memorializing
6 any conversation with Paul prior to sending the
7 October 22, 2013 demand?

8 A. Not that I recall.

9 Q. Okay, and if they did exist, they would be
10 in the possession of Thomas Popovich, correct?

11 A. I would think so.

12 Q. Okay, and if you had those in your
13 possession, you would produce them in discovery,
14 correct?

15 A. If I had them.

16 Q. Okay. Just uploaded Exhibit 5, and this is
17 email dated October 30, 2013, and it's marked at the
18 bottom POP000195.

19 A. Okay.

20 Q. Okay, and here in this email it looks like
21 you started this email chain to Paul on
22 October 25, 2013. Do you see that?

23 A. It looks like there's a couple emails here.
24 There's several pages. You just mean the first page?

1 Q. I think -- It should only be, I believe it's
2 only one page and it looks like --

3 A. Oh, these aren't part of it? Just one page?

4 Q. The document that I have is just one page.
5 Are we looking at the same thing?

6 A. Okay.

7 Q. It's POP00195 on the bottom.

8 A. Yeah, he had a couple other pages on it, but
9 okay.

10 Q. Okay. I just want to make sure that I
11 didn't -- Okay. And on the bottom there of the first
12 sheet, if you have several, I've only published one
13 sheet for the purposes of this deposition, it states,
14 "Friday, October 25, 2013," do you see that?

15 A. Where does it say that?

16 Q. So about halfway down the page it looks like
17 it says, "Original message from Paul"?

18 A. Yeah.

19 Q. Okay. So that looks like Paul reached out
20 to you about medical deposition and then on the top
21 it appears to be your reply of October 30, 2013.
22 Does that seem like that's accurate?

23 A. That's what it shows.

24 Q. Okay. Okay. And here you first -- Am I

1 correct in summarizing this is an email where you
2 talk to Paul about liability for Mr. Gagnon?

3 A. Look likes I did cover that issue.

4 Q. Okay, and do you recall at the time what
5 your purpose was behind this email?

6 A. I mean, every purpose is just to have open
7 communication. That's all the purpose --

8 Q. Okay. Would you have been trying to explain
9 to Paul the liability issues in his case that you
10 described earlier?

11 A. Yeah, I definitely was discussing several
12 issues for him so he knows what's going on.

13 Q. Okay, and this email response is dated
14 October 30th, so that was after you sent that initial
15 letter. Do you recall whether there would have been
16 anything prior to this?

17 A. Whether what was prior to this?

18 Q. Would there have been any communications
19 about liability either to Gagnon or the McGuires
20 prior to the October 30, 2013 email?

21 A. Every time we talked, there were issues
22 about liability, I mean, for whatever I first -- he
23 first came to the office I recall he was lots of
24 questions and I gave him lots of answers as is

1 reflected in my emails.

2 Q. Okay. Did you meet with Paul after you sent
3 that October 22nd demand letter?

4 A. Did I meet with him?

5 Q. Yes. In person.

6 A. I'm sure I did.

7 Q. Okay. Do you recall -- Do you recall
8 meeting -- the dates of those meetings?

9 A. No, I don't recall the dates.

10 Q. Okay. So I'm going to upload another file
11 here.

12 A. Yeah, our Internet is down. That's why I
13 can't bring these up.

14 Q. Okay.

15 MR. FLYNN: Julia, just so you know, I've
16 got hard copies of the majority of the exhibits you
17 sent with the exception of the larger files, like the
18 insurance policy and the dep transcripts.

19 MS. WILLIAMS: Okay. Okay, great.

20 MR. FLYNN: I've got some of the deposition
21 transcripts, but I didn't want to waste a lot of
22 paper and ink at home.

23 MS. WILLIAMS: Okay. I think we'll be --
24 For the most part, I think we'll be fine and we'll

1 deal with it if and when we get to that point.

2 Q. Okay. So the document that I'm looking at
3 now is another email on the -- it's now titled
4 Exhibit 6. I don't think it was entitled Exhibit 6
5 in what I sent to George, but it's an email that the
6 first date on the email is November 4, 2013, and the
7 last date on the email is November 5, 2013 email
8 chain and it's -- at the bottom it's stamped
9 Dulberg001531.

10 A. What exhibit is it?

11 Q. I think it might have been 5-A to George.
12 It's now Exhibit 6 for the purposes of this
13 deposition.

14 A. Yeah, that wasn't part of the download then.
15 Do you have --

16 MR. FLYNN: Yeah, I don't think that was
17 included.

18 THE WITNESS: What's the Bates stamp or
19 what's the stamp?

20 MS. WILLIAMS: The Bates stamp is
21 Dulberg001531.

22 THE WITNESS: Yeah, I don't recall --

23 MR. FLYNN: I don't recall seeing a 5-A on
24 the download. I think it just went straight from

1 5 to 6.

2 MS. WILLIAMS: Okay, let me see if I can do
3 something else. I'm going to try to share my screen.
4 I don't know if I'm going to be able to do it. So
5 bear with me. Okay. I can't -- I can't share the
6 screen. Can I email -- George, can you pull up an
7 email if I email it to you?

8 MR. FLYNN: I should be able to eventually.

9 MS. WILLIAMS: Okay, let me see if that
10 will --

11 THE WITNESS: Let me run to the washroom
12 real quick while you guys do --

13 MS. WILLIAMS: We'll take a quick break,
14 that's fine, we'll try to work this out. If anybody
15 else needs a break, obviously take a break now.

16 (Whereupon, a break was taken,
17 after which the following
18 proceedings were had:)

19 BY MS. WILLIAMS:

20 Q. Okay, back on the record. This is the
21 Exhibit 6 for the deposition and it's marked at the
22 bottom Dulberg001531 and it's an email chain between
23 Paul Dulberg and Hans Mast dated November 4th through
24 about November 5th, is that accurate, Hans?

1 A. That's what it appears.

2 Q. Okay, and it appears at the bottom that Paul
3 is asking you if he should bring anything to a
4 meeting.

5 A. Okay.

6 Q. And that meeting appears to be at 3:00 p.m.
7 on November 4th of 2013.

8 A. Okay.

9 Q. Is that an accurate description? Okay? Do
10 you recall having --

11 A. Go ahead, I'm sorry.

12 Q. Do you recall having a meeting on
13 November 4th of 2013 with Paul Dulberg?

14 A. I don't have an independent recollection.

15 Q. Okay. Okay.

16 MR. FLYNN: Julia, now I recall, this is a
17 separate exhibit you sent a little bit later than the
18 original download, so I did have this.

19 MS. WILLIAMS: Okay. Okay. We got it
20 worked out.

21 MR. FLYNN: Yeah, okay.

22 BY MS. WILLIAMS:

23 Q. Okay. So you don't recall calling a meeting
24 for November 4th?

1 A. We had lots of meetings so --

2 Q. Okay.

3 A. -- I don't have an independent recollection
4 of that one particular date.

5 Q. Okay. Okay, I'm going to stop screen
6 sharing. Okay. I'm going to upload another file.
7 This is Deposition Exhibit 7. George, you probably
8 had it as Exhibit 6, but for the purposes of this
9 deposition right now it's going to be 7 and it's an
10 email chain dated --

11 A. I have these on the computer. You don't
12 need to, unless you want to, but I'm just saying I
13 have these on the computer.

14 Q. Okay, but Barb needs them, so that's why I
15 keep uploading them, otherwise she doesn't have them.
16 Okay. So Exhibit 7, and it's POP00181 and POP00182,
17 and it's two pages of an email chain, November 15th,
18 looks like on the second page it starts November 15th
19 and ends November 19th, is that accurate?

20 A. Yes.

21 Q. Okay, great. So here it looks like Paul
22 started this email chain, but then on November 18th
23 you note that, "The McGuires' attorney has offered
24 us, you, \$5,000 in full settlement of the claim

1 against the McGuires only," do you see that?

2 A. Yes.

3 Q. Okay. Do you recall that offer being made?

4 A. I do have some recollection of having a
5 conversation with them.

6 Q. Okay. So I'm going to upload another
7 document and then we can keep going here. And then
8 this is Exhibit 8 and for -- it is a letter from
9 Ronald Barch to you, Hans, and it's POP000667. Do
10 you have that?

11 A. What's it dated?

12 Q. I'm sorry, dated November 18, 2013.

13 A. Yeah, I have that.

14 Q. Okay. And that's a settlement letter from
15 Barch offering the settlement of \$5,000, correct?

16 A. Right.

17 Q. Do you recall receiving this letter?

18 A. I mean, I don't today recall getting the
19 letter, but I'm familiar with the transaction, yes.

20 Q. Okay. Okay. So you would have received the
21 \$5,000 offer from Barch and you communicated it to
22 Paul via the email on November 18th?

23 A. As well as when we talked, yes.

24 Q. Okay. Okay. And when did you talk?

1 A. Again, I don't know the dates. I just know
2 generally how this all transpired.

3 Q. Would you have talked to Paul on the 18th
4 when the letter came in?

5 A. It's dated the 18th. I doubt I got it on
6 the 18th. Whenever I got it, I would have told Paul.

7 Q. Okay. And it looks like the email you sent,
8 which is Exhibit 7, communicated that offer?

9 A. Okay.

10 Q. Would you have talked to the McGuires'
11 attorney prior to receiving the letter about the
12 offer?

13 A. I don't recall. It might have -- that might
14 have happened.

15 Q. Okay. Do you recall whether you met with
16 Paul sometime after -- on or after November 18 to
17 discuss the settlement offer?

18 A. I'm sure we did. I know we had several
19 conversations and meetings about that.

20 Q. Okay. In this email chain that's
21 Exhibit 7 about halfway down the page it says on
22 November 18, 2013, at 7:40 p.m., Paul responds to
23 your email. Can you see that?

24 A. Are we going back to the email now?

1 Q. Yep, it's POP00181.

2 A. What exhibit?

3 Q. It's Exhibit 7.

4 A. 7, that's the letter.

5 Q. If may be 6 for you. It may be 6 for you.

6 A. Let's take a look. What page is the email?

7 Q. The date at the top of the email chain is
8 Tuesday, November 19, 2013.

9 A. Yeah, I have that.

10 Q. Okay. And then about maybe halfway down the
11 page it's dated on November 18, 2013, at 7:40 p.m.,
12 do you see that?

13 A. Yep.

14 Q. And there it says, "Only five? That's not
15 much at all," do you see that?

16 A. That's his response, yes.

17 Q. Right. Right. Do you recall talking to
18 Paul about the \$5,000 and that not being much?

19 A. Like I said, yes, we've had plenty of
20 conversations and meetings on that.

21 Q. Okay. When you originally offered the
22 7,500, did you talk about what the possible outcomes
23 as far as counteroffers, what they may demand,
24 something like that, did you talk about that prior to

1 making that \$7,500 offer?

2 A. I mean, I think I generally understand what
3 you're asking. Did we just have general
4 conversations of numbers? Yes.

5 Q. Okay. In this email and this is -- I
6 understand this is speculation, but in this email it
7 appears that Paul is surprised that it's \$5,000 was
8 the offer, correct? Would that be fair to
9 characterize it that way?

10 A. Is he surprised at it or is he surprised at
11 the amount? It looks like he didn't think it was
12 much.

13 Q. Right. So if you originally offered 7,500
14 and they came back at 5,000, in your experience, does
15 that seem like much of a difference when it comes to
16 counteroffers?

17 MR. FLYNN: I'll object to the form.

18 THE WITNESS: Yeah, I'm not real sure what
19 you mean by that.

20 BY MS. WILLIAMS:

21 Q. I guess let me rephrase because I don't
22 think I'm getting to the point. Prior to making the
23 \$7,500 offer, did you discuss with Paul that the
24 McGuires may come back with an offer that was lower

1 than the 7,500?

2 A. Again, I'm -- I understand the question.
3 I'm just not trying to play games, but you're asking
4 me do I recall specific words that are used or
5 topics. All I can tell you about this is we talked
6 about the whole gamut of options, that I didn't feel
7 it was a strong case, that they were reaching out to
8 us for \$5,000, and that balancing everything, the
9 risks, costs, even though it wasn't much, it was
10 something that would have been desirable for him if
11 he wants to end up with money versus the McGuires.

12 Q. I'm going to add another exhibit here.
13 Okay, for the purposes of this deposition it's
14 Deposition Exhibit 9. This is a memorandum. At the
15 top it will say, "Memorandum," and the date is
16 November 20, 2013, and at the bottom it's identified
17 as POP and then 3 -- there's 000003, I believe. Do
18 you have that?

19 A. What exhibit is it?

20 Q. I think you're probably going to have it as
21 Exhibit 8, but for the purposes of this deposition
22 it's actually going to be Exhibit 9.

23 A. Okay.

24 Q. And it's Dulberg Mast Memo,

1 2013 November 20.

2 A. Okay, yeah.

3 Q. Okay. It looks from this memo that you had
4 a meeting with Paul and his friend on November 20th,
5 is that accurately reflected what's stated in the
6 memo?

7 A. Yes.

8 Q. Do you remember this document? Do you
9 recall this?

10 A. As I said before, I understand what you're
11 asking, but we've had lots of meetings. Do I
12 remember that particular date, no, but I remember the
13 meetings.

14 Q. Do you recognize this memorandum?

15 A. I recognize the discussion that's referenced
16 in the memo. I haven't seen the memo for 7 years.

17 Q. Okay. Do you recall the advice that you
18 gave in that meeting of November 20th?

19 A. Yeah, like I said, it's summarized a little
20 bit in there. Yeah.

21 Q. Okay. And what was the -- Why don't -- What
22 was the advice that you gave?

23 A. Do you want me to read the memo or you want
24 me to just tell you generally what the topics were or

1 what?

2 Q. Generally to the best that you can recall.

3 A. Looks like on that day he brought his friend
4 in because before he wanted to consider the offer, he
5 wanted to have his friend come with him to talk about
6 these issues with me. So we went over --

7 Q. So --

8 A. Go ahead.

9 Q. No, I'll let you finish. Go ahead. I'm
10 sorry.

11 A. Well, we went over all the issues, all the
12 risks, all the money issues, all of the issues.

13 Q. Do you recall who the friend was?

14 A. Not as I sit here today.

15 Q. From this memo it says, "Paul maintains the
16 McGuires controlled everything that they were doing
17 and you told him that wasn't what the evidence seemed
18 to show." So can you expound on what -- This is
19 really going to be a complicated question, but to the
20 best of your ability, can you explain what the theory
21 of your case was against the McGuires and what the
22 evidence was that was going to -- what evidence was
23 your reason for believing that you couldn't prove
24 your theory?

1 A. We already talked a little bit about that
2 earlier, but every time we met, we talked about this
3 because this was a subject at the time with the
4 McGuire's and given the testimony of the McGuire's,
5 given Paul's testimony, given the lack of any
6 evidence that they were controlling any work or even
7 knew what Paul was doing, I felt it was a big, high
8 risk of moving forward on that claim.

9 Q. So I'm going to try to summarize this.
10 Maybe in parts. So in order for the McGuire's to be
11 liable for Gagnon's work, Paul would have to prove in
12 his case that the McGuire's controlled Gagnon's work,
13 is that accurate?

14 A. Are you asking me if that's an accurate
15 statement of the law?

16 Q. Yes.

17 A. I think that's partially right. There's a
18 lot more to it. It's different branches and elements
19 that you have to prove, control was a factual matter,
20 and he would have to be able to establish there was
21 some oversight. It goes down into some factual
22 issues that you have to be able to show.

23 Q. Okay. So can you -- To the best of your
24 ability, can you kind of walk me through for the

1 negligence claim against the McGuires what the legal
2 elements were that you would have to show?

3 A. I haven't brushed up recently on that area,
4 but I can tell you that under the case law they have
5 to have some oversight and control over what was
6 going on and some involvement in the work and some
7 knowledge higher and above what Paul was doing, and
8 if you look at their testimony, they were not out
9 there, they were not looking at it, they didn't even
10 really know what Paul was doing frankly.

11 Q. And what about David? Did they have to
12 control what David was doing as well?

13 A. I meant David, I'm sorry.

14 Q. Okay. So the McGuires would have to have
15 oversight and control over David Gagnon?

16 A. Over the work.

17 Q. Okay. Over the work. Okay. So William and
18 Caroline did buy the chain saw, correct?

19 A. I believe that is true.

20 Q. Okay. But then David Gagnon was the one
21 operating the chain saw?

22 A. Right.

23 Q. And you would have to show in Paul's case
24 that Bill and Caroline, one or the other, had control

1 over David's operation of the chain saw?

2 A. Control could mean a lot of things. They
3 would have to be in a position to instruct him, tell
4 him what to do, be aware of the work that was being
5 done and have some control over what he was doing.

6 Q. Okay. So in your -- Your opinion of the
7 case was that it was insufficient for them to have
8 simply purchased the chain saw and provided it to
9 Gagnon?

10 A. Yeah.

11 Q. And what about if they were paying him?
12 Would that make any difference?

13 A. No.

14 Q. I'm sorry, I don't know or no?

15 A. No.

16 Q. Just bear with me for a second here. And
17 you informed Paul -- I'm sorry, let me back up. In
18 exhibit -- Deposition Exhibit 7, so it's probably
19 6 for you, the email chain between you and Paul,
20 roughly November 18th through the 19th, Popovich
21 000181, on the bottom of that first page,
22 November 18, 2013, at 1:28 p.m. there's an email from
23 you. Do you see that?

24 A. Yes.

1 Q. "In addition, the McGuires' attorney," so
2 it's ATTY, "has offered us, you, 5,000 in full
3 settlement of the claim against the McGuires only.
4 As we discussed, they have no liability in the case
5 for what Dave did as property owners so they likely
6 will get out of the case on a motion." Did I read
7 that correctly?

8 A. Yes.

9 Q. So this is where you told Paul that you
10 didn't believe the McGuires had any liabilities for
11 the reasons -- in part for the reasons we just
12 discussed?

13 A. Right.

14 Q. Ultimately Paul accepted that \$5,000 offer,
15 correct?

16 A. Yes.

17 Q. And you communicated that to the other side
18 later in 2013, does that sound correct to you?

19 A. Yes.

20 Q. I'm uploading Exhibit 10, and it should be
21 Exhibit 10 for you as well, and it's a memorandum
22 dated December 20, 2013, and at the bottom it's
23 POP000884, do you see that?

24 A. Yes.

1 Q. And that's a memorandum that you wrote to
2 the legal file; is that correct?

3 A. It looks like that.

4 Q. I think I already said this, it's dated
5 December 20, 2013?

6 A. Yes.

7 Q. Okay. And the substance of it, it appears
8 that you had a conversation on December 18th with
9 Paul and that he was authorizing you to accept the
10 \$5,000 settlement?

11 A. Yes.

12 Q. Okay. Do you recall that conversation of
13 December 18?

14 A. I recall having lots of conversations, this
15 is one of them, and generally I do recall the
16 conversations in a general sense, not the exact
17 dates.

18 Q. Okay. So you don't remember anything
19 specific to this December 18th call what you would
20 have discussed?

21 A. Not other than what I've already said we
22 discussed over the time.

23 Q. Okay.

24 A. Paul was weighing his options. He knew the

1 risk and he had -- he wanted some time to think about
2 it and consider it.

3 Q. Okay. All right, just bear with me here.
4 Okay, I just uploaded Deposition Exhibit 11, it's a
5 settlement acceptance letter, letterhead from Thomas
6 Popovich's office dated December 26, 2013. Hans,
7 your signature appears on there and it's POP00670.
8 Do you recognize this document?

9 A. That appears to be a letter from Popovich's
10 office to defense counsel.

11 Q. Do you recognize your signature on here?

12 A. Yes.

13 Q. And this is the letter where you accepted
14 the offer on behalf of Paul, is that accurate?

15 A. It appears, yeah.

16 Q. Okay. So the Defendants made the original
17 offer around November 18 and Paul --

18 November 18, 2013, and Paul accepted it around
19 December 20, 2013. Is that statement accurate?

20 A. I don't have, like I said, independent
21 recollection of the dates. I would just have to go
22 off the documents.

23 Q. Okay. Was there -- If that timeframe is
24 roughly correct, was there anything that occurred

1 during that timeframe that indicated to you, you
2 know, why Paul changed his mind from originally
3 thinking it was too little to now accepting it. Was
4 there anything that stuck out in your mind about
5 that?

6 A. Yeah.

7 Q. Can you expound on that?

8 A. Well, he had his friend with him during our
9 meeting and he reviewed the depositions.

10 Q. Okay. Did he not have the depositions prior
11 to that?

12 A. I remember he asked for copies of them, so I
13 provided them to him.

14 Q. Okay, and when you say the depositions, do
15 you mean just the party depositions, the McGuires and
16 the Gagnon?

17 A. I don't remember if I gave him the doctors.
18 I don't remember which ones I gave him, but I know
19 specifically it was Gagnon and the McGuires.

20 Q. Okay, I'm uploading Dulberg Mast Dep
21 Exhibit 12. This is titled, "Legal Research." And
22 this is hard because there's -- it's 27 pages. Some
23 of them have Bates numbers, but some of them are
24 black on the bottom, so I think the Bates numbers

1 didn't -- didn't take, but it's roughly -- looks like
2 roughly 204, maybe 205, Dulberg204, 205 through
3 roughly Dulberg00304 -- Actually, I'm sorry, these
4 aren't going to be continuous. But do you have that
5 packet of legal research in front of you? It appears
6 to be copies out of a -- copies of case law out of
7 the Northeastern Digest.

8 A. I just have the one case here.

9 Q. Just one case? Which -- What's the case
10 title?

11 A. The first one, it's L A J A T O.

12 Q. Okay. Do you -- Did you copy this case law?

13 A. I don't know.

14 Q. Do you recall providing any case law to
15 Paul?

16 A. I don't know if I did or didn't. I don't
17 know if he asked.

18 Q. Okay. Do you recall doing case law
19 research?

20 A. I'm sure I did, yeah.

21 Q. Would have there been a memo or something
22 regarding that research?

23 A. Not necessarily. I was familiar with the
24 law.

1 Q. Okay. Okay. Was there any -- Was there any
2 case law that stuck out to you, any particular cases
3 that stuck out to you?

4 MR. FLYNN: Object to the form.

5 THE WITNESS: You mean stuck out to me with
6 regard to Paul and his case?

7 BY MS. WILLIAMS:

8 Q. No. Were there any applicable cases that
9 stuck out to you one way or the other as to whether
10 the McGuires would be liable? Was there any specific
11 cases that made you think that the McGuires may not
12 be liable given the facts in Paul's case?

13 A. I mean, you deal with this issue a lot and I
14 can't think of one particular name of a case, but
15 these cases all go along the same line, so there were
16 lots of cases on this one particular issue. It
17 wasn't a complicated issue.

18 Q. So particularly the issue of control of
19 Gagnon.

20 A. Of a premises owner's liability for an
21 independent contractor.

22 Q. Okay. So can you explain generally what an
23 independent contractor is?

24 A. I'll give you have an answer if you want,

1 but just, I mean, we're talking now, what is it,
2 7 years later? I haven't been asked to do any
3 research before today's deposition, but so, I mean,
4 if you're asking me for what the case law says, I'd
5 have to look at the case law, if that's what you're
6 asking.

7 Q. I'm asking based on your -- on your
8 experience and knowledge as a personal injury
9 attorney and not necessarily related to Dulberg's
10 case specifically.

11 A. Okay.

12 Q. But based on your knowledge and experience
13 in premises liability cases, what is an independent
14 contractor?

15 A. Someone that works on their own.

16 Q. And can you explain what you mean by on
17 their own?

18 A. Somebody that's hired, like, somebody that's
19 hired to paint the house.

20 Q. Okay. So somebody that's hired by a
21 homeowner or maybe a business?

22 A. Yes.

23 Q. But someone that's hired by a homeowner but
24 the homeowner doesn't -- doesn't tell them how to do

1 their job?

2 A. Right.

3 Q. Did you ever obtain a copy of the McGuires'
4 insurance policy, do you recall?

5 A. I don't have an independent recollection.

6 Q. Did you ever advise Paul as to the limits of
7 the McGuires' policy?

8 A. I'm sure we talked about it.

9 Q. Okay. I just uploaded Dulberg Mast
10 Deposition Exhibit 13 McGuire Interrogatory Answers
11 and they're Bates stamped Dulberg000162 is the first
12 page and there's roughly 14 pages. Do you see that
13 document?

14 A. Yes.

15 MR. FLYNN: This is 14?

16 MS. WILLIAMS: It should be Exhibit 13 --
17 13 or 14. I think I have it as 13. Yes, okay. And
18 this -- I'm looking at paragraph 15 or at least I'm
19 trying to look at paragraph 15.

20 Q. Okay. In paragraph 15 it looks like there
21 was a question about the homeowner's insurance and
22 the McGuires respond with their personal liability
23 and their medical liability, do you see that?

24 A. Yes.

1 Q. Okay. Now that you see that, do you recall
2 whether you ever got a copy of that policy?

3 A. I don't -- You mean the dec pages or the
4 whole policy?

5 Q. Either. Did you get a copy of the dec
6 pages?

7 A. I have no idea.

8 Q. And you have no idea whether you got a copy
9 of the whole policy?

10 A. Yeah, don't know.

11 Q. But they are representing what their
12 insurance was and the liability there, correct, or
13 their liability coverage there?

14 A. That's what it appears.

15 Q. Okay. And these -- This was -- looks like
16 this was responded to based on the McGuires'
17 signature on roughly the 12th page of the document.
18 It looks like it was August 6th of 2012.

19 A. That's what it appears.

20 Q. Yeah. So prior to when they would have made
21 the settlement offers, correct?

22 A. That's what it appears.

23 Q. Okay. Did you ever talk to Paul about
24 those -- the limits of the insurance policy and how

1 that may be important in his case?

2 A. I suspect we talked about the policy, yeah.

3 Q. Okay. Prior to any settlement discussions?

4 A. Yeah.

5 Q. Okay. But you've already testified you
6 didn't -- You don't know if you -- You don't know if
7 you obtained a copy. What about Gagnon's insurance
8 policy, did you ever obtain a copy of that?

9 A. I don't know. I don't know.

10 Q. Okay. Did you issue interrogatories to
11 Mr. Gagnon?

12 A. I'm sure I did.

13 Q. Let me upload this. Would they have been in
14 Popovich's file if you --

15 A. Yes.

16 Q. Okay. So I can tell you, I don't recall
17 seeing any documents issued by you. I'm going to
18 upload a document that appears to be interrogatories
19 issued by McGuires' counsel in the case. I'm going
20 to upload it right now. It's Exhibit 14 and Answers
21 to Co-Defendant Interrogatories and it is stamped
22 Dulberg00178. Do you see that document?

23 A. Yes.

24 Q. It appears that these were issued by

1 Co-Defendants, in other words, the McGuires, does
2 that seem accurate to you?

3 A. Yes.

4 Q. So would you have issued interrogatories in
5 addition to what the McGuires' counsel issued?

6 A. It's probable.

7 Q. Okay. Do you recall one way or the other
8 today as we sit here?

9 A. Not other than it's probable I did.

10 Q. I have not seen those in discovery, so if
11 they exist, we'd ask that they be produced. Do you
12 ever recall talking to Paul about the policy limits
13 of the Gagnon insurance policy?

14 A. It's a topic that frequently comes up. I
15 don't have an independent recollection.

16 Q. Would you have any memos or notes on that?

17 A. I could. I may. I don't have an
18 independent recollection of that.

19 Q. Okay. And, again, that would have been in
20 the file that -- in Thomas Popovich's file?

21 A. Correct.

22 Q. In your knowledge and experience not related
23 to the Dulberg case but just in your general
24 knowledge and experience, are there any situations

1 where a homeowner may be strictly liable for someone
2 doing work on their property?

3 MR. FLYNN: I'm just going to object to the
4 hypothetical being inaccurate and incomplete, also
5 calls for an expert opinion. While this witness is a
6 lawyer, I won't necessarily -- I don't expect to call
7 him as an F-2 or F-3 witness in the case.

8 THE WITNESS: So you're asking if a
9 homeowner can be strictly liable for an injury?

10 BY MS. WILLIAMS:

11 Q. Right.

12 A. In general terms, not with regard to this
13 case?

14 Q. No, in general terms. I'm just asking in
15 general terms in your -- based on your experience and
16 knowledge of injury cases.

17 A. I mean, I think -- Not in Paul's case, but I
18 think I could probably think of something that maybe
19 could be -- as products strict liability, there's
20 hazardous materials strict liability, there's
21 different issues that potentially factually if
22 they're applicable could apply, but not in Paul's
23 case.

24 Q. Okay. Just in general, what kind of

1 hazardous -- When you say hazardous, are you talking
2 about hazardous chemical-type cases?

3 A. There's a string of cases when you're
4 dealing with hazardous chemicals and hazardous
5 materials, like a bomb or something like that, things
6 like that.

7 Q. Okay. Okay. Are there any, like, hazardous
8 actions? Could something be considered, like, some
9 type of action be considered hazardous?

10 A. What do you mean by action? Activity?

11 Q. Yeah, like, I'm trying to give you an
12 example because I'm just trying to understand it more
13 than anything else. Yeah, is there an activity that
14 you could be doing on your property, I don't know,
15 like, what about tearing down your home, would that
16 be considered -- would that be something that could
17 be hazardous?

18 A. There would have to be statutory authority
19 for that and there isn't.

20 Q. Okay. Okay. Okay. So generally for strict
21 liability there has to be some type of statutory
22 authority for that?

23 A. Or common law. Yeah. They have a
24 particular fact pattern.

1 Q. Okay. But this case particularly is simply
2 a negligence case. Paul's case against the McGuires
3 was a simple negligent failure to control case in
4 your opinion?

5 A. That's what was pled.

6 Q. Okay. Did you ever make any -- ever
7 consider pleading any other allegations?

8 MR. FLYNN: Object to the form.

9 THE WITNESS: I don't -- No. Not that I
10 recall.

11 MS. WILLIAMS: Okay. Can we take about a
12 4-minute break?

13 MR. FLYNN: Sure.

14 MS. WILLIAMS: Let's just take -- I just
15 want to take a quick break and review my notes and I
16 want to give everybody an opportunity to kind of
17 stretch for a second. I'm going to go on mute.

18 MR. FLYNN: Okay.

19 (Whereupon, a break was taken,
20 after which the following
21 proceedings were had:)

22 MS. WILLIAMS: Let's go back on the record.
23 Okay, thank you everyone. Okay, just a little bit
24 more here.

1 Q. On -- When you were talking to Paul about
2 settlement in the general timeframe of
3 November-December 2013, did you ever suggest at that
4 time that he seek alternative counsel or any
5 recommendation related to that?

6 A. I think that did come up.

7 Q. Do you recall what your advice to him was or
8 what the discussion was?

9 A. I think, you know, we always talk about the
10 risks of not settling and further down the road what,
11 you know, having to try the case and having to try
12 prove the case or getting a motion for summary
13 judgment, having the costs exceed the benefits and
14 all that, and I think my position with Paul, since he
15 didn't give a relatively very good deposition, my
16 thought was we were going to have a tough time, an
17 uphill battle, and he can always seek other counsel
18 if he doesn't agree with me.

19 Q. And you just stated that you thought Paul
20 didn't give a very good deposition, that may not have
21 been your exact language, but roughly that the
22 deposition wasn't great. Can you explain what -- as
23 you recall it, what about the deposition was
24 problematic?

1 A. I mean, he even agreed with me, but he just
2 doesn't do a very good job.

3 Q. You mean -- Can you expand on that a little
4 bit?

5 A. As a witness, as I recall, again, it's been
6 quite some time, as I recall he was -- his testimony
7 wasn't given -- wasn't strong, it wasn't definite, it
8 didn't have credible points and some points were
9 incredible when compared to other -- other testimony.
10 I mean, there's just a lot -- there was a lot of
11 problems with his testimony.

12 Q. Okay. Do you recall the circumstances that
13 Paul described as to why he came to the McGuires'?

14 A. I think he was either going to pick up
15 something or drop something off.

16 Q. Okay.

17 A. I don't really recall. I'm just thinking
18 back now.

19 Q. Okay. Do you recall whether he was asked to
20 come over to help with the tree, to help take down
21 the tree? Was that the purpose of his visit?

22 A. I don't recall that.

23 Q. Would it matter as for liability whether it
24 was or wasn't?

1 A. As by who? As to whose liability?

2 Q. I'm sorry, his and McGuires' liability.

3 A. As to how he got there?

4 Q. Whether he was -- Whether he was invited for
5 the purpose of assisting with the removal of the
6 tree.

7 MR. FLYNN: Object to the form. Just
8 invited by whom?

9 THE WITNESS: Yeah, that's a complicated
10 question, but I don't think --

11 BY MS. WILLIAMS:

12 Q. Let me clarify if I can. Okay. So my
13 question was does it matter if the McGuires invited
14 Paul to their residence to remove the tree on that --
15 on the June -- roughly June, I believe, 2011 date?

16 MR. FLYNN: Object to the hypothetical.

17 THE WITNESS: I don't think it matters.

18 BY MS. WILLIAMS:

19 Q. Okay. Would it matter if they were paying
20 Paul?

21 A. That's not the issue. The issue is Dave.

22 Q. Okay. So the relationship between the
23 McGuires and Paul is somewhat irrelevant?

24 A. I'm just saying the issue really that --

1 about liability is Dave's relationship with them.

2 Q. Because Dave is the one that controlled the
3 chain saw that injured Paul, is that accurate?

4 A. He was the one hired to do the work or asked
5 to do the work, however, whatever that background
6 was.

7 Q. And Caroline and William McGuire both
8 testified that they had never used a chain saw; is
9 that correct?

10 A. I think that's accurate. I'd have to
11 refresh my memory, but that sounds right.

12 Q. Okay. Do you remember discussing bankruptcy
13 with Paul?

14 A. I don't remember that.

15 Q. Do you remember that Paul filed for
16 bankruptcy? Do you recall that?

17 A. I saw a -- Maybe I didn't see one. I
18 remember there was some sort of bankruptcy matter. I
19 don't know the dates or when it came up.

20 Q. Okay. Do you recall if you advised Paul to
21 file for bankruptcy?

22 A. I don't advise people to file for
23 bankruptcy.

24 Q. All right. So you would not have advised

1 Paul to file for bankruptcy?

2 A. Would not.

3 Q. Okay. And then sometime after the McGuire
4 settlement but before the -- but while the Gagnon --
5 the claims against David Gagnon were still pending
6 you withdrew from the case; is that correct?

7 A. The law firm did. I -- Again, he hired the
8 law firm.

9 Q. Sure. Sure. I'm sorry. The Popovich firm
10 withdrew?

11 A. Right.

12 Q. And I -- Let's see -- I think we're on
13 Exhibit 14.

14 THE REPORTER: 15.

15 MS. WILLIAMS: 15, okay.

16 Q. I have, I think, one more and then -- Okay,
17 I am uploading Exhibit 15, Dulberg Mast Dep
18 Exhibit 15. It's a motion to withdraw and it's four
19 pages and on the first page it has a Dulberg versus
20 Gagnon case caption and file stamped March 13, 2015.
21 Do you have that document?

22 A. Yeah.

23 Q. And this is the Popovich's firm motion to
24 withdraw as counsel for Paul Dulberg in the Dulberg

1 versus Gagnon-McGuire case, correct?

2 A. Yes.

3 Q. And you drafted or caused this motion to be
4 drafted and filed?

5 A. Yes.

6 Q. And was it granted that same day it was
7 filed?

8 A. I'm sure it had to be noticed up.

9 Q. Okay. On the notice of motion it looks like
10 it was noticed for March 13, filed on March 13, but
11 sent to the service list on March 5th, does that seem
12 accurate?

13 A. That's what it says.

14 Q. But at any rate, you withdrew sometime in
15 roughly March of 2015?

16 A. It appears that way. Again, I don't have an
17 independent recollection of the date.

18 Q. Okay. Okay. That's fine. And I didn't see
19 it -- an order actually showing the exact date of
20 when you withdrew. Can you explain why you withdrew
21 from the case?

22 A. The short version is just we had a
23 difference of opinion.

24 Q. Can you give me the long version or slightly

1 longer?

2 A. Well, we have difference of opinion but Paul
3 was a bit difficult, so I just had to -- there were a
4 couple times that I told him I was going to withdraw
5 and then he begged me not to and so I didn't, but
6 then ultimately he -- it got pretty -- it got pretty
7 tough. He was saying some unfavorable, unflattering
8 things and I just decided we're not going to get
9 anywhere, I'm going to move on.

10 Q. Okay, so you -- the client relationship
11 broke down and you withdrew?

12 A. Yes.

13 Q. Okay. Was there anything about Gagnon's
14 liability or your thoughts on his liability that
15 would have caused you to withdraw?

16 A. That was another aspect of it. Paul was
17 looking for the stars and the moon and I didn't see
18 it.

19 Q. And when you say Paul was looking for the
20 stars and the moon, you mean -- Well, what do you
21 mean by that?

22 A. He was looking for a lot of money.

23 Q. Okay, and what was your opinion as to David
24 Gagnon's liability in the case?

1 A. I didn't think much of the liability issue.
2 I thought it was going to be a long, tough haul given
3 that --

4 Q. And --

5 A. -- Paul was going to be our only witness on
6 our side pretty much.

7 Q. Okay, and there were no other witnesses
8 other than Paul and David; is that correct?

9 A. Correct.

10 Q. And what about -- Anything related to, like,
11 the actual injury, the doctors' depositions or
12 anything like that?

13 A. That all -- It was the whole ball of wax.
14 The doctors weren't supporting his claim. Dave was
15 saying he's a liar, he tried to bribe him. There was
16 just a lot of -- a lot of bad stuff, not enough good
17 stuff.

18 Q. Okay, and then at that point you and Paul
19 disagreed and Paul retained alternative counsel?

20 A. Right.

21 Q. Okay. Was there anything else about the
22 case that you can recall right now that gave you
23 pause as to the liability either to the McGuires or
24 David Gagnon?

1 A. Anything other than what? Pretty much
2 everything was not good.

3 Q. Okay. I mean, anything that we haven't
4 really discussed here today. We've talked about
5 Paul's testimony, Gagnon's testimony a little bit,
6 the McGuires, the premises liability. We talked --
7 You mentioned the doctors' depositions. Is that sort
8 of the general gamut of it?

9 A. That's the whole case.

10 Q. Okay. Have you ever had any other chain saw
11 liability cases other than this particular case?

12 A. I'm sure I have. I don't -- If you're going
13 to ask me to name a date, I don't know. I mean, it's
14 not a common issue, but it comes up from time to
15 time.

16 Q. Okay. Did you state -- Did you seek out a
17 liability expert, a chain saw liability expert,
18 during the time you were representing Paul?

19 A. No.

20 Q. Is there a reason for that?

21 A. That's always a possibility. It's always a
22 consideration, but I had to consider even more
23 whether we could even get to prove a credible case
24 and that was my first object, my first -- my first

1 tier. It doesn't do any good to hire an expert if
2 you don't have a good case.

3 Q. Okay. Okay. If you were going to take the
4 case to trial, at that point would you have hired an
5 expert, chain saw expert?

6 A. For this case, I don't know. I'd have to
7 look at it again and see what we need to prove, what
8 they're arguing. There's -- As I recall, they
9 weren't arguing the chain saw -- They weren't
10 arguing. He didn't get hit with the chain saw. So
11 I'm not real sure. I'd have to think whether we need
12 to prove -- what we need to prove, anything more than
13 that.

14 Q. Okay.

15 A. It was more what happened, who caused it to
16 happen, not that it happened.

17 Q. Okay. Is there a difference between an
18 independent contractor and an employee?

19 A. In terms of what? In terms of duty or what?

20 Q. Right. In terms of the supervisor's duty.
21 So if the Gagnons -- If Gagnon was, and this is a
22 hypothetical, if Gagnon was an employee of his
23 parents as opposed to an independent contractor,
24 would there be a liability difference?

1 MR. FLYNN: Object to the hypothetical.
2 It's inaccurate and incomplete.

3 THE WITNESS: That's a very complicated
4 question, even though it doesn't sound like one. It
5 depends on lots of things.

6 BY MS. WILLIAMS:

7 Q. Okay. We've already talked about an
8 independent contractor. So just in your experience
9 and knowledge, what is a supervisor's duty as to an
10 employee? That's actually a really terrible
11 question. Let's strike that question.

12 Is there a difference -- Is there a
13 difference between the control aspect of -- Would
14 an -- Let me start again. This is a complicated
15 question, more complicated than I'm anticipating
16 right now. Okay.

17 We've generally established that in order
18 for an -- someone who hires an independent contractor
19 to be liable for the actions of that independent
20 contractor, they would have to control the work. In
21 a situation, an employer-employee situation, is that
22 control element also present when considering
23 liability? Does the employer have to control the
24 work of the employee in the same way?

1 A. I think there are --

2 MR. FLYNN: I just want to raise an
3 objection for the record. I object to the form. I
4 think that the premise of the question indicated that
5 we already established some legal precedent. I don't
6 think that's the case. I don't think that he's
7 testified to that, so, again, I'll just object to the
8 form. But if you can --

9 THE WITNESS: You're asking me to compare
10 two different theories without a fact pattern, but
11 there's a lot to each issue and it's hard to just
12 say, well, if you have this, then you have that.
13 There's a lot of different facts that apply, but now
14 I'm forgetting what you asked initially about the
15 employer-employee question.

16 BY MS. WILLIAMS:

17 Q. So I guess my question to the point of is an
18 employer liable for their employees in a different
19 way than a homeowner would be liable for an
20 independent contractor?

21 A. I think --

22 Q. Based on -- You go ahead.

23 A. I think under the law there are different
24 elements to those actions.

1 Q. And there are --

2 A. Go ahead.

3 Q. So there would be different elements if
4 something was an employer-employee situation, that
5 would be different law, different case law?

6 A. Yeah, there's a different cause of action.

7 Q. Okay.

8 A. Different elements potentially have to be
9 pled and proved.

10 Q. Okay. But in this case you were trying to
11 prove -- In Dulberg's case against the McGuires and
12 Gagnon you were trying to show that -- The theory of
13 the case was that Gagnon was not an employee, but an
14 independent contractor, and the McGuires had to
15 control him in order to be liable?

16 A. Well, that's ultimately what it appeared.
17 You followed the evidence, you follow the facts, so
18 if it turned out it was employee-employer-employee
19 relationship, that's a different evaluation.

20 Q. Okay. So but, for the most part, you
21 were -- your evaluations of the liability were based
22 on an independent contractor analysis?

23 A. Well, that's where it went because of the
24 evidence.

1 MS. WILLIAMS: Okay. I'm going to go on
2 mute for just a second so you guys don't hear me
3 shuffling papers, but I think I'm almost finished
4 here or may be finished.

5 MR. FLYNN: Okay.

6 BY MS. WILLIAMS:

7 Q. Okay. Just a couple more questions and then
8 we'll wrap things up here. When did you first advise
9 Paul that you didn't think the claims against Gagnon
10 were going to be very strong?

11 A. Probably day one.

12 Q. Before the settlement with the McGuires?

13 A. Yeah.

14 Q. And did you discuss that several times prior
15 to that McGuire settlement?

16 A. Like I said, we discussed those issues every
17 time we'd meet, liability issues, damages issues.

18 Q. Do you recall any particular instances, like
19 maybe after Paul's deposition, after David's
20 deposition, did that stick out in your mind at all?

21 A. Discussing what, the issues of liability
22 against Gagnon?

23 Q. Yes.

24 A. Those are probably something we talked about

1 every visit.

2 Q. Okay. So we discussed this a little bit
3 before, but I believe the testimony was that the
4 McGuires testified that they purchased the chain saw
5 and I believe you said yes, that was your
6 recollection as well; is that correct?

7 A. That sounds right. I just don't have an
8 independent recollection at this point.

9 Q. Okay. If the McGuires -- Let's assume
10 that -- Just for the purposes of this, let's assume
11 that the McGuires did -- it was their chain saw, they
12 purchased it and let Gagnon use it on their property.
13 Would they have any duties to share the manual of
14 that chain saw with Gagnon or provide any other
15 education as to the use of the chain saw to Gagnon?

16 A. All right, so you're asking me to make a
17 judicial decision whether they had a duty or not?

18 Q. No, I'm asking you in your experience with
19 these types of cases is there any duty there for
20 them.

21 A. All right, so a legal duty?

22 Q. Right. Right. And -- Go ahead, George.

23 MR. FLYNN: Yeah, I'll just object. I mean,
24 there isn't any evidence that Gagnon asked for a

1 manual, for one, but as far as him providing legal
2 opinions not based on the facts of this case, I'm
3 just going to caution him not to provide what could
4 be considered an expert opinion.

5 THE WITNESS: You don't want me to answer?

6 MR. FLYNN: It's up to you. I don't know if
7 you can.

8 THE WITNESS: I don't remember the question.
9 You're asking me should the McGuires have given
10 Gagnon the manual to the chain saw?

11 BY MS. WILLIAMS:

12 Q. Yes.

13 A. Sure, if he asked for it or if they wanted
14 to give it to him.

15 Q. Are there any other warnings that they
16 should have provided?

17 A. See, I mean, you're asking me to -- I get
18 the question, but I'm saying you're asking me to
19 evaluate the conduct of both parties and interpret
20 something and I don't know that that's my position as
21 a witness, but should they have warned him? You
22 know, sure, go ahead and warn him, but obviously when
23 you take on a piece of equipment that you're skilled
24 and experienced in operating, you should be able to

1 operate it effectively yourself safely.

2 Q. Sure. Okay. And --

3 A. So I mean --

4 Q. Okay. But today you're not giving an
5 opinion one way or the other whether they had a duty
6 to provide warnings, whether they had a duty to
7 provide the manual, fair enough?

8 A. Yeah, legal wise, no, I'm not giving you a
9 legal opinion on that.

10 MS. WILLIAMS: Okay. Okay, I don't think I
11 have anything further.

12 MR. FLYNN: I actually have just a few
13 follow-ups to that.

14 MS. WILLIAMS: Sure.

15 EXAMINATION

16 BY MR. FLYNN:

17 Q. Hans, is your understanding based on the
18 evidence that there were only two eyewitnesses to
19 Mr. Dulberg's accident, correct?

20 A. Correct.

21 Q. That was Mr. Dulberg himself and David
22 Gagnon?

23 A. Correct.

24 Q. And did you have an understanding as to how

1 the evidence and testimony shook out as to each
2 gentleman's version of the accident and how it
3 occurred?

4 A. Well, as I said before, I thought Paul's
5 case was going to be very difficult to prove based on
6 the testimony of everybody, credibility issues, and
7 the lack of evidence to support and prove.

8 Q. David Gagnon's testimony regarding the facts
9 surrounding the accident differed from Paul Dulberg's
10 version of the facts, correct?

11 A. Correct.

12 Q. You took that into account in your
13 evaluation and analysis of the case?

14 A. Definitely.

15 Q. Did you also take into account your
16 professional analysis of Paul Dulberg's performance
17 as a witness at his discovery deposition?

18 A. Definitely.

19 Q. You didn't think he made a very good witness
20 for himself, did he?

21 A. He even admits he didn't and I don't think
22 he -- I think -- that was one of the worst -- that
23 was one of my worst fears with this case. I had lots
24 of cases and on a scale of weak witnesses, he's

1 probably up at the top, and I'm not putting him down,
2 that's just a reality and I think he even
3 acknowledged that reality.

4 Q. Okay. Not everyone is a professional
5 witness?

6 A. Right.

7 Q. Okay. Generally speaking, your evaluation
8 of the case hinged in part on whether the McGuires
9 controlled the manner and method of the use of the
10 chain saw, correct?

11 A. Right.

12 Q. Do you have any recollection as to what the
13 McGuires were doing while the work was being done?

14 A. They were inside the house, just another day
15 to them. They weren't even -- I don't think even
16 paying attention to what was going on outside.

17 Q. Did Mr. McGuire testify that he was watching
18 television inside the house while David was working
19 on the tree?

20 A. They were both inside as I recall.

21 Q. Your recommendation or suggestion that
22 Mr. Dulberg settle the case for \$5,000 was based on
23 your analysis of the entire case, including the risks
24 and benefits of going forward and potentially losing

1 the case at trial, correct?

2 A. Yes.

3 Q. Did you have any way to predict whether the
4 case would result in a verdict on behalf of the
5 plaintiff in the case against the McGuires?

6 A. I'm sorry?

7 Q. Did you have any -- Did you have any
8 certainty as to whether Mr. Dulberg could prevail at
9 trial on liability against the McGuires?

10 A. I would have staked a lot that we would not
11 have recovered in the case and just something that
12 didn't come up with the direct is they didn't offer
13 the arbitrator to me. That was something that was
14 later decided. I talked to them about that. They
15 did not offer that to me, so that was not an option
16 to me.

17 Q. So you were -- Based on your professional
18 judgment, you suggested that you attempt to settle
19 the matter as opposed to taking it to trial versus
20 the McGuires, correct?

21 A. Right.

22 MR. FLYNN: Okay. That's all I have.

23 MS. WILLIAMS: I have no follow-up.

24 THE REPORTER: Signature?

1 THE WITNESS: I'll waive signature.

2 MS. WILLIAMS: We'll order the original,

3 E-tran.

4 MR. FLYNN: I'll take a regular and a mini

5 copy.

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DECLARATION UNDER PENALTY OF PERJURY

I, HANS MAST, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 25, 2020; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this ____ day of _____,
20__, at _____, Illinois.

HANS MAST

1 STATE OF ILLINOIS)
)
2 COUNTY OF C O O K) SS:

3
4 I, Barbara G. Smith, Certified Shorthand
5 Reporter and Notary Public in and for the County of
6 Cook, State of Illinois, do hereby certify that on
7 the 25th of June, A.D., 2020, the deposition of the
8 witness, HANS MAST, called by the Defendants, was
9 taken remotely before me, reported stenographically
10 and was thereafter reduced to typewriting through
11 computer-aided transcription.

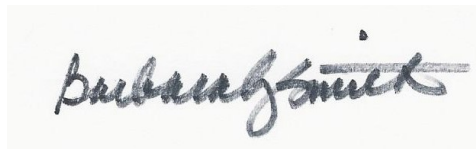
12 The said witness, HANS MAST, was first duly
13 sworn to tell the truth, the whole truth, and nothing
14 but the truth, and was then examined upon oral
15 interrogatories.

16 I further certify that the foregoing is a
17 true, accurate and complete record of the questions
18 asked of and answers made by the said witness, at the
19 time and place hereinabove referred to.

20 The signature of the witness was waived by
21 agreement.

22 The undersigned is not interested in the
23 within case, nor of kin or counsel to any of the
24 parties.

1 Witness my official signature and seal as
2 Notary Public, in and for Cook County, Illinois on
3 this 7th day of July, A.D., 2020.

4
5
6 
7

8 Barbara G. Smith, CSR, RPR
9 Notary Public
10 200 West Jackson Boulevard, Suite 600
 Chicago, Illinois 60606

11 License No. 084-002753
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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,
-vs-
THE LAW OFFICES OF THOMAS
POPOVICH and HANS MAST,
Defendants.

The remote videoconference deposition of HANS MAST, appearing remotely from McHenry County, Illinois, called by the Plaintiff for examination, pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of Illinois, and the Rules of the Supreme Court thereof, pertaining to the taking of depositions, for the purpose of discovery, taken before Barbara G. Smith, appearing remotely from Will County, Illinois, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, commencing at the hour of 10:00 a.m. on the 25th day of June, A.D., 2020.

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF MCHENRY)

3 IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
4 MCHENRY COUNTY, ILLINOIS

5 PAUL DULBERG,)
6)
7 Plaintiff,)
8)
9 -vs-) No. 17 LA 377
10)
11 THE LAW OFFICES OF THOMAS)
12 POPOVICH and HANS MAST,)
13)
14 Defendants.)
15)

12 The remote videoconference deposition of
13 HANS MAST, appearing remotely from McHenry County,
14 Illinois, called by the Plaintiff for examination,
15 pursuant to subpoena and pursuant to the Code of
16 Civil Procedure of the State of Illinois, and the
17 Rules of the Supreme Court thereof, pertaining to the
18 taking of depositions, for the purpose of discovery,
19 taken before Barbara G. Smith, appearing remotely
20 from Will County, Illinois, Certified Shorthand
21 Reporter and Notary Public within and for the County
22 of Cook and State of Illinois, commencing at the hour
23 of 10:00 a.m. on the 25th day of June, A.D., 2020.

REMOTE APPEARANCES:

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On behalf of the Plaintiff;

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On behalf of the Defendants.

ALSO PRESENT: Mr. Paul Dulberg

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I N D E X

WITNESS EXAMINATION

HANS MAST

By Ms. Williams 5

By Mr. Flynn 76

E X H I B I T S

HANS MAST

DEPOSITION EXHIBIT MARKED FOR ID

No. 1	16
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(All exhibits provided electronically
to the reporter.)

1 THE REPORTER: The attorneys participating
2 in this deposition acknowledge that I am not
3 physically present in the deposition room and that I
4 will be reporting this deposition remotely. They
5 further acknowledge that, in lieu of an oath
6 administered in person, the witness will verbally
7 declare his testimony in this matter is under penalty
8 of perjury. The parties and their counsel consent to
9 this arrangement and waive any objections to this
10 manner of reporting. Please indicate your agreement
11 by stating your name and your agreement on the
12 record.

13 MS. WILLIAMS: Julia Williams. I agree.

14 MR. FLYNN: George Flynn. I agree.

15 THE REPORTER: Will the witness kindly
16 present his government-issued identification by
17 holding it up to the camera for verification?

18 (Witness presents
19 government-issued identification
20 and identity is verified.)

21 THE REPORTER: Thank you.

22 HANS MAST,
23 called as a witness herein, having been first duly
24 sworn, was examined and testified as follows:

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EXAMINATION

BY MS. WILLIAMS:

MS. WILLIAMS: Okay, so this is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of Dulberg versus The Law Offices of Thomas Popovich, et al. This deposition is being taken for the purposes of discovery.

Q. Hans, can you state your name for the record, please?

A. Hans Mast.

Q. Have you had your deposition taken before?

A. Yes.

Q. And how many times?

A. I think two.

Q. And for what purpose?

A. Long, long time ago I think there was a malpractice case I was a witness on and a legal -- a medical malpractice case that turned into a legal malpractice case, not against me but against the office I was with.

Q. Okay. So you weren't named in the lawsuit as a defendant?

A. I might have been named. I might have been

1 named, but I was somebody that appeared on a motion.
2 I think I got out eventually.

3 Q. Okay, and then -- And then -- Sorry. And
4 then you said you think twice, so do you know
5 approximately what year that medical malpractice case
6 that turned into a legal malpractice case, do you
7 know roughly what year that was?

8 A. '94 or something.

9 Q. Okay, and then the second time, what would
10 have that been?

11 A. It's not coming to me. It was another legal
12 case. I don't remember the details.

13 Q. Okay --

14 A. There -- Go ahead.

15 Q. More than 10 years? I'm sorry, I didn't
16 mean to interrupt you.

17 A. Yes.

18 Q. We can go over the -- I'm going to try not
19 to interrupt you, you're going to try not to
20 interrupt me. You've taken depositions before, I'm
21 sure we can get into that and appreciate you
22 answering orally, all of those typical things that
23 apply, and I'll try not to interrupt you too much.
24 Have you ever -- Other than the one time you just

1 identified, have you ever been sued other than this
2 suit for legal malpractice?

3 A. No.

4 Q. Do you recall any other details about that
5 medical malpractice lawsuit that turned into a legal
6 malpractice suit? Do you know what the basis of the
7 suit was?

8 A. It was a medical malpractice case that I
9 think lost on a summary judgment motion and they
10 were -- the client was suing the office and I think I
11 got involved in it because I was on a motion.

12 Q. Were you the one that drafted the summary
13 judgment motion?

14 A. I don't think so. I don't really remember
15 clearly back then, but I don't think I did.

16 Q. Okay.

17 A. I think I argued -- I might have argued it.
18 I don't remember.

19 Q. Okay. Have you -- Have you taken
20 depositions before?

21 A. Yes.

22 Q. Roughly how many depositions do you think
23 you've taken in your legal career?

24 A. Lots. Lots.

1 Q. Hundreds?

2 A. Probably.

3 Q. Oh, I'm sorry, I forgot to do this, but I
4 think we saw your room. It's just you and George
5 Flynn in the room with you, correct?

6 A. Yes.

7 Q. And there's no one else in the room and if
8 there were, you would identify them, correct?

9 A. Yes.

10 Q. And you don't have any devices or anything
11 with you? You're not communicating with anyone
12 during this deposition other than the attorney in the
13 room with you, correct?

14 A. And you and who else is on this meeting.

15 Q. Okay. I'm sorry, let me rephrase. Is there
16 anyone that I don't know that you are communicating
17 with that I wouldn't know?

18 A. Not that I'm aware of.

19 Q. Okay. If you take any notes or otherwise
20 communicate with people during the deposition, we
21 just ask that those notes be produced. Okay. Did
22 you do anything to prepare for the deposition today?

23 A. Well, I just saw some exhibits you sent
24 George. I didn't really prepare them. I looked them

1 over briefly.

2 Q. Did you review any of the other files that
3 have been produced in this case?

4 A. No.

5 Q. Did you review any notes?

6 A. No.

7 Q. Any other documents?

8 A. No.

9 Q. Did you meet with anyone --

10 A. Other than George?

11 Q. -- to prepare? Other than George.

12 A. No.

13 Q. And you did meet with George, I'm
14 assuming. I don't want to know the contents of that
15 meeting, but you met with George to prepare?

16 A. Not very long.

17 Q. Okay. Did you talk to anyone else about
18 today's deposition prior to the deposition today?

19 A. No.

20 Q. Where did you go to law school?

21 A. Kent.

22 Q. And what year did you graduate?

23 A. '91.

24 Q. And were you admitted to practice in

1 Illinois that same year?

2 A. Yes.

3 Q. And have you -- Are you admitted to practice
4 anywhere else?

5 A. No.

6 Q. Have you ever been reprimanded or
7 disciplined by any courts?

8 A. No.

9 Q. Have you ever been publicly reprimanded or
10 disciplined by any oversight body, such as the ARDC?

11 A. No.

12 Q. When did you start practicing?

13 A. '91.

14 Q. And where did you start?

15 A. In Rockford.

16 Q. With a firm?

17 A. Yeah, Cacciatore.

18 Q. And how long were you there?

19 A. About a year and a half.

20 Q. And what kind of work did you do there?

21 A. Personal injury, plaintiff.

22 Q. Have you done personal injury your entire
23 career?

24 A. No, I did some defense work.

1 Q. Okay. So you were at Cacciatore for a year
2 and a half and you were doing plaintiff's personal
3 injury work. What did you do after that?

4 A. I went to the Loggans firm in Chicago for
5 about 6 months.

6 Q. And what did you do there?

7 A. Plaintiff's.

8 Q. PI again, personal injury?

9 A. Yeah.

10 Q. And after that?

11 A. Judge and James in Park Ridge.

12 Q. And how long were you there?

13 A. 7 years, I think.

14 Q. Did you do plaintiff's personal injury there
15 as well?

16 A. No, that was defense.

17 Q. What kind of defense work?

18 A. Lots -- All kinds, municipal, tort.

19 Q. Did you defend personal injury cases while
20 you were there as well?

21 A. Yes.

22 Q. And then after that, where did you go?

23 A. Kemper, I think.

24 Q. And how long were you with Kemper?

1 A. I think a couple years. Maybe a little more
2 than that.

3 Q. And what kind of work did you do at Kemper?

4 A. Defense.

5 Q. Defense of what type of cases?

6 A. Lots of different kinds, auto accidents,
7 premises.

8 Q. Mostly torts though, negligence-type cases?

9 A. Yes.

10 Q. And then after Kemper?

11 A. I think Popovich was next.

12 Q. And how long were you with the Popovich
13 firm?

14 A. About 18 years, I think.

15 Q. And do you know what year you -- roughly
16 what year you joined Popovich?

17 A. 2001 maybe.

18 Q. And you were there for roughly 18 years you
19 think?

20 A. Yes.

21 Q. So you left maybe just last year?

22 A. In '18.

23 Q. 2018?

24 A. Yeah.

1 Q. And why did you leave Popovich?

2 A. To start on my own.

3 Q. And where are you now?

4 A. With Compton Law Group.

5 Q. I'll give you just a second to come back.

6 A. Yeah.

7 Q. And what types of -- I'm sorry, I'm going to
8 go back to the Popovich firm. What kind of cases did
9 you handle at Popovich's firm?

10 A. Plaintiff's personal injury, all kinds.

11 Q. And then at Compton, what kind of work do
12 you do?

13 A. Same thing, same kind of cases, plaintiff's
14 personal injury.

15 Q. So is it fair to say you've been doing
16 plaintiff's personal injury cases steadily throughout
17 your career?

18 A. Yeah, except for the time I was with the
19 defense offices.

20 Q. Okay. But you were still doing personal
21 injury, just on the defense side, not on the
22 plaintiff side?

23 A. Right.

24 Q. Okay. Did you answer discovery in this

1 case, in the malpractice case that we're -- the
2 Dulberg versus Thomas Popovich case?

3 A. I think I did.

4 Q. Do you remember -- Did you review discovery
5 in this case, do you recall?

6 A. Like I said, I think I answered some and
7 signed off on some, I just don't remember. I haven't
8 seen them recently.

9 Q. Okay. Okay. If you recall, do you remember
10 reviewing the documents that were produced in this
11 case?

12 A. I don't know what was produced.

13 Q. Okay.

14 A. I assume the file.

15 Q. Right. Okay, if I represented that the file
16 was produced, would that make sense to you? Can we
17 kind of agree that the file was produced?

18 A. Well, if you told me that.

19 Q. Okay. So when the file was produced, I
20 don't know if you recall, there were black -- some
21 black pages between the file. Do you remember any
22 discussions about that?

23 A. I didn't produce anything so and I haven't
24 reviewed what was produced, that wasn't my -- I was

1 in a different office when it was produced, I think.

2 Q. Okay. So Thomas Popovich would have had
3 possession of the file?

4 A. Right.

5 Q. You did not have possession of any documents
6 from the underlying case, from the Dulberg versus
7 Gagnon-McGuire case?

8 A. I didn't.

9 Q. Okay. So you would not have had access to
10 that file since you were with Thomas Popovich in
11 2018?

12 A. Once I left the firm, I have not had the
13 file.

14 Q. Okay. In this case did you produce emails
15 that you possessed or did you not have access to
16 those either?

17 A. I would -- I don't know what was produced,
18 again, by the Popovich firm. I don't know if they
19 had my emails, but I have a new email address. I
20 don't think it's the same as it was back then.

21 Q. Okay.

22 A. So I didn't produce anything.

23 Q. So you didn't produce any emails or
24 communications that -- in the -- from the underlying

1 case?

2 A. Not that I'm aware of. Unless I produced it
3 to Popovich and he produced it. I don't know how
4 that worked.

5 Q. Okay. When were you retained by Paul
6 Dulberg?

7 A. I don't recall. I'm assuming there's
8 paperwork that shows that.

9 Q. Yes. Let me upload a file here. Just give
10 me a second.

11 A. I don't think he retained me. I think he
12 retained Tom Popovich's office.

13 Q. Okay. I just uploaded a file that's titled
14 Dulberg Mast Dep Exhibit 1, if you can -- And,
15 George, you should have that as well -- and it should
16 be the retainer contract.

17 A. Yeah, I see it.

18 Q. Okay. So it's a contract for legal services
19 and it's marked POP, P O P, 000586 on the bottom,
20 just for reference, so this will be the first exhibit
21 in this deposition. Do you recognize this document?

22 A. I recognize what it looks like, yeah.

23 Q. Yeah, and it's the contract for legal
24 services and it's undated, it looks like.

1 A. That's what it looks like.

2 Q. Okay. I'm going to upload another exhibit.
3 So I'm uploading Exhibit 2, it's titled Dulberg Mast
4 Dep Exhibit 2, and this should be the original
5 complaint filed in the case of Dulberg versus Gagnon,
6 et al., 12 LA 178, filed in McHenry County. Do you
7 see that document?

8 A. Yeah. What I'm going off are an email I got
9 with all the exhibits attached, so I'm not -- that's
10 what I'm looking at.

11 Q. Okay.

12 A. It's a complaint and it says Exhibit 2.

13 Q. Right, okay. So our numbers may be a little
14 off, but the description should be correct. In that
15 complaint shows file stamp May 15, 2012?

16 A. Yeah, that's what it says.

17 Q. Okay, and so Mr. Dulberg would have hired
18 you sometime -- hired the Popovich firm sometime
19 prior to that, correct?

20 A. I'm assuming. I --

21 Q. Okay. Do you have any idea?

22 A. I'm sorry.

23 Q. I'm sorry, I didn't mean to interrupt you.
24 Go ahead.

1 A. Go ahead.

2 Q. Do you have any idea about -- Do you have
3 any idea about what timeframe he would have hired --
4 retained you?

5 A. I really, again, I don't have an independent
6 recollection of it. I think there's probably a memo
7 out there of me meeting with him, too.

8 Q. Okay. Actually, I think there is. Okay, I
9 just uploaded Dulberg Mast Dep Exhibit No. 3 and the
10 top says -- it's titled, "Intake Memo." At the top
11 it says, "Memorandum," it's Popovich, it says
12 POP00961 and 000962. Do you recognize this document?

13 A. I -- It looks familiar.

14 Q. And it indicates that it's from you, so you
15 would have drafted this document, correct?

16 A. I would have dictated it, yeah.

17 Q. Okay, and it looks like you had a new client
18 meeting with Paul on December 1st of 2011?

19 A. That's what it says.

20 Q. Okay. Does that seem like that timeframe
21 would have been roughly correct?

22 A. I have no reason not to believe that's
23 accurate.

24 Q. Okay. So Paul retained you probably

1 sometime in December of 2011 and then you filed a
2 complaint around May 15, 2012?

3 A. That's what it appears.

4 Q. Okay. So can you just tell me what the case
5 against Mr. -- I'm sorry. Can you describe the case
6 between Paul Dulberg and David Gagnon, Caroline and
7 William McGuire?

8 A. What do you mean describe it? What it's
9 about?

10 Q. Yeah, basically what was it about?

11 A. An injury, a chain saw injury.

12 Q. Okay. Was there anything about the case
13 that was unique to you?

14 A. Other than it was a chain saw injury.

15 Q. Okay. What was your theory of that case?
16 What was your theory of liability in the case?

17 A. I think the -- Paul had claimed Dave struck
18 him with the chain saw.

19 Q. So was it just a negligence theory or was it
20 a strict liability or --

21 A. I believe it was negligence, if I recall
22 correct.

23 Q. Negligence against Gagnon, David Gagnon?

24 A. Yeah, and I think the McGuires actually were

1 named as well.

2 Q. And what was the theory as to the McGuires?

3 A. I think Paul had said that they were the
4 ones that owned and looked over the work that was
5 being done.

6 Q. Okay. So if they owned the chain saw and
7 were overseeing the work, what's the legal theory for
8 liability on that? Why would they be liable?

9 A. Under case law potentially there's liable --
10 liability for people that oversee and direct the
11 work.

12 Q. Okay, and is that a strict liability or is
13 it some other form of liability?

14 A. It would be negligence.

15 Q. So negligent oversight?

16 A. Potentially.

17 Q. Okay. Were there any other theories that
18 you were going to pursue or could be pursued?

19 A. Not that I recall.

20 Q. Okay. So a negligence claim against Gagnon
21 for negligently utilizing the chain saw and then a
22 negligence claim against McGuires for not -- for not
23 controlling his use of the chain saw, is that
24 accurate?

1 A. I don't recall the exact allegations, but I
2 think in a general theme that was what we were going
3 to try to prove.

4 Q. Okay. In the intake memo, do you want to go
5 back to that? There are some notes on this exhibit
6 that state -- it looks to me like it says, "Hans BC
7 the accident occurred on their premises, their HO med
8 pay will cover the bills," and then it's signed. Do
9 you recognize that handwriting?

10 A. Yeah, that would be Tom.

11 Q. Okay, and what does that note mean?

12 A. Medical coverage, medical payments coverage.

13 Q. So there -- So the McGuires -- When he says
14 their, is he referring to Caroline and Bill McGuire?

15 A. Well, I don't know what he's referring to.
16 I think what he's -- Well, he circled their names, so
17 that probably indicates what he's referring to.

18 Q. Okay. Would their -- Would their insurance
19 cover medical bills in an instance like this?

20 A. Possibly.

21 Q. Okay. Did you reach out to their insurance
22 company about covering any medical bills?

23 A. I don't recall if that was applicable or I
24 don't know -- I don't recall that issue.

1 Q. Okay.

2 A. Oh, uh, I think -- It just kicked me off.

3 MR. FLYNN: I got disconnected, too. It's
4 the Wi-Fi.

5 BY MS. WILLIAMS:

6 Q. Okay, we'll just wait a minute here.

7 A. I can hear you. I just can't see you.

8 Q. We'll wait a minute until you can get your
9 video back on.

10 MR. FLYNN: Julia, we think the Wi-Fi may
11 have dropped here in the office.

12 MS. WILLIAMS: Okay. Well, let's just give
13 it a minute and see.

14 MR. FLYNN: Okay.

15 (Whereupon, a break was taken,
16 after which the following
17 proceedings were had:)

18 MS. WILLIAMS: Okay. I think we're back on
19 the record. Barb, are you doing all right?

20 THE REPORTER: Yes.

21 BY MS. WILLIAMS:

22 Q. Okay. So we just went through the memo that
23 Tom made a note about insurance and your testimony
24 was that you don't recall whether you made any

1 requests to the McGuires' insurance to pay Paul's
2 medical bills; is that correct?

3 A. I don't remember, right.

4 Q. Okay. Back to the actual claims made. Do
5 you remember -- Do you recall what the defense was
6 for first Gagnon and then Bill -- William and
7 Caroline McGuire?

8 A. What do you mean by defense?

9 Q. What was their theory of defense in the
10 case, do you recall? As you understood it.

11 A. I mean, that's a big question. I mean,
12 they, like every case, they were denying what we were
13 alleging.

14 Q. Were they denying the facts? Did they
15 dispute the facts of the case?

16 A. Definitely.

17 Q. Okay. Do you recall what they were alleging
18 as far as the facts that were different from what you
19 were alleging?

20 A. I mean, I can probably answer that for --
21 with an hour -- an hour answer. There's a lot that
22 they were denying. There was a lot that, you know, I
23 mean, I'd have to -- I could look at their answer. I
24 could look at their deposition testimony, but, I

1 mean, that brings up a lot of issues.

2 Q. Okay. Let's -- Let me narrow it down a
3 little bit and try to get more to a point that will
4 be useful for our discussion. At some point, you had
5 recommended that Paul settle the case as to the
6 McGuires; is that correct?

7 A. Yeah.

8 Q. And what was the reasoning for settling the
9 case as to William and Bill McGuire?

10 A. Just risk, like you always discuss with any
11 settlement.

12 Q. Can you be a little more specific about what
13 type of risk?

14 A. Again, that's a long question but, I mean,
15 it's like any settlement, you're taking a risk if you
16 don't settle the case when you have issues that could
17 be problematic.

18 Q. Okay. When you say issues that can be
19 problematic, and I know it could be a very long
20 answer, but as much as you can, can you summarize
21 what you think those risks were?

22 A. Understanding it's a summary that, I mean, I
23 could probably answer that in a couple hours, but the
24 chance of recovery was in my view very slim if at all

1 because of lots of reasons, one, because of Paul's
2 testimony, Gagnon's testimony, the McGuires'
3 testimony. The evidence didn't seem to be something
4 that was going to allow us to prove the case against
5 the McGuires.

6 Q. Okay. What -- And, again, I understand this
7 is -- these are very long questions, but just in
8 summary, what were you going to need to prove the
9 case against the McGuires?

10 A. Now, again, understanding I would have to
11 put myself in my place where I was back at the time
12 that I fully evaluated this with Paul, but if I'm
13 just trying to come up with some thoughts now years
14 later the case law, I think, was against us. The
15 defense was going to file a motion for summary
16 judgment if we didn't work out some sort of
17 settlement that I felt they were going to win and the
18 testimony from all parties was not helpful to us.

19 Q. Okay. I'm going to move forward and then we
20 may come back to this a little bit. Do you recall
21 when the first time was that you talked to Paul about
22 settling the claims with the McGuires?

23 A. No, whenever -- You know, the defense
24 attorney would have reached out to me to ask for some

1 sort of demand, I assume.

2 Q. Did you make a demand at some point?

3 A. I think -- I think some of your paperwork
4 showed that I did.

5 Q. Okay. I just uploaded Dulberg Mast
6 Exhibit 4 and it says letter -- it's "Letter Re
7 Settlement," and that should be -- still be Exhibit 4
8 that was emailed around to Counsel so that you would
9 have it. And it is labeled POP192 and POP193. Do
10 you recognize those documents?

11 A. Wait. I think the Internet, maybe because
12 we were having problems, is the Internet went down,
13 so now my exhibits aren't pulling up. Can you try it
14 again? Do you have that, George?

15 MR. FLYNN: Yeah, here's the hard copy.

16 THE WITNESS: I'll look at the hard copy, so
17 what are you asking?

18 BY MS. WILLIAMS:

19 Q. Great. So it should be the document it has
20 letterhead on the top, Popovich letterhead on the
21 top, and at the bottom it's POP000192 and
22 POP000193.

23 A. Right.

24 Q. Do you recognize those documents?

1 A. I mean, they look familiar. Documents from
2 the Popovich firm, if that's what you're asking.

3 Q. Is that your signature?

4 A. Yes.

5 Q. So you would have drafted or caused this
6 letter to be drafted and sent?

7 A. It appears that way, yeah.

8 Q. And this is a demand letter where you make a
9 demand of \$7,500; is that correct?

10 A. Yes.

11 Q. Do you recall making that demand?

12 A. No.

13 Q. Do you recall if you talked to Paul prior to
14 making the demand?

15 A. I'm sure I would have.

16 Q. Okay. Do you recall -- Do you have any
17 memos or notes regarding that conversation with Paul?

18 A. I don't personally.

19 Q. Okay. If there were memos and notes, would
20 they be in Thomas Popovich's file?

21 A. It should.

22 Q. Okay. Do you recall any emails about the
23 demand -- the 7,500 demand?

24 A. I know there were lots of emails. I don't

1 know if this number is identified in those emails,
2 but, again, it would have been something I would have
3 talked to him about before making it.

4 Q. Okay. But at this time you don't know if
5 there are any memos, notes or emails memorializing
6 any conversation with Paul prior to sending the
7 October 22, 2013 demand?

8 A. Not that I recall.

9 Q. Okay, and if they did exist, they would be
10 in the possession of Thomas Popovich, correct?

11 A. I would think so.

12 Q. Okay, and if you had those in your
13 possession, you would produce them in discovery,
14 correct?

15 A. If I had them.

16 Q. Okay. Just uploaded Exhibit 5, and this is
17 email dated October 30, 2013, and it's marked at the
18 bottom POP000195.

19 A. Okay.

20 Q. Okay, and here in this email it looks like
21 you started this email chain to Paul on
22 October 25, 2013. Do you see that?

23 A. It looks like there's a couple emails here.
24 There's several pages. You just mean the first page?

1 Q. I think -- It should only be, I believe it's
2 only one page and it looks like --

3 A. Oh, these aren't part of it? Just one page?

4 Q. The document that I have is just one page.
5 Are we looking at the same thing?

6 A. Okay.

7 Q. It's POP00195 on the bottom.

8 A. Yeah, he had a couple other pages on it, but
9 okay.

10 Q. Okay. I just want to make sure that I
11 didn't -- Okay. And on the bottom there of the first
12 sheet, if you have several, I've only published one
13 sheet for the purposes of this deposition, it states,
14 "Friday, October 25, 2013," do you see that?

15 A. Where does it say that?

16 Q. So about halfway down the page it looks like
17 it says, "Original message from Paul"?

18 A. Yeah.

19 Q. Okay. So that looks like Paul reached out
20 to you about medical deposition and then on the top
21 it appears to be your reply of October 30, 2013.
22 Does that seem like that's accurate?

23 A. That's what it shows.

24 Q. Okay. Okay. And here you first -- Am I

1 correct in summarizing this is an email where you
2 talk to Paul about liability for Mr. Gagnon?

3 A. Look likes I did cover that issue.

4 Q. Okay, and do you recall at the time what
5 your purpose was behind this email?

6 A. I mean, every purpose is just to have open
7 communication. That's all the purpose --

8 Q. Okay. Would you have been trying to explain
9 to Paul the liability issues in his case that you
10 described earlier?

11 A. Yeah, I definitely was discussing several
12 issues for him so he knows what's going on.

13 Q. Okay, and this email response is dated
14 October 30th, so that was after you sent that initial
15 letter. Do you recall whether there would have been
16 anything prior to this?

17 A. Whether what was prior to this?

18 Q. Would there have been any communications
19 about liability either to Gagnon or the McGuires
20 prior to the October 30, 2013 email?

21 A. Every time we talked, there were issues
22 about liability, I mean, for whatever I first -- he
23 first came to the office I recall he was lots of
24 questions and I gave him lots of answers as is

1 reflected in my emails.

2 Q. Okay. Did you meet with Paul after you sent
3 that October 22nd demand letter?

4 A. Did I meet with him?

5 Q. Yes. In person.

6 A. I'm sure I did.

7 Q. Okay. Do you recall -- Do you recall
8 meeting -- the dates of those meetings?

9 A. No, I don't recall the dates.

10 Q. Okay. So I'm going to upload another file
11 here.

12 A. Yeah, our Internet is down. That's why I
13 can't bring these up.

14 Q. Okay.

15 MR. FLYNN: Julia, just so you know, I've
16 got hard copies of the majority of the exhibits you
17 sent with the exception of the larger files, like the
18 insurance policy and the dep transcripts.

19 MS. WILLIAMS: Okay. Okay, great.

20 MR. FLYNN: I've got some of the deposition
21 transcripts, but I didn't want to waste a lot of
22 paper and ink at home.

23 MS. WILLIAMS: Okay. I think we'll be --
24 For the most part, I think we'll be fine and we'll

1 deal with it if and when we get to that point.

2 Q. Okay. So the document that I'm looking at
3 now is another email on the -- it's now titled
4 Exhibit 6. I don't think it was entitled Exhibit 6
5 in what I sent to George, but it's an email that the
6 first date on the email is November 4, 2013, and the
7 last date on the email is November 5, 2013 email
8 chain and it's -- at the bottom it's stamped
9 Dulberg001531.

10 A. What exhibit is it?

11 Q. I think it might have been 5-A to George.
12 It's now Exhibit 6 for the purposes of this
13 deposition.

14 A. Yeah, that wasn't part of the download then.
15 Do you have --

16 MR. FLYNN: Yeah, I don't think that was
17 included.

18 THE WITNESS: What's the Bates stamp or
19 what's the stamp?

20 MS. WILLIAMS: The Bates stamp is
21 Dulberg001531.

22 THE WITNESS: Yeah, I don't recall --

23 MR. FLYNN: I don't recall seeing a 5-A on
24 the download. I think it just went straight from

1 5 to 6.

2 MS. WILLIAMS: Okay, let me see if I can do
3 something else. I'm going to try to share my screen.
4 I don't know if I'm going to be able to do it. So
5 bear with me. Okay. I can't -- I can't share the
6 screen. Can I email -- George, can you pull up an
7 email if I email it to you?

8 MR. FLYNN: I should be able to eventually.

9 MS. WILLIAMS: Okay, let me see if that
10 will --

11 THE WITNESS: Let me run to the washroom
12 real quick while you guys do --

13 MS. WILLIAMS: We'll take a quick break,
14 that's fine, we'll try to work this out. If anybody
15 else needs a break, obviously take a break now.

16 (Whereupon, a break was taken,
17 after which the following
18 proceedings were had:)

19 BY MS. WILLIAMS:

20 Q. Okay, back on the record. This is the
21 Exhibit 6 for the deposition and it's marked at the
22 bottom Dulberg001531 and it's an email chain between
23 Paul Dulberg and Hans Mast dated November 4th through
24 about November 5th, is that accurate, Hans?

1 A. That's what it appears.

2 Q. Okay, and it appears at the bottom that Paul
3 is asking you if he should bring anything to a
4 meeting.

5 A. Okay.

6 Q. And that meeting appears to be at 3:00 p.m.
7 on November 4th of 2013.

8 A. Okay.

9 Q. Is that an accurate description? Okay? Do
10 you recall having --

11 A. Go ahead, I'm sorry.

12 Q. Do you recall having a meeting on
13 November 4th of 2013 with Paul Dulberg?

14 A. I don't have an independent recollection.

15 Q. Okay. Okay.

16 MR. FLYNN: Julia, now I recall, this is a
17 separate exhibit you sent a little bit later than the
18 original download, so I did have this.

19 MS. WILLIAMS: Okay. Okay. We got it
20 worked out.

21 MR. FLYNN: Yeah, okay.

22 BY MS. WILLIAMS:

23 Q. Okay. So you don't recall calling a meeting
24 for November 4th?

1 A. We had lots of meetings so --

2 Q. Okay.

3 A. -- I don't have an independent recollection
4 of that one particular date.

5 Q. Okay. Okay, I'm going to stop screen
6 sharing. Okay. I'm going to upload another file.
7 This is Deposition Exhibit 7. George, you probably
8 had it as Exhibit 6, but for the purposes of this
9 deposition right now it's going to be 7 and it's an
10 email chain dated --

11 A. I have these on the computer. You don't
12 need to, unless you want to, but I'm just saying I
13 have these on the computer.

14 Q. Okay, but Barb needs them, so that's why I
15 keep uploading them, otherwise she doesn't have them.
16 Okay. So Exhibit 7, and it's POP00181 and POP00182,
17 and it's two pages of an email chain, November 15th,
18 looks like on the second page it starts November 15th
19 and ends November 19th, is that accurate?

20 A. Yes.

21 Q. Okay, great. So here it looks like Paul
22 started this email chain, but then on November 18th
23 you note that, "The McGuires' attorney has offered
24 us, you, \$5,000 in full settlement of the claim

1 against the McGuires only," do you see that?

2 A. Yes.

3 Q. Okay. Do you recall that offer being made?

4 A. I do have some recollection of having a
5 conversation with them.

6 Q. Okay. So I'm going to upload another
7 document and then we can keep going here. And then
8 this is Exhibit 8 and for -- it is a letter from
9 Ronald Barch to you, Hans, and it's POP000667. Do
10 you have that?

11 A. What's it dated?

12 Q. I'm sorry, dated November 18, 2013.

13 A. Yeah, I have that.

14 Q. Okay. And that's a settlement letter from
15 Barch offering the settlement of \$5,000, correct?

16 A. Right.

17 Q. Do you recall receiving this letter?

18 A. I mean, I don't today recall getting the
19 letter, but I'm familiar with the transaction, yes.

20 Q. Okay. Okay. So you would have received the
21 \$5,000 offer from Barch and you communicated it to
22 Paul via the email on November 18th?

23 A. As well as when we talked, yes.

24 Q. Okay. Okay. And when did you talk?

1 A. Again, I don't know the dates. I just know
2 generally how this all transpired.

3 Q. Would you have talked to Paul on the 18th
4 when the letter came in?

5 A. It's dated the 18th. I doubt I got it on
6 the 18th. Whenever I got it, I would have told Paul.

7 Q. Okay. And it looks like the email you sent,
8 which is Exhibit 7, communicated that offer?

9 A. Okay.

10 Q. Would you have talked to the McGuires'
11 attorney prior to receiving the letter about the
12 offer?

13 A. I don't recall. It might have -- that might
14 have happened.

15 Q. Okay. Do you recall whether you met with
16 Paul sometime after -- on or after November 18 to
17 discuss the settlement offer?

18 A. I'm sure we did. I know we had several
19 conversations and meetings about that.

20 Q. Okay. In this email chain that's
21 Exhibit 7 about halfway down the page it says on
22 November 18, 2013, at 7:40 p.m., Paul responds to
23 your email. Can you see that?

24 A. Are we going back to the email now?

1 Q. Yep, it's POP00181.

2 A. What exhibit?

3 Q. It's Exhibit 7.

4 A. 7, that's the letter.

5 Q. If may be 6 for you. It may be 6 for you.

6 A. Let's take a look. What page is the email?

7 Q. The date at the top of the email chain is
8 Tuesday, November 19, 2013.

9 A. Yeah, I have that.

10 Q. Okay. And then about maybe halfway down the
11 page it's dated on November 18, 2013, at 7:40 p.m.,
12 do you see that?

13 A. Yep.

14 Q. And there it says, "Only five? That's not
15 much at all," do you see that?

16 A. That's his response, yes.

17 Q. Right. Right. Do you recall talking to
18 Paul about the \$5,000 and that not being much?

19 A. Like I said, yes, we've had plenty of
20 conversations and meetings on that.

21 Q. Okay. When you originally offered the
22 7,500, did you talk about what the possible outcomes
23 as far as counteroffers, what they may demand,
24 something like that, did you talk about that prior to

1 making that \$7,500 offer?

2 A. I mean, I think I generally understand what
3 you're asking. Did we just have general
4 conversations of numbers? Yes.

5 Q. Okay. In this email and this is -- I
6 understand this is speculation, but in this email it
7 appears that Paul is surprised that it's \$5,000 was
8 the offer, correct? Would that be fair to
9 characterize it that way?

10 A. Is he surprised at it or is he surprised at
11 the amount? It looks like he didn't think it was
12 much.

13 Q. Right. So if you originally offered 7,500
14 and they came back at 5,000, in your experience, does
15 that seem like much of a difference when it comes to
16 counteroffers?

17 MR. FLYNN: I'll object to the form.

18 THE WITNESS: Yeah, I'm not real sure what
19 you mean by that.

20 BY MS. WILLIAMS:

21 Q. I guess let me rephrase because I don't
22 think I'm getting to the point. Prior to making the
23 \$7,500 offer, did you discuss with Paul that the
24 McGuires may come back with an offer that was lower

1 than the 7,500?

2 A. Again, I'm -- I understand the question.
3 I'm just not trying to play games, but you're asking
4 me do I recall specific words that are used or
5 topics. All I can tell you about this is we talked
6 about the whole gamut of options, that I didn't feel
7 it was a strong case, that they were reaching out to
8 us for \$5,000, and that balancing everything, the
9 risks, costs, even though it wasn't much, it was
10 something that would have been desirable for him if
11 he wants to end up with money versus the McGuires.

12 Q. I'm going to add another exhibit here.
13 Okay, for the purposes of this deposition it's
14 Deposition Exhibit 9. This is a memorandum. At the
15 top it will say, "Memorandum," and the date is
16 November 20, 2013, and at the bottom it's identified
17 as POP and then 3 -- there's 000003, I believe. Do
18 you have that?

19 A. What exhibit is it?

20 Q. I think you're probably going to have it as
21 Exhibit 8, but for the purposes of this deposition
22 it's actually going to be Exhibit 9.

23 A. Okay.

24 Q. And it's Dulberg Mast Memo,

1 2013 November 20.

2 A. Okay, yeah.

3 Q. Okay. It looks from this memo that you had
4 a meeting with Paul and his friend on November 20th,
5 is that accurately reflected what's stated in the
6 memo?

7 A. Yes.

8 Q. Do you remember this document? Do you
9 recall this?

10 A. As I said before, I understand what you're
11 asking, but we've had lots of meetings. Do I
12 remember that particular date, no, but I remember the
13 meetings.

14 Q. Do you recognize this memorandum?

15 A. I recognize the discussion that's referenced
16 in the memo. I haven't seen the memo for 7 years.

17 Q. Okay. Do you recall the advice that you
18 gave in that meeting of November 20th?

19 A. Yeah, like I said, it's summarized a little
20 bit in there. Yeah.

21 Q. Okay. And what was the -- Why don't -- What
22 was the advice that you gave?

23 A. Do you want me to read the memo or you want
24 me to just tell you generally what the topics were or

1 what?

2 Q. Generally to the best that you can recall.

3 A. Looks like on that day he brought his friend
4 in because before he wanted to consider the offer, he
5 wanted to have his friend come with him to talk about
6 these issues with me. So we went over --

7 Q. So --

8 A. Go ahead.

9 Q. No, I'll let you finish. Go ahead. I'm
10 sorry.

11 A. Well, we went over all the issues, all the
12 risks, all the money issues, all of the issues.

13 Q. Do you recall who the friend was?

14 A. Not as I sit here today.

15 Q. From this memo it says, "Paul maintains the
16 McGuires controlled everything that they were doing
17 and you told him that wasn't what the evidence seemed
18 to show." So can you expound on what -- This is
19 really going to be a complicated question, but to the
20 best of your ability, can you explain what the theory
21 of your case was against the McGuires and what the
22 evidence was that was going to -- what evidence was
23 your reason for believing that you couldn't prove
24 your theory?

1 A. We already talked a little bit about that
2 earlier, but every time we met, we talked about this
3 because this was a subject at the time with the
4 McGuire's and given the testimony of the McGuire's,
5 given Paul's testimony, given the lack of any
6 evidence that they were controlling any work or even
7 knew what Paul was doing, I felt it was a big, high
8 risk of moving forward on that claim.

9 Q. So I'm going to try to summarize this.
10 Maybe in parts. So in order for the McGuire's to be
11 liable for Gagnon's work, Paul would have to prove in
12 his case that the McGuire's controlled Gagnon's work,
13 is that accurate?

14 A. Are you asking me if that's an accurate
15 statement of the law?

16 Q. Yes.

17 A. I think that's partially right. There's a
18 lot more to it. It's different branches and elements
19 that you have to prove, control was a factual matter,
20 and he would have to be able to establish there was
21 some oversight. It goes down into some factual
22 issues that you have to be able to show.

23 Q. Okay. So can you -- To the best of your
24 ability, can you kind of walk me through for the

1 negligence claim against the McGuires what the legal
2 elements were that you would have to show?

3 A. I haven't brushed up recently on that area,
4 but I can tell you that under the case law they have
5 to have some oversight and control over what was
6 going on and some involvement in the work and some
7 knowledge higher and above what Paul was doing, and
8 if you look at their testimony, they were not out
9 there, they were not looking at it, they didn't even
10 really know what Paul was doing frankly.

11 Q. And what about David? Did they have to
12 control what David was doing as well?

13 A. I meant David, I'm sorry.

14 Q. Okay. So the McGuires would have to have
15 oversight and control over David Gagnon?

16 A. Over the work.

17 Q. Okay. Over the work. Okay. So William and
18 Caroline did buy the chain saw, correct?

19 A. I believe that is true.

20 Q. Okay. But then David Gagnon was the one
21 operating the chain saw?

22 A. Right.

23 Q. And you would have to show in Paul's case
24 that Bill and Caroline, one or the other, had control

1 over David's operation of the chain saw?

2 A. Control could mean a lot of things. They
3 would have to be in a position to instruct him, tell
4 him what to do, be aware of the work that was being
5 done and have some control over what he was doing.

6 Q. Okay. So in your -- Your opinion of the
7 case was that it was insufficient for them to have
8 simply purchased the chain saw and provided it to
9 Gagnon?

10 A. Yeah.

11 Q. And what about if they were paying him?
12 Would that make any difference?

13 A. No.

14 Q. I'm sorry, I don't know or no?

15 A. No.

16 Q. Just bear with me for a second here. And
17 you informed Paul -- I'm sorry, let me back up. In
18 exhibit -- Deposition Exhibit 7, so it's probably
19 6 for you, the email chain between you and Paul,
20 roughly November 18th through the 19th, Popovich
21 000181, on the bottom of that first page,
22 November 18, 2013, at 1:28 p.m. there's an email from
23 you. Do you see that?

24 A. Yes.

1 Q. "In addition, the McGuires' attorney," so
2 it's ATTY, "has offered us, you, 5,000 in full
3 settlement of the claim against the McGuires only.
4 As we discussed, they have no liability in the case
5 for what Dave did as property owners so they likely
6 will get out of the case on a motion." Did I read
7 that correctly?

8 A. Yes.

9 Q. So this is where you told Paul that you
10 didn't believe the McGuires had any liabilities for
11 the reasons -- in part for the reasons we just
12 discussed?

13 A. Right.

14 Q. Ultimately Paul accepted that \$5,000 offer,
15 correct?

16 A. Yes.

17 Q. And you communicated that to the other side
18 later in 2013, does that sound correct to you?

19 A. Yes.

20 Q. I'm uploading Exhibit 10, and it should be
21 Exhibit 10 for you as well, and it's a memorandum
22 dated December 20, 2013, and at the bottom it's
23 POP000884, do you see that?

24 A. Yes.

1 Q. And that's a memorandum that you wrote to
2 the legal file; is that correct?

3 A. It looks like that.

4 Q. I think I already said this, it's dated
5 December 20, 2013?

6 A. Yes.

7 Q. Okay. And the substance of it, it appears
8 that you had a conversation on December 18th with
9 Paul and that he was authorizing you to accept the
10 \$5,000 settlement?

11 A. Yes.

12 Q. Okay. Do you recall that conversation of
13 December 18?

14 A. I recall having lots of conversations, this
15 is one of them, and generally I do recall the
16 conversations in a general sense, not the exact
17 dates.

18 Q. Okay. So you don't remember anything
19 specific to this December 18th call what you would
20 have discussed?

21 A. Not other than what I've already said we
22 discussed over the time.

23 Q. Okay.

24 A. Paul was weighing his options. He knew the

1 risk and he had -- he wanted some time to think about
2 it and consider it.

3 Q. Okay. All right, just bear with me here.
4 Okay, I just uploaded Deposition Exhibit 11, it's a
5 settlement acceptance letter, letterhead from Thomas
6 Popovich's office dated December 26, 2013. Hans,
7 your signature appears on there and it's POP00670.
8 Do you recognize this document?

9 A. That appears to be a letter from Popovich's
10 office to defense counsel.

11 Q. Do you recognize your signature on here?

12 A. Yes.

13 Q. And this is the letter where you accepted
14 the offer on behalf of Paul, is that accurate?

15 A. It appears, yeah.

16 Q. Okay. So the Defendants made the original
17 offer around November 18 and Paul --

18 November 18, 2013, and Paul accepted it around
19 December 20, 2013. Is that statement accurate?

20 A. I don't have, like I said, independent
21 recollection of the dates. I would just have to go
22 off the documents.

23 Q. Okay. Was there -- If that timeframe is
24 roughly correct, was there anything that occurred

1 during that timeframe that indicated to you, you
2 know, why Paul changed his mind from originally
3 thinking it was too little to now accepting it. Was
4 there anything that stuck out in your mind about
5 that?

6 A. Yeah.

7 Q. Can you expound on that?

8 A. Well, he had his friend with him during our
9 meeting and he reviewed the depositions.

10 Q. Okay. Did he not have the depositions prior
11 to that?

12 A. I remember he asked for copies of them, so I
13 provided them to him.

14 Q. Okay, and when you say the depositions, do
15 you mean just the party depositions, the McGuires and
16 the Gagnon?

17 A. I don't remember if I gave him the doctors.
18 I don't remember which ones I gave him, but I know
19 specifically it was Gagnon and the McGuires.

20 Q. Okay, I'm uploading Dulberg Mast Dep
21 Exhibit 12. This is titled, "Legal Research." And
22 this is hard because there's -- it's 27 pages. Some
23 of them have Bates numbers, but some of them are
24 black on the bottom, so I think the Bates numbers

1 didn't -- didn't take, but it's roughly -- looks like
2 roughly 204, maybe 205, Dulberg204, 205 through
3 roughly Dulberg00304 -- Actually, I'm sorry, these
4 aren't going to be continuous. But do you have that
5 packet of legal research in front of you? It appears
6 to be copies out of a -- copies of case law out of
7 the Northeastern Digest.

8 A. I just have the one case here.

9 Q. Just one case? Which -- What's the case
10 title?

11 A. The first one, it's L A J A T O.

12 Q. Okay. Do you -- Did you copy this case law?

13 A. I don't know.

14 Q. Do you recall providing any case law to
15 Paul?

16 A. I don't know if I did or didn't. I don't
17 know if he asked.

18 Q. Okay. Do you recall doing case law
19 research?

20 A. I'm sure I did, yeah.

21 Q. Would have there been a memo or something
22 regarding that research?

23 A. Not necessarily. I was familiar with the
24 law.

1 Q. Okay. Okay. Was there any -- Was there any
2 case law that stuck out to you, any particular cases
3 that stuck out to you?

4 MR. FLYNN: Object to the form.

5 THE WITNESS: You mean stuck out to me with
6 regard to Paul and his case?

7 BY MS. WILLIAMS:

8 Q. No. Were there any applicable cases that
9 stuck out to you one way or the other as to whether
10 the McGuires would be liable? Was there any specific
11 cases that made you think that the McGuires may not
12 be liable given the facts in Paul's case?

13 A. I mean, you deal with this issue a lot and I
14 can't think of one particular name of a case, but
15 these cases all go along the same line, so there were
16 lots of cases on this one particular issue. It
17 wasn't a complicated issue.

18 Q. So particularly the issue of control of
19 Gagnon.

20 A. Of a premises owner's liability for an
21 independent contractor.

22 Q. Okay. So can you explain generally what an
23 independent contractor is?

24 A. I'll give you have an answer if you want,

1 but just, I mean, we're talking now, what is it,
2 7 years later? I haven't been asked to do any
3 research before today's deposition, but so, I mean,
4 if you're asking me for what the case law says, I'd
5 have to look at the case law, if that's what you're
6 asking.

7 Q. I'm asking based on your -- on your
8 experience and knowledge as a personal injury
9 attorney and not necessarily related to Dulberg's
10 case specifically.

11 A. Okay.

12 Q. But based on your knowledge and experience
13 in premises liability cases, what is an independent
14 contractor?

15 A. Someone that works on their own.

16 Q. And can you explain what you mean by on
17 their own?

18 A. Somebody that's hired, like, somebody that's
19 hired to paint the house.

20 Q. Okay. So somebody that's hired by a
21 homeowner or maybe a business?

22 A. Yes.

23 Q. But someone that's hired by a homeowner but
24 the homeowner doesn't -- doesn't tell them how to do

1 their job?

2 A. Right.

3 Q. Did you ever obtain a copy of the McGuires'
4 insurance policy, do you recall?

5 A. I don't have an independent recollection.

6 Q. Did you ever advise Paul as to the limits of
7 the McGuires' policy?

8 A. I'm sure we talked about it.

9 Q. Okay. I just uploaded Dulberg Mast
10 Deposition Exhibit 13 McGuire Interrogatory Answers
11 and they're Bates stamped Dulberg000162 is the first
12 page and there's roughly 14 pages. Do you see that
13 document?

14 A. Yes.

15 MR. FLYNN: This is 14?

16 MS. WILLIAMS: It should be Exhibit 13 --
17 13 or 14. I think I have it as 13. Yes, okay. And
18 this -- I'm looking at paragraph 15 or at least I'm
19 trying to look at paragraph 15.

20 Q. Okay. In paragraph 15 it looks like there
21 was a question about the homeowner's insurance and
22 the McGuires respond with their personal liability
23 and their medical liability, do you see that?

24 A. Yes.

1 Q. Okay. Now that you see that, do you recall
2 whether you ever got a copy of that policy?

3 A. I don't -- You mean the dec pages or the
4 whole policy?

5 Q. Either. Did you get a copy of the dec
6 pages?

7 A. I have no idea.

8 Q. And you have no idea whether you got a copy
9 of the whole policy?

10 A. Yeah, don't know.

11 Q. But they are representing what their
12 insurance was and the liability there, correct, or
13 their liability coverage there?

14 A. That's what it appears.

15 Q. Okay. And these -- This was -- looks like
16 this was responded to based on the McGuires'
17 signature on roughly the 12th page of the document.
18 It looks like it was August 6th of 2012.

19 A. That's what it appears.

20 Q. Yeah. So prior to when they would have made
21 the settlement offers, correct?

22 A. That's what it appears.

23 Q. Okay. Did you ever talk to Paul about
24 those -- the limits of the insurance policy and how

1 that may be important in his case?

2 A. I suspect we talked about the policy, yeah.

3 Q. Okay. Prior to any settlement discussions?

4 A. Yeah.

5 Q. Okay. But you've already testified you
6 didn't -- You don't know if you -- You don't know if
7 you obtained a copy. What about Gagnon's insurance
8 policy, did you ever obtain a copy of that?

9 A. I don't know. I don't know.

10 Q. Okay. Did you issue interrogatories to
11 Mr. Gagnon?

12 A. I'm sure I did.

13 Q. Let me upload this. Would they have been in
14 Popovich's file if you --

15 A. Yes.

16 Q. Okay. So I can tell you, I don't recall
17 seeing any documents issued by you. I'm going to
18 upload a document that appears to be interrogatories
19 issued by McGuires' counsel in the case. I'm going
20 to upload it right now. It's Exhibit 14 and Answers
21 to Co-Defendant Interrogatories and it is stamped
22 Dulberg00178. Do you see that document?

23 A. Yes.

24 Q. It appears that these were issued by

1 Co-Defendants, in other words, the McGuires, does
2 that seem accurate to you?

3 A. Yes.

4 Q. So would you have issued interrogatories in
5 addition to what the McGuires' counsel issued?

6 A. It's probable.

7 Q. Okay. Do you recall one way or the other
8 today as we sit here?

9 A. Not other than it's probable I did.

10 Q. I have not seen those in discovery, so if
11 they exist, we'd ask that they be produced. Do you
12 ever recall talking to Paul about the policy limits
13 of the Gagnon insurance policy?

14 A. It's a topic that frequently comes up. I
15 don't have an independent recollection.

16 Q. Would you have any memos or notes on that?

17 A. I could. I may. I don't have an
18 independent recollection of that.

19 Q. Okay. And, again, that would have been in
20 the file that -- in Thomas Popovich's file?

21 A. Correct.

22 Q. In your knowledge and experience not related
23 to the Dulberg case but just in your general
24 knowledge and experience, are there any situations

1 where a homeowner may be strictly liable for someone
2 doing work on their property?

3 MR. FLYNN: I'm just going to object to the
4 hypothetical being inaccurate and incomplete, also
5 calls for an expert opinion. While this witness is a
6 lawyer, I won't necessarily -- I don't expect to call
7 him as an F-2 or F-3 witness in the case.

8 THE WITNESS: So you're asking if a
9 homeowner can be strictly liable for an injury?

10 BY MS. WILLIAMS:

11 Q. Right.

12 A. In general terms, not with regard to this
13 case?

14 Q. No, in general terms. I'm just asking in
15 general terms in your -- based on your experience and
16 knowledge of injury cases.

17 A. I mean, I think -- Not in Paul's case, but I
18 think I could probably think of something that maybe
19 could be -- as products strict liability, there's
20 hazardous materials strict liability, there's
21 different issues that potentially factually if
22 they're applicable could apply, but not in Paul's
23 case.

24 Q. Okay. Just in general, what kind of

1 hazardous -- When you say hazardous, are you talking
2 about hazardous chemical-type cases?

3 A. There's a string of cases when you're
4 dealing with hazardous chemicals and hazardous
5 materials, like a bomb or something like that, things
6 like that.

7 Q. Okay. Okay. Are there any, like, hazardous
8 actions? Could something be considered, like, some
9 type of action be considered hazardous?

10 A. What do you mean by action? Activity?

11 Q. Yeah, like, I'm trying to give you an
12 example because I'm just trying to understand it more
13 than anything else. Yeah, is there an activity that
14 you could be doing on your property, I don't know,
15 like, what about tearing down your home, would that
16 be considered -- would that be something that could
17 be hazardous?

18 A. There would have to be statutory authority
19 for that and there isn't.

20 Q. Okay. Okay. Okay. So generally for strict
21 liability there has to be some type of statutory
22 authority for that?

23 A. Or common law. Yeah. They have a
24 particular fact pattern.

1 Q. Okay. But this case particularly is simply
2 a negligence case. Paul's case against the McGuires
3 was a simple negligent failure to control case in
4 your opinion?

5 A. That's what was pled.

6 Q. Okay. Did you ever make any -- ever
7 consider pleading any other allegations?

8 MR. FLYNN: Object to the form.

9 THE WITNESS: I don't -- No. Not that I
10 recall.

11 MS. WILLIAMS: Okay. Can we take about a
12 4-minute break?

13 MR. FLYNN: Sure.

14 MS. WILLIAMS: Let's just take -- I just
15 want to take a quick break and review my notes and I
16 want to give everybody an opportunity to kind of
17 stretch for a second. I'm going to go on mute.

18 MR. FLYNN: Okay.

19 (Whereupon, a break was taken,
20 after which the following
21 proceedings were had:)

22 MS. WILLIAMS: Let's go back on the record.
23 Okay, thank you everyone. Okay, just a little bit
24 more here.

1 Q. On -- When you were talking to Paul about
2 settlement in the general timeframe of
3 November-December 2013, did you ever suggest at that
4 time that he seek alternative counsel or any
5 recommendation related to that?

6 A. I think that did come up.

7 Q. Do you recall what your advice to him was or
8 what the discussion was?

9 A. I think, you know, we always talk about the
10 risks of not settling and further down the road what,
11 you know, having to try the case and having to try
12 prove the case or getting a motion for summary
13 judgment, having the costs exceed the benefits and
14 all that, and I think my position with Paul, since he
15 didn't give a relatively very good deposition, my
16 thought was we were going to have a tough time, an
17 uphill battle, and he can always seek other counsel
18 if he doesn't agree with me.

19 Q. And you just stated that you thought Paul
20 didn't give a very good deposition, that may not have
21 been your exact language, but roughly that the
22 deposition wasn't great. Can you explain what -- as
23 you recall it, what about the deposition was
24 problematic?

1 A. I mean, he even agreed with me, but he just
2 doesn't do a very good job.

3 Q. You mean -- Can you expand on that a little
4 bit?

5 A. As a witness, as I recall, again, it's been
6 quite some time, as I recall he was -- his testimony
7 wasn't given -- wasn't strong, it wasn't definite, it
8 didn't have credible points and some points were
9 incredible when compared to other -- other testimony.
10 I mean, there's just a lot -- there was a lot of
11 problems with his testimony.

12 Q. Okay. Do you recall the circumstances that
13 Paul described as to why he came to the McGuires'?

14 A. I think he was either going to pick up
15 something or drop something off.

16 Q. Okay.

17 A. I don't really recall. I'm just thinking
18 back now.

19 Q. Okay. Do you recall whether he was asked to
20 come over to help with the tree, to help take down
21 the tree? Was that the purpose of his visit?

22 A. I don't recall that.

23 Q. Would it matter as for liability whether it
24 was or wasn't?

1 A. As by who? As to whose liability?

2 Q. I'm sorry, his and McGuires' liability.

3 A. As to how he got there?

4 Q. Whether he was -- Whether he was invited for
5 the purpose of assisting with the removal of the
6 tree.

7 MR. FLYNN: Object to the form. Just
8 invited by whom?

9 THE WITNESS: Yeah, that's a complicated
10 question, but I don't think --

11 BY MS. WILLIAMS:

12 Q. Let me clarify if I can. Okay. So my
13 question was does it matter if the McGuires invited
14 Paul to their residence to remove the tree on that --
15 on the June -- roughly June, I believe, 2011 date?

16 MR. FLYNN: Object to the hypothetical.

17 THE WITNESS: I don't think it matters.

18 BY MS. WILLIAMS:

19 Q. Okay. Would it matter if they were paying
20 Paul?

21 A. That's not the issue. The issue is Dave.

22 Q. Okay. So the relationship between the
23 McGuires and Paul is somewhat irrelevant?

24 A. I'm just saying the issue really that --

1 about liability is Dave's relationship with them.

2 Q. Because Dave is the one that controlled the
3 chain saw that injured Paul, is that accurate?

4 A. He was the one hired to do the work or asked
5 to do the work, however, whatever that background
6 was.

7 Q. And Caroline and William McGuire both
8 testified that they had never used a chain saw; is
9 that correct?

10 A. I think that's accurate. I'd have to
11 refresh my memory, but that sounds right.

12 Q. Okay. Do you remember discussing bankruptcy
13 with Paul?

14 A. I don't remember that.

15 Q. Do you remember that Paul filed for
16 bankruptcy? Do you recall that?

17 A. I saw a -- Maybe I didn't see one. I
18 remember there was some sort of bankruptcy matter. I
19 don't know the dates or when it came up.

20 Q. Okay. Do you recall if you advised Paul to
21 file for bankruptcy?

22 A. I don't advise people to file for
23 bankruptcy.

24 Q. All right. So you would not have advised

1 Paul to file for bankruptcy?

2 A. Would not.

3 Q. Okay. And then sometime after the McGuire
4 settlement but before the -- but while the Gagnon --
5 the claims against David Gagnon were still pending
6 you withdrew from the case; is that correct?

7 A. The law firm did. I -- Again, he hired the
8 law firm.

9 Q. Sure. Sure. I'm sorry. The Popovich firm
10 withdrew?

11 A. Right.

12 Q. And I -- Let's see -- I think we're on
13 Exhibit 14.

14 THE REPORTER: 15.

15 MS. WILLIAMS: 15, okay.

16 Q. I have, I think, one more and then -- Okay,
17 I am uploading Exhibit 15, Dulberg Mast Dep
18 Exhibit 15. It's a motion to withdraw and it's four
19 pages and on the first page it has a Dulberg versus
20 Gagnon case caption and file stamped March 13, 2015.
21 Do you have that document?

22 A. Yeah.

23 Q. And this is the Popovich's firm motion to
24 withdraw as counsel for Paul Dulberg in the Dulberg

1 versus Gagnon-McGuire case, correct?

2 A. Yes.

3 Q. And you drafted or caused this motion to be
4 drafted and filed?

5 A. Yes.

6 Q. And was it granted that same day it was
7 filed?

8 A. I'm sure it had to be noticed up.

9 Q. Okay. On the notice of motion it looks like
10 it was noticed for March 13, filed on March 13, but
11 sent to the service list on March 5th, does that seem
12 accurate?

13 A. That's what it says.

14 Q. But at any rate, you withdrew sometime in
15 roughly March of 2015?

16 A. It appears that way. Again, I don't have an
17 independent recollection of the date.

18 Q. Okay. Okay. That's fine. And I didn't see
19 it -- an order actually showing the exact date of
20 when you withdrew. Can you explain why you withdrew
21 from the case?

22 A. The short version is just we had a
23 difference of opinion.

24 Q. Can you give me the long version or slightly

1 longer?

2 A. Well, we have difference of opinion but Paul
3 was a bit difficult, so I just had to -- there were a
4 couple times that I told him I was going to withdraw
5 and then he begged me not to and so I didn't, but
6 then ultimately he -- it got pretty -- it got pretty
7 tough. He was saying some unfavorable, unflattering
8 things and I just decided we're not going to get
9 anywhere, I'm going to move on.

10 Q. Okay, so you -- the client relationship
11 broke down and you withdrew?

12 A. Yes.

13 Q. Okay. Was there anything about Gagnon's
14 liability or your thoughts on his liability that
15 would have caused you to withdraw?

16 A. That was another aspect of it. Paul was
17 looking for the stars and the moon and I didn't see
18 it.

19 Q. And when you say Paul was looking for the
20 stars and the moon, you mean -- Well, what do you
21 mean by that?

22 A. He was looking for a lot of money.

23 Q. Okay, and what was your opinion as to David
24 Gagnon's liability in the case?

1 A. I didn't think much of the liability issue.
2 I thought it was going to be a long, tough haul given
3 that --

4 Q. And --

5 A. -- Paul was going to be our only witness on
6 our side pretty much.

7 Q. Okay, and there were no other witnesses
8 other than Paul and David; is that correct?

9 A. Correct.

10 Q. And what about -- Anything related to, like,
11 the actual injury, the doctors' depositions or
12 anything like that?

13 A. That all -- It was the whole ball of wax.
14 The doctors weren't supporting his claim. Dave was
15 saying he's a liar, he tried to bribe him. There was
16 just a lot of -- a lot of bad stuff, not enough good
17 stuff.

18 Q. Okay, and then at that point you and Paul
19 disagreed and Paul retained alternative counsel?

20 A. Right.

21 Q. Okay. Was there anything else about the
22 case that you can recall right now that gave you
23 pause as to the liability either to the McGuires or
24 David Gagnon?

1 A. Anything other than what? Pretty much
2 everything was not good.

3 Q. Okay. I mean, anything that we haven't
4 really discussed here today. We've talked about
5 Paul's testimony, Gagnon's testimony a little bit,
6 the McGuires, the premises liability. We talked --
7 You mentioned the doctors' depositions. Is that sort
8 of the general gamut of it?

9 A. That's the whole case.

10 Q. Okay. Have you ever had any other chain saw
11 liability cases other than this particular case?

12 A. I'm sure I have. I don't -- If you're going
13 to ask me to name a date, I don't know. I mean, it's
14 not a common issue, but it comes up from time to
15 time.

16 Q. Okay. Did you state -- Did you seek out a
17 liability expert, a chain saw liability expert,
18 during the time you were representing Paul?

19 A. No.

20 Q. Is there a reason for that?

21 A. That's always a possibility. It's always a
22 consideration, but I had to consider even more
23 whether we could even get to prove a credible case
24 and that was my first object, my first -- my first

1 tier. It doesn't do any good to hire an expert if
2 you don't have a good case.

3 Q. Okay. Okay. If you were going to take the
4 case to trial, at that point would you have hired an
5 expert, chain saw expert?

6 A. For this case, I don't know. I'd have to
7 look at it again and see what we need to prove, what
8 they're arguing. There's -- As I recall, they
9 weren't arguing the chain saw -- They weren't
10 arguing. He didn't get hit with the chain saw. So
11 I'm not real sure. I'd have to think whether we need
12 to prove -- what we need to prove, anything more than
13 that.

14 Q. Okay.

15 A. It was more what happened, who caused it to
16 happen, not that it happened.

17 Q. Okay. Is there a difference between an
18 independent contractor and an employee?

19 A. In terms of what? In terms of duty or what?

20 Q. Right. In terms of the supervisor's duty.
21 So if the Gagnons -- If Gagnon was, and this is a
22 hypothetical, if Gagnon was an employee of his
23 parents as opposed to an independent contractor,
24 would there be a liability difference?

1 MR. FLYNN: Object to the hypothetical.
2 It's inaccurate and incomplete.

3 THE WITNESS: That's a very complicated
4 question, even though it doesn't sound like one. It
5 depends on lots of things.

6 BY MS. WILLIAMS:

7 Q. Okay. We've already talked about an
8 independent contractor. So just in your experience
9 and knowledge, what is a supervisor's duty as to an
10 employee? That's actually a really terrible
11 question. Let's strike that question.

12 Is there a difference -- Is there a
13 difference between the control aspect of -- Would
14 an -- Let me start again. This is a complicated
15 question, more complicated than I'm anticipating
16 right now. Okay.

17 We've generally established that in order
18 for an -- someone who hires an independent contractor
19 to be liable for the actions of that independent
20 contractor, they would have to control the work. In
21 a situation, an employer-employee situation, is that
22 control element also present when considering
23 liability? Does the employer have to control the
24 work of the employee in the same way?

1 A. I think there are --

2 MR. FLYNN: I just want to raise an
3 objection for the record. I object to the form. I
4 think that the premise of the question indicated that
5 we already established some legal precedent. I don't
6 think that's the case. I don't think that he's
7 testified to that, so, again, I'll just object to the
8 form. But if you can --

9 THE WITNESS: You're asking me to compare
10 two different theories without a fact pattern, but
11 there's a lot to each issue and it's hard to just
12 say, well, if you have this, then you have that.
13 There's a lot of different facts that apply, but now
14 I'm forgetting what you asked initially about the
15 employer-employee question.

16 BY MS. WILLIAMS:

17 Q. So I guess my question to the point of is an
18 employer liable for their employees in a different
19 way than a homeowner would be liable for an
20 independent contractor?

21 A. I think --

22 Q. Based on -- You go ahead.

23 A. I think under the law there are different
24 elements to those actions.

1 Q. And there are --

2 A. Go ahead.

3 Q. So there would be different elements if
4 something was an employer-employee situation, that
5 would be different law, different case law?

6 A. Yeah, there's a different cause of action.

7 Q. Okay.

8 A. Different elements potentially have to be
9 pled and proved.

10 Q. Okay. But in this case you were trying to
11 prove -- In Dulberg's case against the McGuires and
12 Gagnon you were trying to show that -- The theory of
13 the case was that Gagnon was not an employee, but an
14 independent contractor, and the McGuires had to
15 control him in order to be liable?

16 A. Well, that's ultimately what it appeared.
17 You followed the evidence, you follow the facts, so
18 if it turned out it was employee-employer-employee
19 relationship, that's a different evaluation.

20 Q. Okay. So but, for the most part, you
21 were -- your evaluations of the liability were based
22 on an independent contractor analysis?

23 A. Well, that's where it went because of the
24 evidence.

1 MS. WILLIAMS: Okay. I'm going to go on
2 mute for just a second so you guys don't hear me
3 shuffling papers, but I think I'm almost finished
4 here or may be finished.

5 MR. FLYNN: Okay.

6 BY MS. WILLIAMS:

7 Q. Okay. Just a couple more questions and then
8 we'll wrap things up here. When did you first advise
9 Paul that you didn't think the claims against Gagnon
10 were going to be very strong?

11 A. Probably day one.

12 Q. Before the settlement with the McGuires?

13 A. Yeah.

14 Q. And did you discuss that several times prior
15 to that McGuire settlement?

16 A. Like I said, we discussed those issues every
17 time we'd meet, liability issues, damages issues.

18 Q. Do you recall any particular instances, like
19 maybe after Paul's deposition, after David's
20 deposition, did that stick out in your mind at all?

21 A. Discussing what, the issues of liability
22 against Gagnon?

23 Q. Yes.

24 A. Those are probably something we talked about

1 every visit.

2 Q. Okay. So we discussed this a little bit
3 before, but I believe the testimony was that the
4 McGuires testified that they purchased the chain saw
5 and I believe you said yes, that was your
6 recollection as well; is that correct?

7 A. That sounds right. I just don't have an
8 independent recollection at this point.

9 Q. Okay. If the McGuires -- Let's assume
10 that -- Just for the purposes of this, let's assume
11 that the McGuires did -- it was their chain saw, they
12 purchased it and let Gagnon use it on their property.
13 Would they have any duties to share the manual of
14 that chain saw with Gagnon or provide any other
15 education as to the use of the chain saw to Gagnon?

16 A. All right, so you're asking me to make a
17 judicial decision whether they had a duty or not?

18 Q. No, I'm asking you in your experience with
19 these types of cases is there any duty there for
20 them.

21 A. All right, so a legal duty?

22 Q. Right. Right. And -- Go ahead, George.

23 MR. FLYNN: Yeah, I'll just object. I mean,
24 there isn't any evidence that Gagnon asked for a

1 manual, for one, but as far as him providing legal
2 opinions not based on the facts of this case, I'm
3 just going to caution him not to provide what could
4 be considered an expert opinion.

5 THE WITNESS: You don't want me to answer?

6 MR. FLYNN: It's up to you. I don't know if
7 you can.

8 THE WITNESS: I don't remember the question.
9 You're asking me should the McGuires have given
10 Gagnon the manual to the chain saw?

11 BY MS. WILLIAMS:

12 Q. Yes.

13 A. Sure, if he asked for it or if they wanted
14 to give it to him.

15 Q. Are there any other warnings that they
16 should have provided?

17 A. See, I mean, you're asking me to -- I get
18 the question, but I'm saying you're asking me to
19 evaluate the conduct of both parties and interpret
20 something and I don't know that that's my position as
21 a witness, but should they have warned him? You
22 know, sure, go ahead and warn him, but obviously when
23 you take on a piece of equipment that you're skilled
24 and experienced in operating, you should be able to

1 operate it effectively yourself safely.

2 Q. Sure. Okay. And --

3 A. So I mean --

4 Q. Okay. But today you're not giving an
5 opinion one way or the other whether they had a duty
6 to provide warnings, whether they had a duty to
7 provide the manual, fair enough?

8 A. Yeah, legal wise, no, I'm not giving you a
9 legal opinion on that.

10 MS. WILLIAMS: Okay. Okay, I don't think I
11 have anything further.

12 MR. FLYNN: I actually have just a few
13 follow-ups to that.

14 MS. WILLIAMS: Sure.

15 EXAMINATION

16 BY MR. FLYNN:

17 Q. Hans, is your understanding based on the
18 evidence that there were only two eyewitnesses to
19 Mr. Dulberg's accident, correct?

20 A. Correct.

21 Q. That was Mr. Dulberg himself and David
22 Gagnon?

23 A. Correct.

24 Q. And did you have an understanding as to how

1 the evidence and testimony shook out as to each
2 gentleman's version of the accident and how it
3 occurred?

4 A. Well, as I said before, I thought Paul's
5 case was going to be very difficult to prove based on
6 the testimony of everybody, credibility issues, and
7 the lack of evidence to support and prove.

8 Q. David Gagnon's testimony regarding the facts
9 surrounding the accident differed from Paul Dulberg's
10 version of the facts, correct?

11 A. Correct.

12 Q. You took that into account in your
13 evaluation and analysis of the case?

14 A. Definitely.

15 Q. Did you also take into account your
16 professional analysis of Paul Dulberg's performance
17 as a witness at his discovery deposition?

18 A. Definitely.

19 Q. You didn't think he made a very good witness
20 for himself, did he?

21 A. He even admits he didn't and I don't think
22 he -- I think -- that was one of the worst -- that
23 was one of my worst fears with this case. I had lots
24 of cases and on a scale of weak witnesses, he's

1 probably up at the top, and I'm not putting him down,
2 that's just a reality and I think he even
3 acknowledged that reality.

4 Q. Okay. Not everyone is a professional
5 witness?

6 A. Right.

7 Q. Okay. Generally speaking, your evaluation
8 of the case hinged in part on whether the McGuires
9 controlled the manner and method of the use of the
10 chain saw, correct?

11 A. Right.

12 Q. Do you have any recollection as to what the
13 McGuires were doing while the work was being done?

14 A. They were inside the house, just another day
15 to them. They weren't even -- I don't think even
16 paying attention to what was going on outside.

17 Q. Did Mr. McGuire testify that he was watching
18 television inside the house while David was working
19 on the tree?

20 A. They were both inside as I recall.

21 Q. Your recommendation or suggestion that
22 Mr. Dulberg settle the case for \$5,000 was based on
23 your analysis of the entire case, including the risks
24 and benefits of going forward and potentially losing

1 the case at trial, correct?

2 A. Yes.

3 Q. Did you have any way to predict whether the
4 case would result in a verdict on behalf of the
5 plaintiff in the case against the McGuires?

6 A. I'm sorry?

7 Q. Did you have any -- Did you have any
8 certainty as to whether Mr. Dulberg could prevail at
9 trial on liability against the McGuires?

10 A. I would have staked a lot that we would not
11 have recovered in the case and just something that
12 didn't come up with the direct is they didn't offer
13 the arbitrator to me. That was something that was
14 later decided. I talked to them about that. They
15 did not offer that to me, so that was not an option
16 to me.

17 Q. So you were -- Based on your professional
18 judgment, you suggested that you attempt to settle
19 the matter as opposed to taking it to trial versus
20 the McGuires, correct?

21 A. Right.

22 MR. FLYNN: Okay. That's all I have.

23 MS. WILLIAMS: I have no follow-up.

24 THE REPORTER: Signature?

1 THE WITNESS: I'll waive signature.

2 MS. WILLIAMS: We'll order the original,

3 E-tran.

4 MR. FLYNN: I'll take a regular and a mini

5 copy.

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DECLARATION UNDER PENALTY OF PERJURY

I, HANS MAST, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 25, 2020; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this ____ day of _____,
20__, at _____, Illinois.

HANS MAST

1 STATE OF ILLINOIS)
)
2 COUNTY OF C O O K) SS:

3
4 I, Barbara G. Smith, Certified Shorthand
5 Reporter and Notary Public in and for the County of
6 Cook, State of Illinois, do hereby certify that on
7 the 25th of June, A.D., 2020, the deposition of the
8 witness, HANS MAST, called by the Defendants, was
9 taken remotely before me, reported stenographically
10 and was thereafter reduced to typewriting through
11 computer-aided transcription.

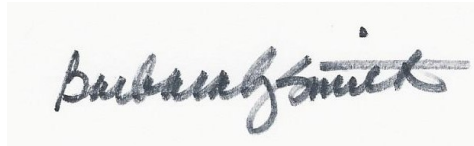
12 The said witness, HANS MAST, was first duly
13 sworn to tell the truth, the whole truth, and nothing
14 but the truth, and was then examined upon oral
15 interrogatories.

16 I further certify that the foregoing is a
17 true, accurate and complete record of the questions
18 asked of and answers made by the said witness, at the
19 time and place hereinabove referred to.

20 The signature of the witness was waived by
21 agreement.

22 The undersigned is not interested in the
23 within case, nor of kin or counsel to any of the
24 parties.

1 Witness my official signature and seal as
2 Notary Public, in and for Cook County, Illinois on
3 this 7th day of July, A.D., 2020.

4
5
6 
7

8 Barbara G. Smith, CSR, RPR
9 Notary Public
10 200 West Jackson Boulevard, Suite 600
 Chicago, Illinois 60606

11 License No. 084-002753
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Exhibits	\$	19	30th
EX 0001 Hans Mast 062520 16:14	\$5,000 35:24 36:15, 21 38:18 39:7 40:8 46:14 47:10 78:22	19 38:8 19th 35:19 45:20 1:28 45:22 1st 18:18	30:14 3:00 34:6
EX 0002 Hans Mast 062520 17:3, 4, 12	\$7,500 27:9 39:1, 23	2	4
EX 0003 Hans Mast 062520 18:9	0	2 17:3, 4, 12 20 40:16 41:1 46:22 47:5 48:19	4 26:6, 7 32:6 4-minute 59:12 4th 33:23 34:7, 13, 24
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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,
-vs-
THE LAW OFFICES OF THOMAS
POPOVICH and HANS MAST,
Defendants.

The remote videoconference deposition of HANS MAST, appearing remotely from McHenry County, Illinois, called by the Plaintiff for examination, pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of Illinois, and the Rules of the Supreme Court thereof, pertaining to the taking of depositions, for the purpose of discovery, taken before Barbara G. Smith, appearing remotely from Will County, Illinois, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, commencing at the hour of 10:00 a.m. on the 25th day of June, A.D., 2020.

Page 2 1 REMOTE APPEARANCES: 2 THE CLINTON LAW FIRM, By 3 MS. JULIA C. WILLIAMS 4 111 West Washington Street, Suite 1437 5 Chicago, Illinois 60602 6 (312) 357-1515 7 (312) 201-0737 (Facsimile) 8 juliawilliams@clintonlaw.net 9 On behalf of the Plaintiff; 10 11 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, By 12 MR. GEORGE FLYNN 13 150 South Wacker Drive, Suite 1700 14 Chicago, Illinois 60606 15 (312) 431-3622 16 (312) 431-3670 (Facsimile) 17 gflynn@karballaw.com 18 19 On behalf of the Defendants. 20 21 ALSO PRESENT: Mr. Paul Dulberg 22 23 24	Page 4 1 THE REPORTER: The attorneys participating 2 in this deposition acknowledge that I am not 3 physically present in the deposition room and that I 4 will be reporting this deposition remotely. They 5 further acknowledge that, in lieu of an oath 6 administered in person, the witness will verbally 7 declare his testimony in this matter is under penalty 8 of perjury. The parties and their counsel consent to 9 this arrangement and waive any objections to this 10 manner of reporting. Please indicate your agreement 11 by stating your name and your agreement on the 12 record. 13 MS. WILLIAMS: Julia Williams. I agree. 14 MR. FLYNN: George Flynn. I agree. 15 THE REPORTER: Will the witness kindly 16 present his government-issued identification by 17 holding it up to the camera for verification? 18 (Witness presents 19 government-issued identification 20 and identity is verified.) 21 THE REPORTER: Thank you. 22 HANS MAST, 23 called as a witness herein, having been first duly 24 sworn, was examined and testified as follows:																														
Page 3 1 I N D E X 2 3 WITNESS EXAMINATION 4 5 HANS MAST 6 By Ms. Williams 5 7 By Mr. Flynn 76 8 9 E X H I B I T S 10 11 HANS MAST 12 DEPOSITION EXHIBIT MARKED FOR ID 13 <table><tr><td>No. 1</td><td>16</td></tr><tr><td>No. 2</td><td>17</td></tr><tr><td>No. 3</td><td>18</td></tr><tr><td>No. 4</td><td>26</td></tr><tr><td>No. 5</td><td>28</td></tr><tr><td>No. 6</td><td>32</td></tr><tr><td>No. 7</td><td>35</td></tr><tr><td>No. 8</td><td>36</td></tr><tr><td>No. 9</td><td>40</td></tr><tr><td>No. 10</td><td>46</td></tr><tr><td>No. 11</td><td>48</td></tr><tr><td>No. 12</td><td>49</td></tr><tr><td>No. 13</td><td>53</td></tr><tr><td>No. 14</td><td>55</td></tr><tr><td>No. 15</td><td>64</td></tr></table> 21 22 (All exhibits provided electronically 23 to the reporter.) 24	No. 1	16	No. 2	17	No. 3	18	No. 4	26	No. 5	28	No. 6	32	No. 7	35	No. 8	36	No. 9	40	No. 10	46	No. 11	48	No. 12	49	No. 13	53	No. 14	55	No. 15	64	Page 5 1 EXAMINATION 2 BY MS. WILLIAMS: 3 MS. WILLIAMS: Okay, so this is the 4 discovery deposition of Hans Mast taken pursuant to 5 all applicable rules and notice in the case of 6 Dulberg versus The Law Offices of Thomas Popovich, 7 et al. This deposition is being taken for the 8 purposes of discovery. 9 Q. Hans, can you state your name for the 10 record, please? 11 A. Hans Mast. 12 Q. Have you had your deposition taken before? 13 A. Yes. 14 Q. And how many times? 15 A. I think two. 16 Q. And for what purpose? 17 A. Long, long time ago I think there was a 18 malpractice case I was a witness on and a legal -- a 19 medical malpractice case that turned into a legal 20 malpractice case, not against me but against the 21 office I was with. 22 Q. Okay. So you weren't named in the 23 lawsuit as a defendant? 24 A. I might have been named. I might have been
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Page 6 1 named, but I was somebody that appeared on a motion. 2 I think I got out eventually. 3 Q. Okay, and then -- And then -- Sorry. And 4 then you said you think twice, so do you know 5 approximately what year that medical malpractice case 6 that turned into a legal malpractice case, do you 7 know roughly what year that was? 8 A. '94 or something. 9 Q. Okay, and then the second time, what would 10 have that been? 11 A. It's not coming to me. It was another legal 12 case. I don't remember the details. 13 Q. Okay -- 14 A. There -- Go ahead. 15 Q. More than 10 years? I'm sorry, I didn't 16 mean to interrupt you. 17 A. Yes. 18 Q. We can go over the -- I'm going to try not 19 to interrupt you, you're going to try not to 20 interrupt me. You've taken depositions before, I'm 21 sure we can get into that and appreciate you 22 answering orally, all of those typical things that 23 apply, and I'll try not to interrupt you too much. 24 Have you ever -- Other than the one time you just	Page 8 1 Q. Hundreds? 2 A. Probably. 3 Q. Oh, I'm sorry, I forgot to do this, but I 4 think we saw your room. It's just you and George 5 Flynn in the room with you, correct? 6 A. Yes. 7 Q. And there's no one else in the room and if 8 there were, you would identify them, correct? 9 A. Yes. 10 Q. And you don't have any devices or anything 11 with you? You're not communicating with anyone 12 during this deposition other than the attorney in the 13 room with you, correct? 14 A. And you and who else is on this meeting. 15 Q. Okay. I'm sorry, let me rephrase. Is there 16 anyone that I don't know that you are communicating 17 with that I wouldn't know? 18 A. Not that I'm aware of. 19 Q. Okay. If you take any notes or otherwise 20 communicate with people during the deposition, we 21 just ask that those notes be produced. Okay. Did 22 you do anything to prepare for the deposition today? 23 A. Well, I just saw some exhibits you sent 24 George. I didn't really prepare them. I looked them
Page 7 1 identified, have you ever been sued other than this 2 suit for legal malpractice? 3 A. No. 4 Q. Do you recall any other details about that 5 medical malpractice lawsuit that turned into a legal 6 malpractice suit? Do you know what the basis of the 7 suit was? 8 A. It was a medical malpractice case that I 9 think lost on a summary judgment motion and they 10 were -- the client was suing the office and I think I 11 got involved in it because I was on a motion. 12 Q. Were you the one that drafted the summary 13 judgment motion? 14 A. I don't think so. I don't really remember 15 clearly back then, but I don't think I did. 16 Q. Okay. 17 A. I think I argued -- I might have argued it. 18 I don't remember. 19 Q. Okay. Have you -- Have you taken 20 depositions before? 21 A. Yes. 22 Q. Roughly how many depositions do you think 23 you've taken in your legal career? 24 A. Lots. Lots.	Page 9 1 over briefly. 2 Q. Did you review any of the other files that 3 have been produced in this case? 4 A. No. 5 Q. Did you review any notes? 6 A. No. 7 Q. Any other documents? 8 A. No. 9 Q. Did you meet with anyone -- 10 A. Other than George? 11 Q. -- to prepare? Other than George. 12 A. No. 13 Q. And you did meet with George, I'm 14 assuming. I don't want to know the contents of that 15 meeting, but you met with George to prepare? 16 A. Not very long. 17 Q. Okay. Did you talk to anyone else about 18 today's deposition prior to the deposition today? 19 A. No. 20 Q. Where did you go to law school? 21 A. Kent. 22 Q. And what year did you graduate? 23 A. '91. 24 Q. And were you admitted to practice in

Page 10	Page 12
1 Illinois that same year? 2 A. Yes. 3 Q. And have you -- Are you admitted to practice 4 anywhere else? 5 A. No. 6 Q. Have you ever been reprimanded or 7 disciplined by any courts? 8 A. No. 9 Q. Have you ever been publicly reprimanded or 10 disciplined by any oversight body, such as the ARDC? 11 A. No. 12 Q. When did you start practicing? 13 A. '91. 14 Q. And where did you start? 15 A. In Rockford. 16 Q. With a firm? 17 A. Yeah, Cacciatore. 18 Q. And how long were you there? 19 A. About a year and a half. 20 Q. And what kind of work did you do there? 21 A. Personal injury, plaintiff. 22 Q. Have you done personal injury your entire 23 career? 24 A. No, I did some defense work.	1 A. I think a couple years. Maybe a little more 2 than that. 3 Q. And what kind of work did you do at Kemper? 4 A. Defense. 5 Q. Defense of what type of cases? 6 A. Lots of different kinds, auto accidents, 7 premises. 8 Q. Mostly torts though, negligence-type cases? 9 A. Yes. 10 Q. And then after Kemper? 11 A. I think Popovich was next. 12 Q. And how long were you with the Popovich 13 firm? 14 A. About 18 years, I think. 15 Q. And do you know what year you -- roughly 16 what year you joined Popovich? 17 A. 2001 maybe. 18 Q. And you were there for roughly 18 years you 19 think? 20 A. Yes. 21 Q. So you left maybe just last year? 22 A. In '18. 23 Q. 2018? 24 A. Yeah.
Page 11	Page 13
1 Q. Okay. So you were at Cacciatore for a year 2 and a half and you were doing plaintiff's personal 3 injury work. What did you do after that? 4 A. I went to the Loggans firm in Chicago for 5 about 6 months. 6 Q. And what did you do there? 7 A. Plaintiff's. 8 Q. PI again, personal injury? 9 A. Yeah. 10 Q. And after that? 11 A. Judge and James in Park Ridge. 12 Q. And how long were you there? 13 A. 7 years, I think. 14 Q. Did you do plaintiff's personal injury there 15 as well? 16 A. No, that was defense. 17 Q. What kind of defense work? 18 A. Lots -- All kinds, municipal, tort. 19 Q. Did you defend personal injury cases while 20 you were there as well? 21 A. Yes. 22 Q. And then after that, where did you go? 23 A. Kemper, I think. 24 Q. And how long were you with Kemper?	1 Q. And why did you leave Popovich? 2 A. To start on my own. 3 Q. And where are you now? 4 A. With Compton Law Group. 5 Q. I'll give you just a second to come back. 6 A. Yeah. 7 Q. And what types of -- I'm sorry, I'm going to 8 go back to the Popovich firm. What kind of cases did 9 you handle at Popovich's firm? 10 A. Plaintiff's personal injury, all kinds. 11 Q. And then at Compton, what kind of work do 12 you do? 13 A. Same thing, same kind of cases, plaintiff's 14 personal injury. 15 Q. So is it fair to say you've been doing 16 plaintiff's personal injury cases steadily throughout 17 your career? 18 A. Yeah, except for the time I was with the 19 defense offices. 20 Q. Okay. But you were still doing personal 21 injury, just on the defense side, not on the 22 plaintiff side? 23 A. Right. 24 Q. Okay. Did you answer discovery in this

Page 14 1 case, in the malpractice case that we're -- the 2 Dulberg versus Thomas Popovich case? 3 A. I think I did. 4 Q. Do you remember -- Did you review discovery 5 in this case, do you recall? 6 A. Like I said, I think I answered some and 7 signed off on some, I just don't remember. I haven't 8 seen them recently. 9 Q. Okay. Okay. If you recall, do you remember 10 reviewing the documents that were produced in this 11 case? 12 A. I don't know what was produced. 13 Q. Okay. 14 A. I assume the file. 15 Q. Right. Okay, if I represented that the file 16 was produced, would that make sense to you? Can we 17 kind of agree that the file was produced? 18 A. Well, if you told me that. 19 Q. Okay. So when the file was produced, I 20 don't know if you recall, there were black -- some 21 black pages between the file. Do you remember any 22 discussions about that? 23 A. I didn't produce anything so and I haven't 24 reviewed what was produced, that wasn't my -- I was	Page 16 1 case? 2 A. Not that I'm aware of. Unless I produced it 3 to Popovich and he produced it. I don't know how 4 that worked. 5 Q. Okay. When were you retained by Paul 6 Dulberg? 7 A. I don't recall. I'm assuming there's 8 paperwork that shows that. 9 Q. Yes. Let me upload a file here. Just give 10 me a second. 11 A. I don't think he retained me. I think he 12 retained Tom Popovich's office. 13 Q. Okay. I just uploaded a file that's titled 14 Dulberg Mast Dep Exhibit 1, if you can -- And, 15 George, you should have that as well -- and it should 16 be the retainer contract. 17 A. Yeah, I see it. 18 Q. Okay. So it's a contract for legal services 19 and it's marked POP, P O P, 000586 on the bottom, 20 just for reference, so this will be the first exhibit 21 in this deposition. Do you recognize this document? 22 A. I recognize what it looks like, yeah. 23 Q. Yeah, and it's the contract for legal 24 services and it's undated, it looks like.
Page 15 1 in a different office when it was produced, I think. 2 Q. Okay. So Thomas Popovich would have had 3 possession of the file? 4 A. Right. 5 Q. You did not have possession of any documents 6 from the underlying case, from the Dulberg versus 7 Gagnon-McGuire case? 8 A. I didn't. 9 Q. Okay. So you would not have had access to 10 that file since you were with Thomas Popovich in 11 2018? 12 A. Once I left the firm, I have not had the 13 file. 14 Q. Okay. In this case did you produce emails 15 that you possessed or did you not have access to 16 those either? 17 A. I would -- I don't know what was produced, 18 again, by the Popovich firm. I don't know if they 19 had my emails, but I have a new email address. I 20 don't think it's the same as it was back then. 21 Q. Okay. 22 A. So I didn't produce anything. 23 Q. So you didn't produce any emails or 24 communications that -- in the -- from the underlying	Page 17 1 A. That's what it looks like. 2 Q. Okay. I'm going to upload another exhibit. 3 So I'm uploading Exhibit 2, it's titled Dulberg Mast 4 Dep Exhibit 2, and this should be the original 5 complaint filed in the case of Dulberg versus Gagnon, 6 et al., 12 LA 178, filed in McHenry County. Do you 7 see that document? 8 A. Yeah. What I'm going off are an email I got 9 with all the exhibits attached, so I'm not -- that's 10 what I'm looking at. 11 Q. Okay. 12 A. It's a complaint and it says Exhibit 2. 13 Q. Right, okay. So our numbers may be a little 14 off, but the description should be correct. In that 15 complaint shows file stamp May 15, 2012? 16 A. Yeah, that's what it says. 17 Q. Okay, and so Mr. Dulberg would have hired 18 you sometime -- hired the Popovich firm sometime 19 prior to that, correct? 20 A. I'm assuming. I -- 21 Q. Okay. Do you have any idea? 22 A. I'm sorry. 23 Q. I'm sorry, I didn't mean to interrupt you. 24 Go ahead.

Page 18 1 A. Go ahead. 2 Q. Do you have any idea about -- Do you have 3 any idea about what timeframe he would have hired -- 4 retained you? 5 A. I really, again, I don't have an independent 6 recollection of it. I think there's probably a memo 7 out there of me meeting with him, too. 8 Q. Okay. Actually, I think there is. Okay, I 9 just uploaded Dulberg Mast Dep Exhibit No. 3 and the 10 top says -- it's titled, "Intake Memo." At the top 11 it says, "Memorandum," it's Popovich, it says 12 POP00961 and 000962. Do you recognize this document? 13 A. I -- It looks familiar. 14 Q. And it indicates that it's from you, so you 15 would have drafted this document, correct? 16 A. I would have dictated it, yeah. 17 Q. Okay, and it looks like you had a new client 18 meeting with Paul on December 1st of 2011? 19 A. That's what it says. 20 Q. Okay. Does that seem like that timeframe 21 would have been roughly correct? 22 A. I have no reason not to believe that's 23 accurate. 24 Q. Okay. So Paul retained you probably	Page 20 1 named as well. 2 Q. And what was the theory as to the McGuires? 3 A. I think Paul had said that they were the 4 ones that owned and looked over the work that was 5 being done. 6 Q. Okay. So if they owned the chain saw and 7 were overseeing the work, what's the legal theory for 8 liability on that? Why would they be liable? 9 A. Under case law potentially there's liable -- 10 liability for people that oversee and direct the 11 work. 12 Q. Okay, and is that a strict liability or is 13 it some other form of liability? 14 A. It would be negligence. 15 Q. So negligent oversight? 16 A. Potentially. 17 Q. Okay. Were there any other theories that 18 you were going to pursue or could be pursued? 19 A. Not that I recall. 20 Q. Okay. So a negligence claim against Gagnon 21 for negligently utilizing the chain saw and then a 22 negligence claim against McGuires for not -- for not 23 controlling his use of the chain saw, is that 24 accurate?
Page 19 1 sometime in December of 2011 and then you filed a 2 complaint around May 15, 2012? 3 A. That's what it appears. 4 Q. Okay. So can you just tell me what the case 5 against Mr. -- I'm sorry. Can you describe the case 6 between Paul Dulberg and David Gagnon, Caroline and 7 William McGuire? 8 A. What do you mean describe it? What it's 9 about? 10 Q. Yeah, basically what was it about? 11 A. An injury, a chain saw injury. 12 Q. Okay. Was there anything about the case 13 that was unique to you? 14 A. Other than it was a chain saw injury. 15 Q. Okay. What was your theory of that case? 16 What was your theory of liability in the case? 17 A. I think the -- Paul had claimed Dave struck 18 him with the chain saw. 19 Q. So was it just a negligence theory or was it 20 a strict liability or -- 21 A. I believe it was negligence, if I recall 22 correct. 23 Q. Negligence against Gagnon, David Gagnon? 24 A. Yeah, and I think the McGuires actually were	Page 21 1 A. I don't recall the exact allegations, but I 2 think in a general theme that was what we were going 3 to try to prove. 4 Q. Okay. In the intake memo, do you want to go 5 back to that? There are some notes on this exhibit 6 that state -- it looks to me like it says, "Hans BC 7 the accident occurred on their premises, their HO med 8 pay will cover the bills," and then it's signed. Do 9 you recognize that handwriting? 10 A. Yeah, that would be Tom. 11 Q. Okay, and what does that note mean? 12 A. Medical coverage, medical payments coverage. 13 Q. So there -- So the McGuires -- When he says 14 their, is he referring to Caroline and Bill McGuire? 15 A. Well, I don't know what he's referring to. 16 I think what he's -- Well, he circled their names, so 17 that probably indicates what he's referring to. 18 Q. Okay. Would their -- Would their insurance 19 cover medical bills in an instance like this? 20 A. Possibly. 21 Q. Okay. Did you reach out to their insurance 22 company about covering any medical bills? 23 A. I don't recall if that was applicable or I 24 don't know -- I don't recall that issue.

Page 22 1 Q. Okay. 2 A. Oh, uh, I think -- It just kicked me off. 3 MR. FLYNN: I got disconnected, too. It's 4 the Wi-Fi. 5 BY MS. WILLIAMS: 6 Q. Okay, we'll just wait a minute here. 7 A. I can hear you. I just can't see you. 8 Q. We'll wait a minute until you can get your 9 video back on. 10 MR. FLYNN: Julia, we think the Wi-Fi may 11 have dropped here in the office. 12 MS. WILLIAMS: Okay. Well, let's just give 13 it a minute and see. 14 MR. FLYNN: Okay. 15 (Whereupon, a break was taken, 16 after which the following 17 proceedings were had:) 18 MS. WILLIAMS: Okay. I think we're back on 19 the record. Barb, are you doing all right? 20 THE REPORTER: Yes. 21 BY MS. WILLIAMS: 22 Q. Okay. So we just went through the memo that 23 Tom made a note about insurance and your testimony 24 was that you don't recall whether you made any	Page 24 1 mean, that brings up a lot of issues. 2 Q. Okay. Let's -- Let me narrow it down a 3 little bit and try to get more to a point that will 4 be useful for our discussion. At some point, you had 5 recommended that Paul settle the case as to the 6 McGuires; is that correct? 7 A. Yeah. 8 Q. And what was the reasoning for settling the 9 case as to William and Bill McGuire? 10 A. Just risk, like you always discuss with any 11 settlement. 12 Q. Can you be a little more specific about what 13 type of risk? 14 A. Again, that's a long question but, I mean, 15 it's like any settlement, you're taking a risk if you 16 don't settle the case when you have issues that could 17 be problematic. 18 Q. Okay. When you say issues that can be 19 problematic, and I know it could be a very long 20 answer, but as much as you can, can you summarize 21 what you think those risks were? 22 A. Understanding it's a summary that, I mean, I 23 could probably answer that in a couple hours, but the 24 chance of recovery was in my view very slim if at all
Page 23 1 requests to the McGuires' insurance to pay Paul's 2 medical bills; is that correct? 3 A. I don't remember, right. 4 Q. Okay. Back to the actual claims made. Do 5 you remember -- Do you recall what the defense was 6 for first Gagnon and then Bill -- William and 7 Caroline McGuire? 8 A. What do you mean by defense? 9 Q. What was their theory of defense in the 10 case, do you recall? As you understood it. 11 A. I mean, that's a big question. I mean, 12 they, like every case, they were denying what we were 13 alleging. 14 Q. Were they denying the facts? Did they 15 dispute the facts of the case? 16 A. Definitely. 17 Q. Okay. Do you recall what they were alleging 18 as far as the facts that were different from what you 19 were alleging? 20 A. I mean, I can probably answer that for -- 21 with an hour -- an hour answer. There's a lot that 22 they were denying. There was a lot that, you know, I 23 mean, I'd have to -- I could look at their answer. I 24 could look at their deposition testimony, but, I	Page 25 1 because of lots of reasons, one, because of Paul's 2 testimony, Gagnon's testimony, the McGuires' 3 testimony. The evidence didn't seem to be something 4 that was going to allow us to prove the case against 5 the McGuires. 6 Q. Okay. What -- And, again, I understand this 7 is -- these are very long questions, but just in 8 summary, what were you going to need to prove the 9 case against the McGuires? 10 A. Now, again, understanding I would have to 11 put myself in my place where I was back at the time 12 that I fully evaluated this with Paul, but if I'm 13 just trying to come up with some thoughts now years 14 later the case law, I think, was against us. The 15 defense was going to file a motion for summary 16 judgment if we didn't work out some sort of 17 settlement that I felt they were going to win and the 18 testimony from all parties was not helpful to us. 19 Q. Okay. I'm going to move forward and then we 20 may come back to this a little bit. Do you recall 21 when the first time was that you talked to Paul about 22 settling the claims with the McGuires? 23 A. No, whenever -- You know, the defense 24 attorney would have reached out to me to ask for some

Page 26 1 sort of demand, I assume. 2 Q. Did you make a demand at some point? 3 A. I think -- I think some of your paperwork 4 showed that I did. 5 Q. Okay. I just uploaded Dulberg Mast 6 Exhibit 4 and it says letter -- it's "Letter Re 7 Settlement," and that should be -- still be Exhibit 4 8 that was emailed around to Counsel so that you would 9 have it. And it is labeled POP192 and POP193. Do 10 you recognize those documents? 11 A. Wait. I think the Internet, maybe because 12 we were having problems, is the Internet went down, 13 so now my exhibits aren't pulling up. Can you try it 14 again? Do you have that, George? 15 MR. FLYNN: Yeah, here's the hard copy. 16 THE WITNESS: I'll look at the hard copy, so 17 what are you asking? 18 BY MS. WILLIAMS: 19 Q. Great. So it should be the document it has 20 letterhead on the top, Popovich letterhead on the 21 top, and at the bottom it's POP000192 and 22 POP000193. 23 A. Right. 24 Q. Do you recognize those documents?	Page 28 1 know if this number is identified in those emails, 2 but, again, it would have been something I would have 3 talked to him about before making it. 4 Q. Okay. But at this time you don't know if 5 there are any memos, notes or emails memorializing 6 any conversation with Paul prior to sending the 7 October 22, 2013 demand? 8 A. Not that I recall. 9 Q. Okay, and if they did exist, they would be 10 in the possession of Thomas Popovich, correct? 11 A. I would think so. 12 Q. Okay, and if you had those in your 13 possession, you would produce them in discovery, 14 correct? 15 A. If I had them. 16 Q. Okay. Just uploaded Exhibit 5, and this is 17 email dated October 30, 2013, and it's marked at the 18 bottom POP000195. 19 A. Okay. 20 Q. Okay, and here in this email it looks like 21 you started this email chain to Paul on 22 October 25, 2013. Do you see that? 23 A. It looks like there's a couple emails here. 24 There's several pages. You just mean the first page?
Page 27 1 A. I mean, they look familiar. Documents from 2 the Popovich firm, if that's what you're asking. 3 Q. Is that your signature? 4 A. Yes. 5 Q. So you would have drafted or caused this 6 letter to be drafted and sent? 7 A. It appears that way, yeah. 8 Q. And this is a demand letter where you make a 9 demand of \$7,500; is that correct? 10 A. Yes. 11 Q. Do you recall making that demand? 12 A. No. 13 Q. Do you recall if you talked to Paul prior to 14 making the demand? 15 A. I'm sure I would have. 16 Q. Okay. Do you recall -- Do you have any 17 memos or notes regarding that conversation with Paul? 18 A. I don't personally. 19 Q. Okay. If there were memos and notes, would 20 they be in Thomas Popovich's file? 21 A. It should. 22 Q. Okay. Do you recall any emails about the 23 demand -- the 7,500 demand? 24 A. I know there were lots of emails. I don't	Page 29 1 Q. I think -- It should only be, I believe it's 2 only one page and it looks like -- 3 A. Oh, these aren't part of it? Just one page? 4 Q. The document that I have is just one page. 5 Are we looking at the same thing? 6 A. Okay. 7 Q. It's POP00195 on the bottom. 8 A. Yeah, he had a couple other pages on it, but 9 okay. 10 Q. Okay. I just want to make sure that I 11 didn't -- Okay. And on the bottom there of the first 12 sheet, if you have several, I've only published one 13 sheet for the purposes of this deposition, it states, 14 "Friday, October 25, 2013," do you see that? 15 A. Where does it say that? 16 Q. So about halfway down the page it looks like 17 it says, "Original message from Paul"? 18 A. Yeah. 19 Q. Okay. So that looks like Paul reached out 20 to you about medical deposition and then on the top 21 it appears to be your reply of October 30, 2013. 22 Does that seem like that's accurate? 23 A. That's what it shows. 24 Q. Okay. Okay. And here you first -- Am I

Page 30 1 correct in summarizing this is an email where you 2 talk to Paul about liability for Mr. Gagnon? 3 A. Look likes I did cover that issue. 4 Q. Okay, and do you recall at the time what 5 your purpose was behind this email? 6 A. I mean, every purpose is just to have open 7 communication. That's all the purpose -- 8 Q. Okay. Would you have been trying to explain 9 to Paul the liability issues in his case that you 10 described earlier? 11 A. Yeah, I definitely was discussing several 12 issues for him so he knows what's going on. 13 Q. Okay, and this email response is dated 14 October 30th, so that was after you sent that initial 15 letter. Do you recall whether there would have been 16 anything prior to this? 17 A. Whether what was prior to this? 18 Q. Would there have been any communications 19 about liability either to Gagnon or the McGuires 20 prior to the October 30, 2013 email? 21 A. Every time we talked, there were issues 22 about liability, I mean, for whatever I first -- he 23 first came to the office I recall he was lots of 24 questions and I gave him lots of answers as is	Page 32 1 deal with it if and when we get to that point. 2 Q. Okay. So the document that I'm looking at 3 now is another email on the -- it's now titled 4 Exhibit 6. I don't think it was entitled Exhibit 6 5 in what I sent to George, but it's an email that the 6 first date on the email is November 4, 2013, and the 7 last date on the email is November 5, 2013 email 8 chain and it's -- at the bottom it's stamped 9 Dulberg001531. 10 A. What exhibit is it? 11 Q. I think it might have been 5-A to George. 12 It's now Exhibit 6 for the purposes of this 13 deposition. 14 A. Yeah, that wasn't part of the download then. 15 Do you have -- 16 MR. FLYNN: Yeah, I don't think that was 17 included. 18 THE WITNESS: What's the Bates stamp or 19 what's the stamp? 20 MS. WILLIAMS: The Bates stamp is 21 Dulberg001531. 22 THE WITNESS: Yeah, I don't recall -- 23 MR. FLYNN: I don't recall seeing a 5-A on 24 the download. I think it just went straight from
Page 31 1 reflected in my emails. 2 Q. Okay. Did you meet with Paul after you sent 3 that October 22nd demand letter? 4 A. Did I meet with him? 5 Q. Yes. In person. 6 A. I'm sure I did. 7 Q. Okay. Do you recall -- Do you recall 8 meeting -- the dates of those meetings? 9 A. No, I don't recall the dates. 10 Q. Okay. So I'm going to upload another file 11 here. 12 A. Yeah, our Internet is down. That's why I 13 can't bring these up. 14 Q. Okay. 15 MR. FLYNN: Julia, just so you know, I've 16 got hard copies of the majority of the exhibits you 17 sent with the exception of the larger files, like the 18 insurance policy and the dep transcripts. 19 MS. WILLIAMS: Okay. Okay, great. 20 MR. FLYNN: I've got some of the deposition 21 transcripts, but I didn't want to waste a lot of 22 paper and ink at home. 23 MS. WILLIAMS: Okay. I think we'll be -- 24 For the most part, I think we'll be fine and we'll	Page 33 1 5 to 6. 2 MS. WILLIAMS: Okay, let me see if I can do 3 something else. I'm going to try to share my screen. 4 I don't know if I'm going to be able to do it. So 5 bear with me. Okay. I can't -- I can't share the 6 screen. Can I email -- George, can you pull up an 7 email if I email it to you? 8 MR. FLYNN: I should be able to eventually. 9 MS. WILLIAMS: Okay, let me see if that 10 will -- 11 THE WITNESS: Let me run to the washroom 12 real quick while you guys do -- 13 MS. WILLIAMS: We'll take a quick break, 14 that's fine, we'll try to work this out. If anybody 15 else needs a break, obviously take a break now. 16 (Whereupon, a break was taken, 17 after which the following 18 proceedings were had:) 19 BY MS. WILLIAMS: 20 Q. Okay, back on the record. This is the 21 Exhibit 6 for the deposition and it's marked at the 22 bottom Dulberg001531 and it's an email chain between 23 Paul Dulberg and Hans Mast dated November 4th through 24 about November 5th, is that accurate, Hans?

Page 34 1 A. That's what it appears. 2 Q. Okay, and it appears at the bottom that Paul 3 is asking you if he should bring anything to a 4 meeting. 5 A. Okay. 6 Q. And that meeting appears to be at 3:00 p.m. 7 on November 4th of 2013. 8 A. Okay. 9 Q. Is that an accurate description? Okay? Do 10 you recall having -- 11 A. Go ahead, I'm sorry. 12 Q. Do you recall having a meeting on 13 November 4th of 2013 with Paul Dulberg? 14 A. I don't have an independent recollection. 15 Q. Okay. Okay. 16 MR. FLYNN: Julia, now I recall, this is a 17 separate exhibit you sent a little bit later than the 18 original download, so I did have this. 19 MS. WILLIAMS: Okay. Okay. We got it 20 worked out. 21 MR. FLYNN: Yeah, okay. 22 BY MS. WILLIAMS: 23 Q. Okay. So you don't recall calling a meeting 24 for November 4th?	Page 36 1 against the McGuires only," do you see that? 2 A. Yes. 3 Q. Okay. Do you recall that offer being made? 4 A. I do have some recollection of having a 5 conversation with them. 6 Q. Okay. So I'm going to upload another 7 document and then we can keep going here. And then 8 this is Exhibit 8 and for -- it is a letter from 9 Ronald Barch to you, Hans, and it's POP000667. Do 10 you have that? 11 A. What's it dated? 12 Q. I'm sorry, dated November 18, 2013. 13 A. Yeah, I have that. 14 Q. Okay. And that's a settlement letter from 15 Barch offering the settlement of \$5,000, correct? 16 A. Right. 17 Q. Do you recall receiving this letter? 18 A. I mean, I don't today recall getting the 19 letter, but I'm familiar with the transaction, yes. 20 Q. Okay. Okay. So you would have received the 21 \$5,000 offer from Barch and you communicated it to 22 Paul via the email on November 18th? 23 A. As well as when we talked, yes. 24 Q. Okay. Okay. And when did you talk?
Page 35 1 A. We had lots of meetings so -- 2 Q. Okay. 3 A. -- I don't have an independent recollection 4 of that one particular date. 5 Q. Okay. Okay, I'm going to stop screen 6 sharing. Okay. I'm going to upload another file. 7 This is Deposition Exhibit 7. George, you probably 8 had it as Exhibit 6, but for the purposes of this 9 deposition right now it's going to be 7 and it's an 10 email chain dated -- 11 A. I have these on the computer. You don't 12 need to, unless you want to, but I'm just saying I 13 have these on the computer. 14 Q. Okay, but Barb needs them, so that's why I 15 keep uploading them, otherwise she doesn't have them. 16 Okay. So Exhibit 7, and it's POP00181 and POP00182, 17 and it's two pages of an email chain, November 15th, 18 looks like on the second page it starts November 15th 19 and ends November 19th, is that accurate? 20 A. Yes. 21 Q. Okay, great. So here it looks like Paul 22 started this email chain, but then on November 18th 23 you note that, "The McGuires' attorney has offered 24 us, you, \$5,000 in full settlement of the claim	Page 37 1 A. Again, I don't know the dates. I just know 2 generally how this all transpired. 3 Q. Would you have talked to Paul on the 18th 4 when the letter came in? 5 A. It's dated the 18th. I doubt I got it on 6 the 18th. Whenever I got it, I would have told Paul. 7 Q. Okay. And it looks like the email you sent, 8 which is Exhibit 7, communicated that offer? 9 A. Okay. 10 Q. Would you have talked to the McGuires' 11 attorney prior to receiving the letter about the 12 offer? 13 A. I don't recall. It might have -- that might 14 have happened. 15 Q. Okay. Do you recall whether you met with 16 Paul sometime after -- on or after November 18 to 17 discuss the settlement offer? 18 A. I'm sure we did. I know we had several 19 conversations and meetings about that. 20 Q. Okay. In this email chain that's 21 Exhibit 7 about halfway down the page it says on 22 November 18, 2013, at 7:40 p.m., Paul responds to 23 your email. Can you see that? 24 A. Are we going back to the email now?

Page 38 1 Q. Yep, it's POP00181. 2 A. What exhibit? 3 Q. It's Exhibit 7. 4 A. 7, that's the letter. 5 Q. If may be 6 for you. It may be 6 for you. 6 A. Let's take a look. What page is the email? 7 Q. The date at the top of the email chain is 8 Tuesday, November 19, 2013. 9 A. Yeah, I have that. 10 Q. Okay. And then about maybe halfway down the 11 page it's dated on November 18, 2013, at 7:40 p.m., 12 do you see that? 13 A. Yep. 14 Q. And there it says, "Only five? That's not 15 much at all," do you see that? 16 A. That's his response, yes. 17 Q. Right. Right. Do you recall talking to 18 Paul about the \$5,000 and that not being much? 19 A. Like I said, yes, we've had plenty of 20 conversations and meetings on that. 21 Q. Okay. When you originally offered the 22 7,500, did you talk about what the possible outcomes 23 as far as counteroffers, what they may demand, 24 something like that, did you talk about that prior to	Page 40 1 than the 7,500? 2 A. Again, I'm -- I understand the question. 3 I'm just not trying to play games, but you're asking 4 me do I recall specific words that are used or 5 topics. All I can tell you about this is we talked 6 about the whole gamut of options, that I didn't feel 7 it was a strong case, that they were reaching out to 8 us for \$5,000, and that balancing everything, the 9 risks, costs, even though it wasn't much, it was 10 something that would have been desirable for him if 11 he wants to end up with money versus the McGuires. 12 Q. I'm going to add another exhibit here. 13 Okay, for the purposes of this deposition it's 14 Deposition Exhibit 9. This is a memorandum. At the 15 top it will say, "Memorandum," and the date is 16 November 20, 2013, and at the bottom it's identified 17 as POP and then 3 -- there's 000003, I believe. Do 18 you have that? 19 A. What exhibit is it? 20 Q. I think you're probably going to have it as 21 Exhibit 8, but for the purposes of this deposition 22 it's actually going to be Exhibit 9. 23 A. Okay. 24 Q. And it's Dulberg Mast Memo,
Page 39 1 making that \$7,500 offer? 2 A. I mean, I think I generally understand what 3 you're asking. Did we just have general 4 conversations of numbers? Yes. 5 Q. Okay. In this email and this is -- I 6 understand this is speculation, but in this email it 7 appears that Paul is surprised that it's \$5,000 was 8 the offer, correct? Would that be fair to 9 characterize it that way? 10 A. Is he surprised at it or is he surprised at 11 the amount? It looks like he didn't think it was 12 much. 13 Q. Right. So if you originally offered 7,500 14 and they came back at 5,000, in your experience, does 15 that seem like much of a difference when it comes to 16 counteroffers? 17 MR. FLYNN: I'll object to the form. 18 THE WITNESS: Yeah, I'm not real sure what 19 you mean by that. 20 BY MS. WILLIAMS: 21 Q. I guess let me rephrase because I don't 22 think I'm getting to the point. Prior to making the 23 \$7,500 offer, did you discuss with Paul that the 24 McGuires may come back with an offer that was lower	Page 41 1 2013 November 20. 2 A. Okay, yeah. 3 Q. Okay. It looks from this memo that you had 4 a meeting with Paul and his friend on November 20th, 5 is that accurately reflected what's stated in the 6 memo? 7 A. Yes. 8 Q. Do you remember this document? Do you 9 recall this? 10 A. As I said before, I understand what you're 11 asking, but we've had lots of meetings. Do I 12 remember that particular date, no, but I remember the 13 meetings. 14 Q. Do you recognize this memorandum? 15 A. I recognize the discussion that's referenced 16 in the memo. I haven't seen the memo for 7 years. 17 Q. Okay. Do you recall the advice that you 18 gave in that meeting of November 20th? 19 A. Yeah, like I said, it's summarized a little 20 bit in there. Yeah. 21 Q. Okay. And what was the -- Why don't -- What 22 was the advice that you gave? 23 A. Do you want me to read the memo or you want 24 me to just tell you generally what the topics were or

Page 42 1 what? 2 Q. Generally to the best that you can recall. 3 A. Looks like on that day he brought his friend 4 in because before he wanted to consider the offer, he 5 wanted to have his friend come with him to talk about 6 these issues with me. So we went over -- 7 Q. So -- 8 A. Go ahead. 9 Q. No, I'll let you finish. Go ahead. I'm 10 sorry. 11 A. Well, we went over all the issues, all the 12 risks, all the money issues, all of the issues. 13 Q. Do you recall who the friend was? 14 A. Not as I sit here today. 15 Q. From this memo it says, "Paul maintains the 16 McGuires controlled everything that they were doing 17 and you told him that wasn't what the evidence seemed 18 to show." So can you expound on what -- This is 19 really going to be a complicated question, but to the 20 best of your ability, can you explain what the theory 21 of your case was against the McGuires and what the 22 evidence was that was going to -- what evidence was 23 your reason for believing that you couldn't prove 24 your theory?	Page 44 1 negligence claim against the McGuires what the legal 2 elements were that you would have to show? 3 A. I haven't brushed up recently on that area, 4 but I can tell you that under the case law they have 5 to have some oversight and control over what was 6 going on and some involvement in the work and some 7 knowledge higher and above what Paul was doing, and 8 if you look at their testimony, they were not out 9 there, they were not looking at it, they didn't even 10 really know what Paul was doing frankly. 11 Q. And what about David? Did they have to 12 control what David was doing as well? 13 A. I meant David, I'm sorry. 14 Q. Okay. So the McGuires would have to have 15 oversight and control over David Gagnon? 16 A. Over the work. 17 Q. Okay. Over the work. Okay. So William and 18 Caroline did buy the chain saw, correct? 19 A. I believe that is true. 20 Q. Okay. But then David Gagnon was the one 21 operating the chain saw? 22 A. Right. 23 Q. And you would have to show in Paul's case 24 that Bill and Caroline, one or the other, had control
Page 43 1 A. We already talked a little bit about that 2 earlier, but every time we met, we talked about this 3 because this was a subject at the time with the 4 McGuires and given the testimony of the McGuires, 5 given Paul's testimony, given the lack of any 6 evidence that they were controlling any work or even 7 knew what Paul was doing, I felt it was a big, high 8 risk of moving forward on that claim. 9 Q. So I'm going to try to summarize this. 10 Maybe in parts. So in order for the McGuires to be 11 liable for Gagnon's work, Paul would have to prove in 12 his case that the McGuires controlled Gagnon's work, 13 is that accurate? 14 A. Are you asking me if that's an accurate 15 statement of the law? 16 Q. Yes. 17 A. I think that's partially right. There's a 18 lot more to it. It's different branches and elements 19 that you have to prove, control was a factual matter, 20 and he would have to be able to establish there was 21 some oversight. It goes down into some factual 22 issues that you have to be able to show. 23 Q. Okay. So can you -- To the best of your 24 ability, can you kind of walk me through for the	Page 45 1 over David's operation of the chain saw? 2 A. Control could mean a lot of things. They 3 would have to be in a position to instruct him, tell 4 him what to do, be aware of the work that was being 5 done and have some control over what he was doing. 6 Q. Okay. So in your -- Your opinion of the 7 case was that it was insufficient for them to have 8 simply purchased the chain saw and provided it to 9 Gagnon? 10 A. Yeah. 11 Q. And what about if they were paying him? 12 Would that make any difference? 13 A. No. 14 Q. I'm sorry, I don't know or no? 15 A. No. 16 Q. Just bear with me for a second here. And 17 you informed Paul -- I'm sorry, let me back up. In 18 exhibit -- Deposition Exhibit 7, so it's probably 19 6 for you, the email chain between you and Paul, 20 roughly November 18th through the 19th, Popovich 21 000181, on the bottom of that first page, 22 November 18, 2013, at 1:28 p.m. there's an email from 23 you. Do you see that? 24 A. Yes.

Page 46 1 Q. "In addition, the McGuires' attorney," so 2 it's ATTY, "has offered us, you, 5,000 in full 3 settlement of the claim against the McGuires only. 4 As we discussed, they have no liability in the case 5 for what Dave did as property owners so they likely 6 will get out of the case on a motion." Did I read 7 that correctly? 8 A. Yes. 9 Q. So this is where you told Paul that you 10 didn't believe the McGuires had any liabilities for 11 the reasons -- in part for the reasons we just 12 discussed? 13 A. Right. 14 Q. Ultimately Paul accepted that \$5,000 offer, 15 correct? 16 A. Yes. 17 Q. And you communicated that to the other side 18 later in 2013, does that sound correct to you? 19 A. Yes. 20 Q. I'm uploading Exhibit 10, and it should be 21 Exhibit 10 for you as well, and it's a memorandum 22 dated December 20, 2013, and at the bottom it's 23 POP000884, do you see that? 24 A. Yes.	Page 48 1 risk and he had -- he wanted some time to think about 2 it and consider it. 3 Q. Okay. All right, just bear with me here. 4 Okay, I just uploaded Deposition Exhibit 11, it's a 5 settlement acceptance letter, letterhead from Thomas 6 Popovich's office dated December 26, 2013. Hans, 7 your signature appears on there and it's POP00670. 8 Do you recognize this document? 9 A. That appears to be a letter from Popovich's 10 office to defense counsel. 11 Q. Do you recognize your signature on here? 12 A. Yes. 13 Q. And this is the letter where you accepted 14 the offer on behalf of Paul, is that accurate? 15 A. It appears, yeah. 16 Q. Okay. So the Defendants made the original 17 offer around November 18 and Paul -- 18 November 18, 2013, and Paul accepted it around 19 December 20, 2013. Is that statement accurate? 20 A. I don't have, like I said, independent 21 recollection of the dates. I would just have to go 22 off the documents. 23 Q. Okay. Was there -- If that timeframe is 24 roughly correct, was there anything that occurred
Page 47 1 Q. And that's a memorandum that you wrote to 2 the legal file; is that correct? 3 A. It looks like that. 4 Q. I think I already said this, it's dated 5 December 20, 2013? 6 A. Yes. 7 Q. Okay. And the substance of it, it appears 8 that you had a conversation on December 18th with 9 Paul and that he was authorizing you to accept the 10 \$5,000 settlement? 11 A. Yes. 12 Q. Okay. Do you recall that conversation of 13 December 18? 14 A. I recall having lots of conversations, this 15 is one of them, and generally I do recall the 16 conversations in a general sense, not the exact 17 dates. 18 Q. Okay. So you don't remember anything 19 specific to this December 18th call what you would 20 have discussed? 21 A. Not other than what I've already said we 22 discussed over the time. 23 Q. Okay. 24 A. Paul was weighing his options. He knew the	Page 49 1 during that timeframe that indicated to you, you 2 know, why Paul changed his mind from originally 3 thinking it was too little to now accepting it. Was 4 there anything that stuck out in your mind about 5 that? 6 A. Yeah. 7 Q. Can you expound on that? 8 A. Well, he had his friend with him during our 9 meeting and he reviewed the depositions. 10 Q. Okay. Did he not have the depositions prior 11 to that? 12 A. I remember he asked for copies of them, so I 13 provided them to him. 14 Q. Okay, and when you say the depositions, do 15 you mean just the party depositions, the McGuires and 16 the Gagnon? 17 A. I don't remember if I gave him the doctors. 18 I don't remember which ones I gave him, but I know 19 specifically it was Gagnon and the McGuires. 20 Q. Okay, I'm uploading Dulberg Mast Dep 21 Exhibit 12. This is titled, "Legal Research." And 22 this is hard because there's -- it's 27 pages. Some 23 of them have Bates numbers, but some of them are 24 black on the bottom, so I think the Bates numbers

Page 50 1 didn't -- didn't take, but it's roughly -- looks like 2 roughly 204, maybe 205, Dulberg204, 205 through 3 roughly Dulberg00304 -- Actually, I'm sorry, these 4 aren't going to be continuous. But do you have that 5 packet of legal research in front of you? It appears 6 to be copies out of a -- copies of case law out of 7 the Northeastern Digest. 8 A. I just have the one case here. 9 Q. Just one case? Which -- What's the case 10 title? 11 A. The first one, it's L A J A T O. 12 Q. Okay. Do you -- Did you copy this case law? 13 A. I don't know. 14 Q. Do you recall providing any case law to 15 Paul? 16 A. I don't know if I did or didn't. I don't 17 know if he asked. 18 Q. Okay. Do you recall doing case law 19 research? 20 A. I'm sure I did, yeah. 21 Q. Would have there been a memo or something 22 regarding that research? 23 A. Not necessarily. I was familiar with the 24 law.	Page 52 1 but just, I mean, we're talking now, what is it, 2 7 years later? I haven't been asked to do any 3 research before today's deposition, but so, I mean, 4 if you're asking me for what the case law says, I'd 5 have to look at the case law, if that's what you're 6 asking. 7 Q. I'm asking based on your -- on your 8 experience and knowledge as a personal injury 9 attorney and not necessarily related to Dulberg's 10 case specifically. 11 A. Okay. 12 Q. But based on your knowledge and experience 13 in premises liability cases, what is an independent 14 contractor? 15 A. Someone that works on their own. 16 Q. And can you explain what you mean by on 17 their own? 18 A. Somebody that's hired, like, somebody that's 19 hired to paint the house. 20 Q. Okay. So somebody that's hired by a 21 homeowner or maybe a business? 22 A. Yes. 23 Q. But someone that's hired by a homeowner but 24 the homeowner doesn't -- doesn't tell them how to do
Page 51 1 Q. Okay. Okay. Was there any -- Was there any 2 case law that stuck out to you, any particular cases 3 that stuck out to you? 4 MR. FLYNN: Object to the form. 5 THE WITNESS: You mean stuck out to me with 6 regard to Paul and his case? 7 BY MS. WILLIAMS: 8 Q. No. Were there any applicable cases that 9 stuck out to you one way or the other as to whether 10 the McGuires would be liable? Was there any specific 11 cases that made you think that the McGuires may not 12 be liable given the facts in Paul's case? 13 A. I mean, you deal with this issue a lot and I 14 can't think of one particular name of a case, but 15 these cases all go along the same line, so there were 16 lots of cases on this one particular issue. It 17 wasn't a complicated issue. 18 Q. So particularly the issue of control of 19 Gagnon. 20 A. Of a premises owner's liability for an 21 independent contractor. 22 Q. Okay. So can you explain generally what an 23 independent contractor is? 24 A. I'll give you have an answer if you want,	Page 53 1 their job? 2 A. Right. 3 Q. Did you ever obtain a copy of the McGuires' 4 insurance policy, do you recall? 5 A. I don't have an independent recollection. 6 Q. Did you ever advise Paul as to the limits of 7 the McGuires' policy? 8 A. I'm sure we talked about it. 9 Q. Okay. I just uploaded Dulberg Mast 10 Deposition Exhibit 13 McGuire Interrogatory Answers 11 and they're Bates stamped Dulberg000162 is the first 12 page and there's roughly 14 pages. Do you see that 13 document? 14 A. Yes. 15 MR. FLYNN: This is 14? 16 MS. WILLIAMS: It should be Exhibit 13 -- 17 13 or 14. I think I have it as 13. Yes, okay. And 18 this -- I'm looking at paragraph 15 or at least I'm 19 trying to look at paragraph 15. 20 Q. Okay. In paragraph 15 it looks like there 21 was a question about the homeowner's insurance and 22 the McGuires respond with their personal liability 23 and their medical liability, do you see that? 24 A. Yes.

Page 54 1 Q. Okay. Now that you see that, do you recall 2 whether you ever got a copy of that policy? 3 A. I don't -- You mean the dec pages or the 4 whole policy? 5 Q. Either. Did you get a copy of the dec 6 pages? 7 A. I have no idea. 8 Q. And you have no idea whether you got a copy 9 of the whole policy? 10 A. Yeah, don't know. 11 Q. But they are representing what their 12 insurance was and the liability there, correct, or 13 their liability coverage there? 14 A. That's what it appears. 15 Q. Okay. And these -- This was -- looks like 16 this was responded to based on the McGuires' 17 signature on roughly the 12th page of the document. 18 It looks like it was August 6th of 2012. 19 A. That's what it appears. 20 Q. Yeah. So prior to when they would have made 21 the settlement offers, correct? 22 A. That's what it appears. 23 Q. Okay. Did you ever talk to Paul about 24 those -- the limits of the insurance policy and how	Page 56 1 Co-Defendants, in other words, the McGuires, does 2 that seem accurate to you? 3 A. Yes. 4 Q. So would you have issued interrogatories in 5 addition to what the McGuires' counsel issued? 6 A. It's probable. 7 Q. Okay. Do you recall one way or the other 8 today as we sit here? 9 A. Not other than it's probable I did. 10 Q. I have not seen those in discovery, so if 11 they exist, we'd ask that they be produced. Do you 12 ever recall talking to Paul about the policy limits 13 of the Gagnon insurance policy? 14 A. It's a topic that frequently comes up. I 15 don't have an independent recollection. 16 Q. Would you have any memos or notes on that? 17 A. I could. I may. I don't have an 18 independent recollection of that. 19 Q. Okay. And, again, that would have been in 20 the file that -- in Thomas Popovich's file? 21 A. Correct. 22 Q. In your knowledge and experience not related 23 to the Dulberg case but just in your general 24 knowledge and experience, are there any situations
Page 55 1 that may be important in his case? 2 A. I suspect we talked about the policy, yeah. 3 Q. Okay. Prior to any settlement discussions? 4 A. Yeah. 5 Q. Okay. But you've already testified you 6 didn't -- You don't know if you -- You don't know if 7 you obtained a copy. What about Gagnon's insurance 8 policy, did you ever obtain a copy of that? 9 A. I don't know. I don't know. 10 Q. Okay. Did you issue interrogatories to 11 Mr. Gagnon? 12 A. I'm sure I did. 13 Q. Let me upload this. Would they have been in 14 Popovich's file if you -- 15 A. Yes. 16 Q. Okay. So I can tell you, I don't recall 17 seeing any documents issued by you. I'm going to 18 upload a document that appears to be interrogatories 19 issued by McGuires' counsel in the case. I'm going 20 to upload it right now. It's Exhibit 14 and Answers 21 to Co-Defendant Interrogatories and it is stamped 22 Dulberg00178. Do you see that document? 23 A. Yes. 24 Q. It appears that these were issued by	Page 57 1 where a homeowner may be strictly liable for someone 2 doing work on their property? 3 MR. FLYNN: I'm just going to object to the 4 hypothetical being inaccurate and incomplete, also 5 calls for an expert opinion. While this witness is a 6 lawyer, I won't necessarily -- I don't expect to call 7 him as an F-2 or F-3 witness in the case. 8 THE WITNESS: So you're asking if a 9 homeowner can be strictly liable for an injury? 10 BY MS. WILLIAMS: 11 Q. Right. 12 A. In general terms, not with regard to this 13 case? 14 Q. No, in general terms. I'm just asking in 15 general terms in your -- based on your experience and 16 knowledge of injury cases. 17 A. I mean, I think -- Not in Paul's case, but I 18 think I could probably think of something that maybe 19 could be -- as products strict liability, there's 20 hazardous materials strict liability, there's 21 different issues that potentially factually if 22 they're applicable could apply, but not in Paul's 23 case. 24 Q. Okay. Just in general, what kind of

Page 58 1 hazardous -- When you say hazardous, are you talking 2 about hazardous chemical-type cases? 3 A. There's a string of cases when you're 4 dealing with hazardous chemicals and hazardous 5 materials, like a bomb or something like that, things 6 like that. 7 Q. Okay. Okay. Are there any, like, hazardous 8 actions? Could something be considered, like, some 9 type of action be considered hazardous? 10 A. What do you mean by action? Activity? 11 Q. Yeah, like, I'm trying to give you an 12 example because I'm just trying to understand it more 13 than anything else. Yeah, is there an activity that 14 you could be doing on your property, I don't know, 15 like, what about tearing down your home, would that 16 be considered -- would that be something that could 17 be hazardous? 18 A. There would have to be statutory authority 19 for that and there isn't. 20 Q. Okay. Okay. Okay. So generally for strict 21 liability there has to be some type of statutory 22 authority for that? 23 A. Or common law. Yeah. They have a 24 particular fact pattern.	Page 60 1 Q. On -- When you were talking to Paul about 2 settlement in the general timeframe of 3 November-December 2013, did you ever suggest at that 4 time that he seek alternative counsel or any 5 recommendation related to that? 6 A. I think that did come up. 7 Q. Do you recall what your advice to him was or 8 what the discussion was? 9 A. I think, you know, we always talk about the 10 risks of not settling and further down the road what, 11 you know, having to try the case and having to try 12 prove the case or getting a motion for summary 13 judgment, having the costs exceed the benefits and 14 all that, and I think my position with Paul, since he 15 didn't give a relatively very good deposition, my 16 thought was we were going to have a tough time, an 17 uphill battle, and he can always seek other counsel 18 if he doesn't agree with me. 19 Q. And you just stated that you thought Paul 20 didn't give a very good deposition, that may not have 21 been your exact language, but roughly that the 22 deposition wasn't great. Can you explain what -- as 23 you recall it, what about the deposition was 24 problematic?
Page 59 1 Q. Okay. But this case particularly is simply 2 a negligence case. Paul's case against the McGuires 3 was a simple negligent failure to control case in 4 your opinion? 5 A. That's what was pled. 6 Q. Okay. Did you ever make any -- ever 7 consider pleading any other allegations? 8 MR. FLYNN: Object to the form. 9 THE WITNESS: I don't -- No. Not that I 10 recall. 11 MS. WILLIAMS: Okay. Can we take about a 12 4-minute break? 13 MR. FLYNN: Sure. 14 MS. WILLIAMS: Let's just take -- I just 15 want to take a quick break and review my notes and I 16 want to give everybody an opportunity to kind of 17 stretch for a second. I'm going to go on mute. 18 MR. FLYNN: Okay. 19 (Whereupon, a break was taken, 20 after which the following 21 proceedings were had:) 22 MS. WILLIAMS: Let's go back on the record. 23 Okay, thank you everyone. Okay, just a little bit 24 more here.	Page 61 1 A. I mean, he even agreed with me, but he just 2 doesn't do a very good job. 3 Q. You mean -- Can you expand on that a little 4 bit? 5 A. As a witness, as I recall, again, it's been 6 quite some time, as I recall he was -- his testimony 7 wasn't given -- wasn't strong, it wasn't definite, it 8 didn't have credible points and some points were 9 incredible when compared to other -- other testimony. 10 I mean, there's just a lot -- there was a lot of 11 problems with his testimony. 12 Q. Okay. Do you recall the circumstances that 13 Paul described as to why he came to the McGuires'? 14 A. I think he was either going to pick up 15 something or drop something off. 16 Q. Okay. 17 A. I don't really recall. I'm just thinking 18 back now. 19 Q. Okay. Do you recall whether he was asked to 20 come over to help with the tree, to help take down 21 the tree? Was that the purpose of his visit? 22 A. I don't recall that. 23 Q. Would it matter as for liability whether it 24 was or wasn't?

Page 62	Page 64
1 A. As by who? As to whose liability? 2 Q. I'm sorry, his and McGuire's liability. 3 A. As to how he got there? 4 Q. Whether he was -- whether he was invited for 5 the purpose of assisting with the removal of the 6 tree. 7 MR. FLYNN: Object to the form. Just 8 invited by whom? 9 THE WITNESS: Yeah, that's a complicated 10 question, but I don't think -- 11 BY MS. WILLIAMS: 12 Q. Let me clarify if I can. Okay. So my 13 question was does it matter if the McGuire's invited 14 Paul to their residence to remove the tree on that -- 15 on the June -- roughly June, I believe, 2011 date? 16 MR. FLYNN: Object to the hypothetical. 17 THE WITNESS: I don't think it matters. 18 BY MS. WILLIAMS: 19 Q. Okay. Would it matter if they were paying 20 Paul? 21 A. That's not the issue. The issue is Dave. 22 Q. Okay. So the relationship between the 23 McGuire's and Paul is somewhat irrelevant? 24 A. I'm just saying the issue really that --	1 Paul to file for bankruptcy? 2 A. Would not. 3 Q. Okay. And then sometime after the McGuire 4 settlement but before the -- but while the Gagnon -- 5 the claims against David Gagnon were still pending 6 you withdrew from the case; is that correct? 7 A. The law firm did. I -- Again, he hired the 8 law firm. 9 Q. Sure. Sure. I'm sorry. The Popovich firm 10 withdrew? 11 A. Right. 12 Q. And I -- Let's see -- I think we're on 13 Exhibit 14. 14 THE REPORTER: 15. 15 MS. WILLIAMS: 15, okay. 16 Q. I have, I think, one more and then -- Okay, 17 I am uploading Exhibit 15, Dulberg Mast Dep 18 Exhibit 15. It's a motion to withdraw and it's four 19 pages and on the first page it has a Dulberg versus 20 Gagnon case caption and file stamped March 13, 2015. 21 Do you have that document? 22 A. Yeah. 23 Q. And this is the Popovich's firm motion to 24 withdraw as counsel for Paul Dulberg in the Dulberg
Page 63	Page 65
1 about liability is Dave's relationship with them. 2 Q. Because Dave is the one that controlled the 3 chain saw that injured Paul, is that accurate? 4 A. He was the one hired to do the work or asked 5 to do the work, however, whatever that background 6 was. 7 Q. And Caroline and William McGuire both 8 testified that they had never used a chain saw; is 9 that correct? 10 A. I think that's accurate. I'd have to 11 refresh my memory, but that sounds right. 12 Q. Okay. Do you remember discussing bankruptcy 13 with Paul? 14 A. I don't remember that. 15 Q. Do you remember that Paul filed for 16 bankruptcy? Do you recall that? 17 A. I saw a -- Maybe I didn't see one. I 18 remember there was some sort of bankruptcy matter. I 19 don't know the dates or when it came up. 20 Q. Okay. Do you recall if you advised Paul to 21 file for bankruptcy? 22 A. I don't advise people to file for 23 bankruptcy. 24 Q. All right. So you would not have advised	1 versus Gagnon-McGuire case, correct? 2 A. Yes. 3 Q. And you drafted or caused this motion to be 4 drafted and filed? 5 A. Yes. 6 Q. And was it granted that same day it was 7 filed? 8 A. I'm sure it had to be noticed up. 9 Q. Okay. On the notice of motion it looks like 10 it was noticed for March 13, filed on March 13, but 11 sent to the service list on March 5th, does that seem 12 accurate? 13 A. That's what it says. 14 Q. But at any rate, you withdrew sometime in 15 roughly March of 2015? 16 A. It appears that way. Again, I don't have an 17 independent recollection of the date. 18 Q. Okay. Okay. That's fine. And I didn't see 19 it -- an order actually showing the exact date of 20 when you withdrew. Can you explain why you withdrew 21 from the case? 22 A. The short version is just we had a 23 difference of opinion. 24 Q. Can you give me the long version or slightly

Page 66 1 longer? 2 A. Well, we have difference of opinion but Paul 3 was a bit difficult, so I just had to -- there were a 4 couple times that I told him I was going to withdraw 5 and then he begged me not to and so I didn't, but 6 then ultimately he -- it got pretty -- it got pretty 7 tough. He was saying some unfavorable, unflattering 8 things and I just decided we're not going to get 9 anywhere, I'm going to move on. 10 Q. Okay, so you -- the client relationship 11 broke down and you withdrew? 12 A. Yes. 13 Q. Okay. Was there anything about Gagnon's 14 liability or your thoughts on his liability that 15 would have caused you to withdraw? 16 A. That was another aspect of it. Paul was 17 looking for the stars and the moon and I didn't see 18 it. 19 Q. And when you say Paul was looking for the 20 stars and the moon, you mean -- Well, what do you 21 mean by that? 22 A. He was looking for a lot of money. 23 Q. Okay, and what was your opinion as to David 24 Gagnon's liability in the case?	Page 68 1 A. Anything other than what? Pretty much 2 everything was not good. 3 Q. Okay. I mean, anything that we haven't 4 really discussed here today. We've talked about 5 Paul's testimony, Gagnon's testimony a little bit, 6 the McGuires, the premises liability. We talked -- 7 You mentioned the doctors' depositions. Is that sort 8 of the general gamut of it? 9 A. That's the whole case. 10 Q. Okay. Have you ever had any other chain saw 11 liability cases other than this particular case? 12 A. I'm sure I have. I don't -- If you're going 13 to ask me to name a date, I don't know. I mean, it's 14 not a common issue, but it comes up from time to 15 time. 16 Q. Okay. Did you state -- Did you seek out a 17 liability expert, a chain saw liability expert, 18 during the time you were representing Paul? 19 A. No. 20 Q. Is there a reason for that? 21 A. That's always a possibility. It's always a 22 consideration, but I had to consider even more 23 whether we could even get to prove a credible case 24 and that was my first object, my first -- my first
Page 67 1 A. I didn't think much of the liability issue. 2 I thought it was going to be a long, tough haul given 3 that -- 4 Q. And -- 5 A. -- Paul was going to be our only witness on 6 our side pretty much. 7 Q. Okay, and there were no other witnesses 8 other than Paul and David; is that correct? 9 A. Correct. 10 Q. And what about -- Anything related to, like, 11 the actual injury, the doctors' depositions or 12 anything like that? 13 A. That all -- It was the whole ball of wax. 14 The doctors weren't supporting his claim. Dave was 15 saying he's a liar, he tried to bribe him. There was 16 just a lot of -- a lot of bad stuff, not enough good 17 stuff. 18 Q. Okay, and then at that point you and Paul 19 disagreed and Paul retained alternative counsel? 20 A. Right. 21 Q. Okay. Was there anything else about the 22 case that you can recall right now that gave you 23 pause as to the liability either to the McGuires or 24 David Gagnon?	Page 69 1 tier. It doesn't do any good to hire an expert if 2 you don't have a good case. 3 Q. Okay. Okay. If you were going to take the 4 case to trial, at that point would you have hired an 5 expert, chain saw expert? 6 A. For this case, I don't know. I'd have to 7 look at it again and see what we need to prove, what 8 they're arguing. There's -- As I recall, they 9 weren't arguing the chain saw -- They weren't 10 arguing. He didn't get hit with the chain saw. So 11 I'm not real sure. I'd have to think whether we need 12 to prove -- what we need to prove, anything more than 13 that. 14 Q. Okay. 15 A. It was more what happened, who caused it to 16 happen, not that it happened. 17 Q. Okay. Is there a difference between an 18 independent contractor and an employee? 19 A. In terms of what? In terms of duty or what? 20 Q. Right. In terms of the supervisor's duty. 21 So if the Gagnons -- If Gagnon was, and this is a 22 hypothetical, if Gagnon was an employee of his 23 parents as opposed to an independent contractor, 24 would there be a liability difference?

Page 70 1 MR. FLYNN: Object to the hypothetical. 2 It's inaccurate and incomplete. 3 THE WITNESS: That's a very complicated 4 question, even though it doesn't sound like one. It 5 depends on lots of things. 6 BY MS. WILLIAMS: 7 Q. Okay. We've already talked about an 8 independent contractor. So just in your experience 9 and knowledge, what is a supervisor's duty as to an 10 employee? That's actually a really terrible 11 question. Let's strike that question. 12 Is there a difference -- Is there a 13 difference between the control aspect of -- Would 14 an -- Let me start again. This is a complicated 15 question, more complicated than I'm anticipating 16 right now. Okay. 17 We've generally established that in order 18 for an -- someone who hires an independent contractor 19 to be liable for the actions of that independent 20 contractor, they would have to control the work. In 21 a situation, an employer-employee situation, is that 22 control element also present when considering 23 liability? Does the employer have to control the 24 work of the employee in the same way?	Page 72 1 Q. And there are -- 2 A. Go ahead. 3 Q. So there would be different elements if 4 something was an employer-employee situation, that 5 would be different law, different case law? 6 A. Yeah, there's a different cause of action. 7 Q. Okay. 8 A. Different elements potentially have to be 9 pled and proved. 10 Q. Okay. But in this case you were trying to 11 prove -- In Dulberg's case against the McGuires and 12 Gagnon you were trying to show that -- The theory of 13 the case was that Gagnon was not an employee, but an 14 independent contractor, and the McGuires had to 15 control him in order to be liable? 16 A. Well, that's ultimately what it appeared. 17 You followed the evidence, you follow the facts, so 18 if it turned out it was employee-employer-employee 19 relationship, that's a different evaluation. 20 Q. Okay. So but, for the most part, you 21 were -- your evaluations of the liability were based 22 on an independent contractor analysis? 23 A. Well, that's where it went because of the 24 evidence.
Page 71 1 A. I think there are -- 2 MR. FLYNN: I just want to raise an 3 objection for the record. I object to the form. I 4 think that the premise of the question indicated that 5 we already established some legal precedent. I don't 6 think that's the case. I don't think that he's 7 testified to that, so, again, I'll just object to the 8 form. But if you can -- 9 THE WITNESS: You're asking me to compare 10 two different theories without a fact pattern, but 11 there's a lot to each issue and it's hard to just 12 say, well, if you have this, then you have that. 13 There's a lot of different facts that apply, but now 14 I'm forgetting what you asked initially about the 15 employer-employee question. 16 BY MS. WILLIAMS: 17 Q. So I guess my question to the point of is an 18 employer liable for their employees in a different 19 way than a homeowner would be liable for an 20 independent contractor? 21 A. I think -- 22 Q. Based on -- You go ahead. 23 A. I think under the law there are different 24 elements to those actions.	Page 73 1 MS. WILLIAMS: Okay. I'm going to go on 2 mute for just a second so you guys don't hear me 3 shuffling papers, but I think I'm almost finished 4 here or may be finished. 5 MR. FLYNN: Okay. 6 BY MS. WILLIAMS: 7 Q. Okay. Just a couple more questions and then 8 we'll wrap things up here. When did you first advise 9 Paul that you didn't think the claims against Gagnon 10 were going to be very strong? 11 A. Probably day one. 12 Q. Before the settlement with the McGuires? 13 A. Yeah. 14 Q. And did you discuss that several times prior 15 to that McGuire settlement? 16 A. Like I said, we discussed those issues every 17 time we'd meet, liability issues, damages issues. 18 Q. Do you recall any particular instances, like 19 maybe after Paul's deposition, after David's 20 deposition, did that stick out in your mind at all? 21 A. Discussing what, the issues of liability 22 against Gagnon? 23 Q. Yes. 24 A. Those are probably something we talked about

Page 74 1 every visit. 2 Q. Okay. So we discussed this a little bit 3 before, but I believe the testimony was that the 4 McGuires testified that they purchased the chain saw 5 and I believe you said yes, that was your 6 recollection as well; is that correct? 7 A. That sounds right. I just don't have an 8 independent recollection at this point. 9 Q. Okay. If the McGuires -- Let's assume 10 that -- Just for the purposes of this, let's assume 11 that the McGuires did -- it was their chain saw, they 12 purchased it and let Gagnon use it on their property. 13 Would they have any duties to share the manual of 14 that chain saw with Gagnon or provide any other 15 education as to the use of the chain saw to Gagnon? 16 A. All right, so you're asking me to make a 17 judicial decision whether they had a duty or not? 18 Q. No, I'm asking you in your experience with 19 these types of cases is there any duty there for 20 them. 21 A. All right, so a legal duty? 22 Q. Right. Right. And -- Go ahead, George. 23 MR. FLYNN: Yeah, I'll just object. I mean, 24 there isn't any evidence that Gagnon asked for a	Page 76 1 operate it effectively yourself safely. 2 Q. Sure. Okay. And -- 3 A. So I mean -- 4 Q. Okay. But today you're not giving an 5 opinion one way or the other whether they had a duty 6 to provide warnings, whether they had a duty to 7 provide the manual, fair enough? 8 A. Yeah, legal wise, no, I'm not giving you a 9 legal opinion on that. 10 MS. WILLIAMS: Okay. Okay, I don't think I 11 have anything further. 12 MR. FLYNN: I actually have just a few 13 follow-ups to that. 14 MS. WILLIAMS: Sure. 15 EXAMINATION 16 BY MR. FLYNN: 17 Q. Hans, is your understanding based on the 18 evidence that there were only two eyewitnesses to 19 Mr. Dulberg's accident, correct? 20 A. Correct. 21 Q. That was Mr. Dulberg himself and David 22 Gagnon? 23 A. Correct. 24 Q. And did you have an understanding as to how
Page 75 1 manual, for one, but as far as him providing legal 2 opinions not based on the facts of this case, I'm 3 just going to caution him not to provide what could 4 be considered an expert opinion. 5 THE WITNESS: You don't want me to answer? 6 MR. FLYNN: It's up to you. I don't know if 7 you can. 8 THE WITNESS: I don't remember the question. 9 You're asking me should the McGuires have given 10 Gagnon the manual to the chain saw? 11 BY MS. WILLIAMS: 12 Q. Yes. 13 A. Sure, if he asked for it or if they wanted 14 to give it to him. 15 Q. Are there any other warnings that they 16 should have provided? 17 A. See, I mean, you're asking me to -- I get 18 the question, but I'm saying you're asking me to 19 evaluate the conduct of both parties and interpret 20 something and I don't know that that's my position as 21 a witness, but should they have warned him? You 22 know, sure, go ahead and warn him, but obviously when 23 you take on a piece of equipment that you're skilled 24 and experienced in operating, you should be able to	Page 77 1 the evidence and testimony shook out as to each 2 gentleman's version of the accident and how it 3 occurred? 4 A. Well, as I said before, I thought Paul's 5 case was going to be very difficult to prove based on 6 the testimony of everybody, credibility issues, and 7 the lack of evidence to support and prove. 8 Q. David Gagnon's testimony regarding the facts 9 surrounding the accident differed from Paul Dulberg's 10 version of the facts, correct? 11 A. Correct. 12 Q. You took that into account in your 13 evaluation and analysis of the case? 14 A. Definitely. 15 Q. Did you also take into account your 16 professional analysis of Paul Dulberg's performance 17 as a witness at his discovery deposition? 18 A. Definitely. 19 Q. You didn't think he made a very good witness 20 for himself, did he? 21 A. He even admits he didn't and I don't think 22 he -- I think -- that was one of the worst -- that 23 was one of my worst fears with this case. I had lots 24 of cases and on a scale of weak witnesses, he's

Page 78 1 probably up at the top, and I'm not putting him down, 2 that's just a reality and I think he even 3 acknowledged that reality. 4 Q. Okay. Not everyone is a professional 5 witness? 6 A. Right. 7 Q. Okay. Generally speaking, your evaluation 8 of the case hinged in part on whether the McGuires 9 controlled the manner and method of the use of the 10 chain saw, correct? 11 A. Right. 12 Q. Do you have any recollection as to what the 13 McGuires were doing while the work was being done? 14 A. They were inside the house, just another day 15 to them. They weren't even -- I don't think even 16 paying attention to what was going on outside. 17 Q. Did Mr. McGuire testify that he was watching 18 television inside the house while David was working 19 on the tree? 20 A. They were both inside as I recall. 21 Q. Your recommendation or suggestion that 22 Mr. Dulberg settle the case for \$5,000 was based on 23 your analysis of the entire case, including the risks 24 and benefits of going forward and potentially losing	Page 80 1 THE WITNESS: I'll waive signature. 2 MS. WILLIAMS: We'll order the original, 3 E-tran. 4 MR. FLYNN: I'll take a regular and a mini 5 copy. 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24
Page 79 1 the case at trial, correct? 2 A. Yes. 3 Q. Did you have any way to predict whether the 4 case would result in a verdict on behalf of the 5 plaintiff in the case against the McGuires? 6 A. I'm sorry? 7 Q. Did you have any -- Did you have any 8 certainty as to whether Mr. Dulberg could prevail at 9 trial on liability against the McGuires? 10 A. I would have staked a lot that we would not 11 have recovered in the case and just something that 12 didn't come up with the direct is they didn't offer 13 the arbitrator to me. That was something that was 14 later decided. I talked to them about that. They 15 did not offer that to me, so that was not an option 16 to me. 17 Q. So you were -- Based on your professional 18 judgment, you suggested that you attempt to settle 19 the matter as opposed to taking it to trial versus 20 the McGuires, correct? 21 A. Right. 22 MR. FLYNN: Okay. That's all I have. 23 MS. WILLIAMS: I have no follow-up. 24 THE REPORTER: Signature?	Page 81 1 DECLARATION UNDER PENALTY OF PERJURY 2 3 I, HANS MAST, do hereby certify under 4 penalty of perjury that I have read the foregoing 5 transcript of my deposition taken on June 25, 2020; 6 that I have made such corrections as appear noted 7 herein in ink, initialed by me; that my testimony as 8 contained herein, as corrected, is true and correct. 9 Dated this ____ day of _____, 10 20__, at _____, Illinois. 11 12 13 14 _____ 15 HANS MAST 16 17 18 19 20 21 22 23 24

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)
3

4 I, Barbara G. Smith, Certified Shorthand
5 Reporter and Notary Public in and for the County of
6 Cook, State of Illinois, do hereby certify that on
7 the 25th of June, A.D., 2020, the deposition of the
8 witness, HANS MAST, called by the Defendants, was
9 taken remotely before me, reported stenographically
10 and was thereafter reduced to typewriting through
11 computer-aided transcription.

12 The said witness, HANS MAST, was first duly
13 sworn to tell the truth, the whole truth, and nothing
14 but the truth, and was then examined upon oral
15 interrogatories.

16 I further certify that the foregoing is a
17 true, accurate and complete record of the questions
18 asked of and answers made by the said witness, at the
19 time and place hereinabove referred to.

20 The signature of the witness was waived by
21 agreement.

22 The undersigned is not interested in the
23 within case, nor of kin or counsel to any of the
24 parties.

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1 Witness my official signature and seal as
2 Notary Public, in and for Cook County, Illinois on
3 this 7th day of July, A.D., 2020.
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5
6 

8 Barbara G. Smith, CSR, RPR
9 Notary Public

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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

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

The remote videoconference deposition of HANS MAST, appearing remotely from McHenry County, Illinois, called by the Plaintiff for examination, pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of Illinois, and the Rules of the Supreme Court thereof, pertaining to the taking of depositions, for the purpose of discovery, taken before Barbara G. Smith, appearing remotely from Will County, Illinois, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, commencing at the hour of 10:00 a.m. on the 25th day of June, A.D., 2020.

STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,
-vs-
THE LAW OFFICES OF THOMAS
POPOVICH and HANS MAST,
Defendants.

The remote videoconference deposition of HANS MAST, appearing remotely from McHenry County, Illinois, called by the Plaintiff for examination, pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of Illinois, and the Rules of the Supreme Court thereof, pertaining to the taking of depositions, for the purpose of discovery, taken before Barbara G. Smith, appearing remotely from Will County, Illinois, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, commencing at the hour of 10:00 a.m. on the 25th day of June, A.D., 2020.

Page 2 1 REMOTE APPEARANCES: 2 THE CLINTON LAW FIRM, By 3 MS. JULIA C. WILLIAMS 4 111 West Washington Street, Suite 1437 5 Chicago, Illinois 60602 6 (312) 357-1515 7 (312) 201-0737 (Facsimile) 8 juliawilliams@clintonlaw.net 9 On behalf of the Plaintiff; 10 11 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, By 12 MR. GEORGE FLYNN 13 150 South Wacker Drive, Suite 1700 14 Chicago, Illinois 60606 15 (312) 431-3622 16 (312) 431-3670 (Facsimile) 17 gflynn@karballaw.com 18 19 On behalf of the Defendants. 20 21 ALSO PRESENT: Mr. Paul Dulberg 22 23 24	Page 4 1 THE REPORTER: The attorneys participating 2 in this deposition acknowledge that I am not 3 physically present in the deposition room and that I 4 will be reporting this deposition remotely. They 5 further acknowledge that, in lieu of an oath 6 administered in person, the witness will verbally 7 declare his testimony in this matter is under penalty 8 of perjury. The parties and their counsel consent to 9 this arrangement and waive any objections to this 10 manner of reporting. Please indicate your agreement 11 by stating your name and your agreement on the 12 record. 13 MS. WILLIAMS: Julia Williams. I agree. 14 MR. FLYNN: George Flynn. I agree. 15 THE REPORTER: Will the witness kindly 16 present his government-issued identification by 17 holding it up to the camera for verification? 18 (Witness presents 19 government-issued identification 20 and identity is verified.) 21 THE REPORTER: Thank you. 22 HANS MAST, 23 called as a witness herein, having been first duly 24 sworn, was examined and testified as follows:																														
Page 3 1 I N D E X 2 3 WITNESS EXAMINATION 4 5 HANS MAST 6 By Ms. Williams 5 7 By Mr. Flynn 76 8 9 E X H I B I T S 10 11 HANS MAST 12 DEPOSITION EXHIBIT MARKED FOR ID 13 <table><tr><td>No. 1</td><td>16</td></tr><tr><td>No. 2</td><td>17</td></tr><tr><td>No. 3</td><td>18</td></tr><tr><td>No. 4</td><td>26</td></tr><tr><td>No. 5</td><td>28</td></tr><tr><td>No. 6</td><td>32</td></tr><tr><td>No. 7</td><td>35</td></tr><tr><td>No. 8</td><td>36</td></tr><tr><td>No. 9</td><td>40</td></tr><tr><td>No. 10</td><td>46</td></tr><tr><td>No. 11</td><td>48</td></tr><tr><td>No. 12</td><td>49</td></tr><tr><td>No. 13</td><td>53</td></tr><tr><td>No. 14</td><td>55</td></tr><tr><td>No. 15</td><td>64</td></tr></table> 21 22 (All exhibits provided electronically 23 to the reporter.) 24	No. 1	16	No. 2	17	No. 3	18	No. 4	26	No. 5	28	No. 6	32	No. 7	35	No. 8	36	No. 9	40	No. 10	46	No. 11	48	No. 12	49	No. 13	53	No. 14	55	No. 15	64	Page 5 1 EXAMINATION 2 BY MS. WILLIAMS: 3 MS. WILLIAMS: Okay, so this is the 4 discovery deposition of Hans Mast taken pursuant to 5 all applicable rules and notice in the case of 6 Dulberg versus The Law Offices of Thomas Popovich, 7 et al. This deposition is being taken for the 8 purposes of discovery. 9 Q. Hans, can you state your name for the 10 record, please? 11 A. Hans Mast. 12 Q. Have you had your deposition taken before? 13 A. Yes. 14 Q. And how many times? 15 A. I think two. 16 Q. And for what purpose? 17 A. Long, long time ago I think there was a 18 malpractice case I was a witness on and a legal -- a 19 medical malpractice case that turned into a legal 20 malpractice case, not against me but against the 21 office I was with. 22 Q. Okay. So you weren't named in the 23 lawsuit as a defendant? 24 A. I might have been named. I might have been
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Page 6 1 named, but I was somebody that appeared on a motion. 2 I think I got out eventually. 3 Q. Okay, and then -- And then -- Sorry. And 4 then you said you think twice, so do you know 5 approximately what year that medical malpractice case 6 that turned into a legal malpractice case, do you 7 know roughly what year that was? 8 A. '94 or something. 9 Q. Okay, and then the second time, what would 10 have that been? 11 A. It's not coming to me. It was another legal 12 case. I don't remember the details. 13 Q. Okay -- 14 A. There -- Go ahead. 15 Q. More than 10 years? I'm sorry, I didn't 16 mean to interrupt you. 17 A. Yes. 18 Q. We can go over the -- I'm going to try not 19 to interrupt you, you're going to try not to 20 interrupt me. You've taken depositions before, I'm 21 sure we can get into that and appreciate you 22 answering orally, all of those typical things that 23 apply, and I'll try not to interrupt you too much. 24 Have you ever -- Other than the one time you just	Page 8 1 Q. Hundreds? 2 A. Probably. 3 Q. Oh, I'm sorry, I forgot to do this, but I 4 think we saw your room. It's just you and George 5 Flynn in the room with you, correct? 6 A. Yes. 7 Q. And there's no one else in the room and if 8 there were, you would identify them, correct? 9 A. Yes. 10 Q. And you don't have any devices or anything 11 with you? You're not communicating with anyone 12 during this deposition other than the attorney in the 13 room with you, correct? 14 A. And you and who else is on this meeting. 15 Q. Okay. I'm sorry, let me rephrase. Is there 16 anyone that I don't know that you are communicating 17 with that I wouldn't know? 18 A. Not that I'm aware of. 19 Q. Okay. If you take any notes or otherwise 20 communicate with people during the deposition, we 21 just ask that those notes be produced. Okay. Did 22 you do anything to prepare for the deposition today? 23 A. Well, I just saw some exhibits you sent 24 George. I didn't really prepare them. I looked them
Page 7 1 identified, have you ever been sued other than this 2 suit for legal malpractice? 3 A. No. 4 Q. Do you recall any other details about that 5 medical malpractice lawsuit that turned into a legal 6 malpractice suit? Do you know what the basis of the 7 suit was? 8 A. It was a medical malpractice case that I 9 think lost on a summary judgment motion and they 10 were -- the client was suing the office and I think I 11 got involved in it because I was on a motion. 12 Q. Were you the one that drafted the summary 13 judgment motion? 14 A. I don't think so. I don't really remember 15 clearly back then, but I don't think I did. 16 Q. Okay. 17 A. I think I argued -- I might have argued it. 18 I don't remember. 19 Q. Okay. Have you -- Have you taken 20 depositions before? 21 A. Yes. 22 Q. Roughly how many depositions do you think 23 you've taken in your legal career? 24 A. Lots. Lots.	Page 9 1 over briefly. 2 Q. Did you review any of the other files that 3 have been produced in this case? 4 A. No. 5 Q. Did you review any notes? 6 A. No. 7 Q. Any other documents? 8 A. No. 9 Q. Did you meet with anyone -- 10 A. Other than George? 11 Q. -- to prepare? Other than George. 12 A. No. 13 Q. And you did meet with George, I'm 14 assuming. I don't want to know the contents of that 15 meeting, but you met with George to prepare? 16 A. Not very long. 17 Q. Okay. Did you talk to anyone else about 18 today's deposition prior to the deposition today? 19 A. No. 20 Q. Where did you go to law school? 21 A. Kent. 22 Q. And what year did you graduate? 23 A. '91. 24 Q. And were you admitted to practice in

Page 10	Page 12
1 Illinois that same year? 2 A. Yes. 3 Q. And have you -- Are you admitted to practice 4 anywhere else? 5 A. No. 6 Q. Have you ever been reprimanded or 7 disciplined by any courts? 8 A. No. 9 Q. Have you ever been publicly reprimanded or 10 disciplined by any oversight body, such as the ARDC? 11 A. No. 12 Q. When did you start practicing? 13 A. '91. 14 Q. And where did you start? 15 A. In Rockford. 16 Q. With a firm? 17 A. Yeah, Cacciatore. 18 Q. And how long were you there? 19 A. About a year and a half. 20 Q. And what kind of work did you do there? 21 A. Personal injury, plaintiff. 22 Q. Have you done personal injury your entire 23 career? 24 A. No, I did some defense work.	1 A. I think a couple years. Maybe a little more 2 than that. 3 Q. And what kind of work did you do at Kemper? 4 A. Defense. 5 Q. Defense of what type of cases? 6 A. Lots of different kinds, auto accidents, 7 premises. 8 Q. Mostly torts though, negligence-type cases? 9 A. Yes. 10 Q. And then after Kemper? 11 A. I think Popovich was next. 12 Q. And how long were you with the Popovich 13 firm? 14 A. About 18 years, I think. 15 Q. And do you know what year you -- roughly 16 what year you joined Popovich? 17 A. 2001 maybe. 18 Q. And you were there for roughly 18 years you 19 think? 20 A. Yes. 21 Q. So you left maybe just last year? 22 A. In '18. 23 Q. 2018? 24 A. Yeah.
Page 11	Page 13
1 Q. Okay. So you were at Cacciatore for a year 2 and a half and you were doing plaintiff's personal 3 injury work. What did you do after that? 4 A. I went to the Loggans firm in Chicago for 5 about 6 months. 6 Q. And what did you do there? 7 A. Plaintiff's. 8 Q. PI again, personal injury? 9 A. Yeah. 10 Q. And after that? 11 A. Judge and James in Park Ridge. 12 Q. And how long were you there? 13 A. 7 years, I think. 14 Q. Did you do plaintiff's personal injury there 15 as well? 16 A. No, that was defense. 17 Q. What kind of defense work? 18 A. Lots -- All kinds, municipal, tort. 19 Q. Did you defend personal injury cases while 20 you were there as well? 21 A. Yes. 22 Q. And then after that, where did you go? 23 A. Kemper, I think. 24 Q. And how long were you with Kemper?	1 Q. And why did you leave Popovich? 2 A. To start on my own. 3 Q. And where are you now? 4 A. With Compton Law Group. 5 Q. I'll give you just a second to come back. 6 A. Yeah. 7 Q. And what types of -- I'm sorry, I'm going to 8 go back to the Popovich firm. What kind of cases did 9 you handle at Popovich's firm? 10 A. Plaintiff's personal injury, all kinds. 11 Q. And then at Compton, what kind of work do 12 you do? 13 A. Same thing, same kind of cases, plaintiff's 14 personal injury. 15 Q. So is it fair to say you've been doing 16 plaintiff's personal injury cases steadily throughout 17 your career? 18 A. Yeah, except for the time I was with the 19 defense offices. 20 Q. Okay. But you were still doing personal 21 injury, just on the defense side, not on the 22 plaintiff side? 23 A. Right. 24 Q. Okay. Did you answer discovery in this

Page 14 1 case, in the malpractice case that we're -- the 2 Dulberg versus Thomas Popovich case? 3 A. I think I did. 4 Q. Do you remember -- Did you review discovery 5 in this case, do you recall? 6 A. Like I said, I think I answered some and 7 signed off on some, I just don't remember. I haven't 8 seen them recently. 9 Q. Okay. Okay. If you recall, do you remember 10 reviewing the documents that were produced in this 11 case? 12 A. I don't know what was produced. 13 Q. Okay. 14 A. I assume the file. 15 Q. Right. Okay, if I represented that the file 16 was produced, would that make sense to you? Can we 17 kind of agree that the file was produced? 18 A. Well, if you told me that. 19 Q. Okay. So when the file was produced, I 20 don't know if you recall, there were black -- some 21 black pages between the file. Do you remember any 22 discussions about that? 23 A. I didn't produce anything so and I haven't 24 reviewed what was produced, that wasn't my -- I was	Page 16 1 case? 2 A. Not that I'm aware of. Unless I produced it 3 to Popovich and he produced it. I don't know how 4 that worked. 5 Q. Okay. When were you retained by Paul 6 Dulberg? 7 A. I don't recall. I'm assuming there's 8 paperwork that shows that. 9 Q. Yes. Let me upload a file here. Just give 10 me a second. 11 A. I don't think he retained me. I think he 12 retained Tom Popovich's office. 13 Q. Okay. I just uploaded a file that's titled 14 Dulberg Mast Dep Exhibit 1, if you can -- And, 15 George, you should have that as well -- and it should 16 be the retainer contract. 17 A. Yeah, I see it. 18 Q. Okay. So it's a contract for legal services 19 and it's marked POP, P O P, 000586 on the bottom, 20 just for reference, so this will be the first exhibit 21 in this deposition. Do you recognize this document? 22 A. I recognize what it looks like, yeah. 23 Q. Yeah, and it's the contract for legal 24 services and it's undated, it looks like.
Page 15 1 in a different office when it was produced, I think. 2 Q. Okay. So Thomas Popovich would have had 3 possession of the file? 4 A. Right. 5 Q. You did not have possession of any documents 6 from the underlying case, from the Dulberg versus 7 Gagnon-McGuire case? 8 A. I didn't. 9 Q. Okay. So you would not have had access to 10 that file since you were with Thomas Popovich in 11 2018? 12 A. Once I left the firm, I have not had the 13 file. 14 Q. Okay. In this case did you produce emails 15 that you possessed or did you not have access to 16 those either? 17 A. I would -- I don't know what was produced, 18 again, by the Popovich firm. I don't know if they 19 had my emails, but I have a new email address. I 20 don't think it's the same as it was back then. 21 Q. Okay. 22 A. So I didn't produce anything. 23 Q. So you didn't produce any emails or 24 communications that -- in the -- from the underlying	Page 17 1 A. That's what it looks like. 2 Q. Okay. I'm going to upload another exhibit. 3 So I'm uploading Exhibit 2, it's titled Dulberg Mast 4 Dep Exhibit 2, and this should be the original 5 complaint filed in the case of Dulberg versus Gagnon, 6 et al., 12 LA 178, filed in McHenry County. Do you 7 see that document? 8 A. Yeah. What I'm going off are an email I got 9 with all the exhibits attached, so I'm not -- that's 10 what I'm looking at. 11 Q. Okay. 12 A. It's a complaint and it says Exhibit 2. 13 Q. Right, okay. So our numbers may be a little 14 off, but the description should be correct. In that 15 complaint shows file stamp May 15, 2012? 16 A. Yeah, that's what it says. 17 Q. Okay, and so Mr. Dulberg would have hired 18 you sometime -- hired the Popovich firm sometime 19 prior to that, correct? 20 A. I'm assuming. I -- 21 Q. Okay. Do you have any idea? 22 A. I'm sorry. 23 Q. I'm sorry, I didn't mean to interrupt you. 24 Go ahead.

Page 18 1 A. Go ahead. 2 Q. Do you have any idea about -- Do you have 3 any idea about what timeframe he would have hired -- 4 retained you? 5 A. I really, again, I don't have an independent 6 recollection of it. I think there's probably a memo 7 out there of me meeting with him, too. 8 Q. Okay. Actually, I think there is. Okay, I 9 just uploaded Dulberg Mast Dep Exhibit No. 3 and the 10 top says -- it's titled, "Intake Memo." At the top 11 it says, "Memorandum," it's Popovich, it says 12 POP00961 and 000962. Do you recognize this document? 13 A. I -- It looks familiar. 14 Q. And it indicates that it's from you, so you 15 would have drafted this document, correct? 16 A. I would have dictated it, yeah. 17 Q. Okay, and it looks like you had a new client 18 meeting with Paul on December 1st of 2011? 19 A. That's what it says. 20 Q. Okay. Does that seem like that timeframe 21 would have been roughly correct? 22 A. I have no reason not to believe that's 23 accurate. 24 Q. Okay. So Paul retained you probably	Page 20 1 named as well. 2 Q. And what was the theory as to the McGuires? 3 A. I think Paul had said that they were the 4 ones that owned and looked over the work that was 5 being done. 6 Q. Okay. So if they owned the chain saw and 7 were overseeing the work, what's the legal theory for 8 liability on that? Why would they be liable? 9 A. Under case law potentially there's liable -- 10 liability for people that oversee and direct the 11 work. 12 Q. Okay, and is that a strict liability or is 13 it some other form of liability? 14 A. It would be negligence. 15 Q. So negligent oversight? 16 A. Potentially. 17 Q. Okay. Were there any other theories that 18 you were going to pursue or could be pursued? 19 A. Not that I recall. 20 Q. Okay. So a negligence claim against Gagnon 21 for negligently utilizing the chain saw and then a 22 negligence claim against McGuires for not -- for not 23 controlling his use of the chain saw, is that 24 accurate?
Page 19 1 sometime in December of 2011 and then you filed a 2 complaint around May 15, 2012? 3 A. That's what it appears. 4 Q. Okay. So can you just tell me what the case 5 against Mr. -- I'm sorry. Can you describe the case 6 between Paul Dulberg and David Gagnon, Caroline and 7 William McGuire? 8 A. What do you mean describe it? What it's 9 about? 10 Q. Yeah, basically what was it about? 11 A. An injury, a chain saw injury. 12 Q. Okay. Was there anything about the case 13 that was unique to you? 14 A. Other than it was a chain saw injury. 15 Q. Okay. What was your theory of that case? 16 What was your theory of liability in the case? 17 A. I think the -- Paul had claimed Dave struck 18 him with the chain saw. 19 Q. So was it just a negligence theory or was it 20 a strict liability or -- 21 A. I believe it was negligence, if I recall 22 correct. 23 Q. Negligence against Gagnon, David Gagnon? 24 A. Yeah, and I think the McGuires actually were	Page 21 1 A. I don't recall the exact allegations, but I 2 think in a general theme that was what we were going 3 to try to prove. 4 Q. Okay. In the intake memo, do you want to go 5 back to that? There are some notes on this exhibit 6 that state -- it looks to me like it says, "Hans BC 7 the accident occurred on their premises, their HO med 8 pay will cover the bills," and then it's signed. Do 9 you recognize that handwriting? 10 A. Yeah, that would be Tom. 11 Q. Okay, and what does that note mean? 12 A. Medical coverage, medical payments coverage. 13 Q. So there -- So the McGuires -- When he says 14 their, is he referring to Caroline and Bill McGuire? 15 A. Well, I don't know what he's referring to. 16 I think what he's -- Well, he circled their names, so 17 that probably indicates what he's referring to. 18 Q. Okay. Would their -- Would their insurance 19 cover medical bills in an instance like this? 20 A. Possibly. 21 Q. Okay. Did you reach out to their insurance 22 company about covering any medical bills? 23 A. I don't recall if that was applicable or I 24 don't know -- I don't recall that issue.

Page 22 1 Q. Okay. 2 A. Oh, uh, I think -- It just kicked me off. 3 MR. FLYNN: I got disconnected, too. It's 4 the Wi-Fi. 5 BY MS. WILLIAMS: 6 Q. Okay, we'll just wait a minute here. 7 A. I can hear you. I just can't see you. 8 Q. We'll wait a minute until you can get your 9 video back on. 10 MR. FLYNN: Julia, we think the Wi-Fi may 11 have dropped here in the office. 12 MS. WILLIAMS: Okay. Well, let's just give 13 it a minute and see. 14 MR. FLYNN: Okay. 15 (Whereupon, a break was taken, 16 after which the following 17 proceedings were had:) 18 MS. WILLIAMS: Okay. I think we're back on 19 the record. Barb, are you doing all right? 20 THE REPORTER: Yes. 21 BY MS. WILLIAMS: 22 Q. Okay. So we just went through the memo that 23 Tom made a note about insurance and your testimony 24 was that you don't recall whether you made any	Page 24 1 mean, that brings up a lot of issues. 2 Q. Okay. Let's -- Let me narrow it down a 3 little bit and try to get more to a point that will 4 be useful for our discussion. At some point, you had 5 recommended that Paul settle the case as to the 6 McGuires; is that correct? 7 A. Yeah. 8 Q. And what was the reasoning for settling the 9 case as to William and Bill McGuire? 10 A. Just risk, like you always discuss with any 11 settlement. 12 Q. Can you be a little more specific about what 13 type of risk? 14 A. Again, that's a long question but, I mean, 15 it's like any settlement, you're taking a risk if you 16 don't settle the case when you have issues that could 17 be problematic. 18 Q. Okay. When you say issues that can be 19 problematic, and I know it could be a very long 20 answer, but as much as you can, can you summarize 21 what you think those risks were? 22 A. Understanding it's a summary that, I mean, I 23 could probably answer that in a couple hours, but the 24 chance of recovery was in my view very slim if at all
Page 23 1 requests to the McGuires' insurance to pay Paul's 2 medical bills; is that correct? 3 A. I don't remember, right. 4 Q. Okay. Back to the actual claims made. Do 5 you remember -- Do you recall what the defense was 6 for first Gagnon and then Bill -- William and 7 Caroline McGuire? 8 A. What do you mean by defense? 9 Q. What was their theory of defense in the 10 case, do you recall? As you understood it. 11 A. I mean, that's a big question. I mean, 12 they, like every case, they were denying what we were 13 alleging. 14 Q. Were they denying the facts? Did they 15 dispute the facts of the case? 16 A. Definitely. 17 Q. Okay. Do you recall what they were alleging 18 as far as the facts that were different from what you 19 were alleging? 20 A. I mean, I can probably answer that for -- 21 with an hour -- an hour answer. There's a lot that 22 they were denying. There was a lot that, you know, I 23 mean, I'd have to -- I could look at their answer. I 24 could look at their deposition testimony, but, I	Page 25 1 because of lots of reasons, one, because of Paul's 2 testimony, Gagnon's testimony, the McGuires' 3 testimony. The evidence didn't seem to be something 4 that was going to allow us to prove the case against 5 the McGuires. 6 Q. Okay. What -- And, again, I understand this 7 is -- these are very long questions, but just in 8 summary, what were you going to need to prove the 9 case against the McGuires? 10 A. Now, again, understanding I would have to 11 put myself in my place where I was back at the time 12 that I fully evaluated this with Paul, but if I'm 13 just trying to come up with some thoughts now years 14 later the case law, I think, was against us. The 15 defense was going to file a motion for summary 16 judgment if we didn't work out some sort of 17 settlement that I felt they were going to win and the 18 testimony from all parties was not helpful to us. 19 Q. Okay. I'm going to move forward and then we 20 may come back to this a little bit. Do you recall 21 when the first time was that you talked to Paul about 22 settling the claims with the McGuires? 23 A. No, whenever -- You know, the defense 24 attorney would have reached out to me to ask for some

Page 26 1 sort of demand, I assume. 2 Q. Did you make a demand at some point? 3 A. I think -- I think some of your paperwork 4 showed that I did. 5 Q. Okay. I just uploaded Dulberg Mast 6 Exhibit 4 and it says letter -- it's "Letter Re 7 Settlement," and that should be -- still be Exhibit 4 8 that was emailed around to Counsel so that you would 9 have it. And it is labeled POP192 and POP193. Do 10 you recognize those documents? 11 A. Wait. I think the Internet, maybe because 12 we were having problems, is the Internet went down, 13 so now my exhibits aren't pulling up. Can you try it 14 again? Do you have that, George? 15 MR. FLYNN: Yeah, here's the hard copy. 16 THE WITNESS: I'll look at the hard copy, so 17 what are you asking? 18 BY MS. WILLIAMS: 19 Q. Great. So it should be the document it has 20 letterhead on the top, Popovich letterhead on the 21 top, and at the bottom it's POP000192 and 22 POP000193. 23 A. Right. 24 Q. Do you recognize those documents?	Page 28 1 know if this number is identified in those emails, 2 but, again, it would have been something I would have 3 talked to him about before making it. 4 Q. Okay. But at this time you don't know if 5 there are any memos, notes or emails memorializing 6 any conversation with Paul prior to sending the 7 October 22, 2013 demand? 8 A. Not that I recall. 9 Q. Okay, and if they did exist, they would be 10 in the possession of Thomas Popovich, correct? 11 A. I would think so. 12 Q. Okay, and if you had those in your 13 possession, you would produce them in discovery, 14 correct? 15 A. If I had them. 16 Q. Okay. Just uploaded Exhibit 5, and this is 17 email dated October 30, 2013, and it's marked at the 18 bottom POP000195. 19 A. Okay. 20 Q. Okay, and here in this email it looks like 21 you started this email chain to Paul on 22 October 25, 2013. Do you see that? 23 A. It looks like there's a couple emails here. 24 There's several pages. You just mean the first page?
Page 27 1 A. I mean, they look familiar. Documents from 2 the Popovich firm, if that's what you're asking. 3 Q. Is that your signature? 4 A. Yes. 5 Q. So you would have drafted or caused this 6 letter to be drafted and sent? 7 A. It appears that way, yeah. 8 Q. And this is a demand letter where you make a 9 demand of \$7,500; is that correct? 10 A. Yes. 11 Q. Do you recall making that demand? 12 A. No. 13 Q. Do you recall if you talked to Paul prior to 14 making the demand? 15 A. I'm sure I would have. 16 Q. Okay. Do you recall -- Do you have any 17 memos or notes regarding that conversation with Paul? 18 A. I don't personally. 19 Q. Okay. If there were memos and notes, would 20 they be in Thomas Popovich's file? 21 A. It should. 22 Q. Okay. Do you recall any emails about the 23 demand -- the 7,500 demand? 24 A. I know there were lots of emails. I don't	Page 29 1 Q. I think -- It should only be, I believe it's 2 only one page and it looks like -- 3 A. Oh, these aren't part of it? Just one page? 4 Q. The document that I have is just one page. 5 Are we looking at the same thing? 6 A. Okay. 7 Q. It's POP00195 on the bottom. 8 A. Yeah, he had a couple other pages on it, but 9 okay. 10 Q. Okay. I just want to make sure that I 11 didn't -- Okay. And on the bottom there of the first 12 sheet, if you have several, I've only published one 13 sheet for the purposes of this deposition, it states, 14 "Friday, October 25, 2013," do you see that? 15 A. Where does it say that? 16 Q. So about halfway down the page it looks like 17 it says, "Original message from Paul"? 18 A. Yeah. 19 Q. Okay. So that looks like Paul reached out 20 to you about medical deposition and then on the top 21 it appears to be your reply of October 30, 2013. 22 Does that seem like that's accurate? 23 A. That's what it shows. 24 Q. Okay. Okay. And here you first -- Am I

Page 30 1 correct in summarizing this is an email where you 2 talk to Paul about liability for Mr. Gagnon? 3 A. Look likes I did cover that issue. 4 Q. Okay, and do you recall at the time what 5 your purpose was behind this email? 6 A. I mean, every purpose is just to have open 7 communication. That's all the purpose -- 8 Q. Okay. Would you have been trying to explain 9 to Paul the liability issues in his case that you 10 described earlier? 11 A. Yeah, I definitely was discussing several 12 issues for him so he knows what's going on. 13 Q. Okay, and this email response is dated 14 October 30th, so that was after you sent that initial 15 letter. Do you recall whether there would have been 16 anything prior to this? 17 A. Whether what was prior to this? 18 Q. Would there have been any communications 19 about liability either to Gagnon or the McGuires 20 prior to the October 30, 2013 email? 21 A. Every time we talked, there were issues 22 about liability, I mean, for whatever I first -- he 23 first came to the office I recall he was lots of 24 questions and I gave him lots of answers as is	Page 32 1 deal with it if and when we get to that point. 2 Q. Okay. So the document that I'm looking at 3 now is another email on the -- it's now titled 4 Exhibit 6. I don't think it was entitled Exhibit 6 5 in what I sent to George, but it's an email that the 6 first date on the email is November 4, 2013, and the 7 last date on the email is November 5, 2013 email 8 chain and it's -- at the bottom it's stamped 9 Dulberg001531. 10 A. What exhibit is it? 11 Q. I think it might have been 5-A to George. 12 It's now Exhibit 6 for the purposes of this 13 deposition. 14 A. Yeah, that wasn't part of the download then. 15 Do you have -- 16 MR. FLYNN: Yeah, I don't think that was 17 included. 18 THE WITNESS: What's the Bates stamp or 19 what's the stamp? 20 MS. WILLIAMS: The Bates stamp is 21 Dulberg001531. 22 THE WITNESS: Yeah, I don't recall -- 23 MR. FLYNN: I don't recall seeing a 5-A on 24 the download. I think it just went straight from
Page 31 1 reflected in my emails. 2 Q. Okay. Did you meet with Paul after you sent 3 that October 22nd demand letter? 4 A. Did I meet with him? 5 Q. Yes. In person. 6 A. I'm sure I did. 7 Q. Okay. Do you recall -- Do you recall 8 meeting -- the dates of those meetings? 9 A. No, I don't recall the dates. 10 Q. Okay. So I'm going to upload another file 11 here. 12 A. Yeah, our Internet is down. That's why I 13 can't bring these up. 14 Q. Okay. 15 MR. FLYNN: Julia, just so you know, I've 16 got hard copies of the majority of the exhibits you 17 sent with the exception of the larger files, like the 18 insurance policy and the dep transcripts. 19 MS. WILLIAMS: Okay. Okay, great. 20 MR. FLYNN: I've got some of the deposition 21 transcripts, but I didn't want to waste a lot of 22 paper and ink at home. 23 MS. WILLIAMS: Okay. I think we'll be -- 24 For the most part, I think we'll be fine and we'll	Page 33 1 5 to 6. 2 MS. WILLIAMS: Okay, let me see if I can do 3 something else. I'm going to try to share my screen. 4 I don't know if I'm going to be able to do it. So 5 bear with me. Okay. I can't -- I can't share the 6 screen. Can I email -- George, can you pull up an 7 email if I email it to you? 8 MR. FLYNN: I should be able to eventually. 9 MS. WILLIAMS: Okay, let me see if that 10 will -- 11 THE WITNESS: Let me run to the washroom 12 real quick while you guys do -- 13 MS. WILLIAMS: We'll take a quick break, 14 that's fine, we'll try to work this out. If anybody 15 else needs a break, obviously take a break now. 16 (Whereupon, a break was taken, 17 after which the following 18 proceedings were had:) 19 BY MS. WILLIAMS: 20 Q. Okay, back on the record. This is the 21 Exhibit 6 for the deposition and it's marked at the 22 bottom Dulberg001531 and it's an email chain between 23 Paul Dulberg and Hans Mast dated November 4th through 24 about November 5th, is that accurate, Hans?

Page 34 1 A. That's what it appears. 2 Q. Okay, and it appears at the bottom that Paul 3 is asking you if he should bring anything to a 4 meeting. 5 A. Okay. 6 Q. And that meeting appears to be at 3:00 p.m. 7 on November 4th of 2013. 8 A. Okay. 9 Q. Is that an accurate description? Okay? Do 10 you recall having -- 11 A. Go ahead, I'm sorry. 12 Q. Do you recall having a meeting on 13 November 4th of 2013 with Paul Dulberg? 14 A. I don't have an independent recollection. 15 Q. Okay. Okay. 16 MR. FLYNN: Julia, now I recall, this is a 17 separate exhibit you sent a little bit later than the 18 original download, so I did have this. 19 MS. WILLIAMS: Okay. Okay. We got it 20 worked out. 21 MR. FLYNN: Yeah, okay. 22 BY MS. WILLIAMS: 23 Q. Okay. So you don't recall calling a meeting 24 for November 4th?	Page 36 1 against the McGuires only," do you see that? 2 A. Yes. 3 Q. Okay. Do you recall that offer being made? 4 A. I do have some recollection of having a 5 conversation with them. 6 Q. Okay. So I'm going to upload another 7 document and then we can keep going here. And then 8 this is Exhibit 8 and for -- it is a letter from 9 Ronald Barch to you, Hans, and it's POP000667. Do 10 you have that? 11 A. What's it dated? 12 Q. I'm sorry, dated November 18, 2013. 13 A. Yeah, I have that. 14 Q. Okay. And that's a settlement letter from 15 Barch offering the settlement of \$5,000, correct? 16 A. Right. 17 Q. Do you recall receiving this letter? 18 A. I mean, I don't today recall getting the 19 letter, but I'm familiar with the transaction, yes. 20 Q. Okay. Okay. So you would have received the 21 \$5,000 offer from Barch and you communicated it to 22 Paul via the email on November 18th? 23 A. As well as when we talked, yes. 24 Q. Okay. Okay. And when did you talk?
Page 35 1 A. We had lots of meetings so -- 2 Q. Okay. 3 A. -- I don't have an independent recollection 4 of that one particular date. 5 Q. Okay. Okay, I'm going to stop screen 6 sharing. Okay. I'm going to upload another file. 7 This is Deposition Exhibit 7. George, you probably 8 had it as Exhibit 6, but for the purposes of this 9 deposition right now it's going to be 7 and it's an 10 email chain dated -- 11 A. I have these on the computer. You don't 12 need to, unless you want to, but I'm just saying I 13 have these on the computer. 14 Q. Okay, but Barb needs them, so that's why I 15 keep uploading them, otherwise she doesn't have them. 16 Okay. So Exhibit 7, and it's POP00181 and POP00182, 17 and it's two pages of an email chain, November 15th, 18 looks like on the second page it starts November 15th 19 and ends November 19th, is that accurate? 20 A. Yes. 21 Q. Okay, great. So here it looks like Paul 22 started this email chain, but then on November 18th 23 you note that, "The McGuires' attorney has offered 24 us, you, \$5,000 in full settlement of the claim	Page 37 1 A. Again, I don't know the dates. I just know 2 generally how this all transpired. 3 Q. Would you have talked to Paul on the 18th 4 when the letter came in? 5 A. It's dated the 18th. I doubt I got it on 6 the 18th. Whenever I got it, I would have told Paul. 7 Q. Okay. And it looks like the email you sent, 8 which is Exhibit 7, communicated that offer? 9 A. Okay. 10 Q. Would you have talked to the McGuires' 11 attorney prior to receiving the letter about the 12 offer? 13 A. I don't recall. It might have -- that might 14 have happened. 15 Q. Okay. Do you recall whether you met with 16 Paul sometime after -- on or after November 18 to 17 discuss the settlement offer? 18 A. I'm sure we did. I know we had several 19 conversations and meetings about that. 20 Q. Okay. In this email chain that's 21 Exhibit 7 about halfway down the page it says on 22 November 18, 2013, at 7:40 p.m., Paul responds to 23 your email. Can you see that? 24 A. Are we going back to the email now?

Page 38 1 Q. Yep, it's POP00181. 2 A. What exhibit? 3 Q. It's Exhibit 7. 4 A. 7, that's the letter. 5 Q. If may be 6 for you. It may be 6 for you. 6 A. Let's take a look. What page is the email? 7 Q. The date at the top of the email chain is 8 Tuesday, November 19, 2013. 9 A. Yeah, I have that. 10 Q. Okay. And then about maybe halfway down the 11 page it's dated on November 18, 2013, at 7:40 p.m., 12 do you see that? 13 A. Yep. 14 Q. And there it says, "Only five? That's not 15 much at all," do you see that? 16 A. That's his response, yes. 17 Q. Right. Right. Do you recall talking to 18 Paul about the \$5,000 and that not being much? 19 A. Like I said, yes, we've had plenty of 20 conversations and meetings on that. 21 Q. Okay. When you originally offered the 22 7,500, did you talk about what the possible outcomes 23 as far as counteroffers, what they may demand, 24 something like that, did you talk about that prior to	Page 40 1 than the 7,500? 2 A. Again, I'm -- I understand the question. 3 I'm just not trying to play games, but you're asking 4 me do I recall specific words that are used or 5 topics. All I can tell you about this is we talked 6 about the whole gamut of options, that I didn't feel 7 it was a strong case, that they were reaching out to 8 us for \$5,000, and that balancing everything, the 9 risks, costs, even though it wasn't much, it was 10 something that would have been desirable for him if 11 he wants to end up with money versus the McGuires. 12 Q. I'm going to add another exhibit here. 13 Okay, for the purposes of this deposition it's 14 Deposition Exhibit 9. This is a memorandum. At the 15 top it will say, "Memorandum," and the date is 16 November 20, 2013, and at the bottom it's identified 17 as POP and then 3 -- there's 000003, I believe. Do 18 you have that? 19 A. What exhibit is it? 20 Q. I think you're probably going to have it as 21 Exhibit 8, but for the purposes of this deposition 22 it's actually going to be Exhibit 9. 23 A. Okay. 24 Q. And it's Dulberg Mast Memo,
Page 39 1 making that \$7,500 offer? 2 A. I mean, I think I generally understand what 3 you're asking. Did we just have general 4 conversations of numbers? Yes. 5 Q. Okay. In this email and this is -- I 6 understand this is speculation, but in this email it 7 appears that Paul is surprised that it's \$5,000 was 8 the offer, correct? Would that be fair to 9 characterize it that way? 10 A. Is he surprised at it or is he surprised at 11 the amount? It looks like he didn't think it was 12 much. 13 Q. Right. So if you originally offered 7,500 14 and they came back at 5,000, in your experience, does 15 that seem like much of a difference when it comes to 16 counteroffers? 17 MR. FLYNN: I'll object to the form. 18 THE WITNESS: Yeah, I'm not real sure what 19 you mean by that. 20 BY MS. WILLIAMS: 21 Q. I guess let me rephrase because I don't 22 think I'm getting to the point. Prior to making the 23 \$7,500 offer, did you discuss with Paul that the 24 McGuires may come back with an offer that was lower	Page 41 1 2013 November 20. 2 A. Okay, yeah. 3 Q. Okay. It looks from this memo that you had 4 a meeting with Paul and his friend on November 20th, 5 is that accurately reflected what's stated in the 6 memo? 7 A. Yes. 8 Q. Do you remember this document? Do you 9 recall this? 10 A. As I said before, I understand what you're 11 asking, but we've had lots of meetings. Do I 12 remember that particular date, no, but I remember the 13 meetings. 14 Q. Do you recognize this memorandum? 15 A. I recognize the discussion that's referenced 16 in the memo. I haven't seen the memo for 7 years. 17 Q. Okay. Do you recall the advice that you 18 gave in that meeting of November 20th? 19 A. Yeah, like I said, it's summarized a little 20 bit in there. Yeah. 21 Q. Okay. And what was the -- Why don't -- What 22 was the advice that you gave? 23 A. Do you want me to read the memo or you want 24 me to just tell you generally what the topics were or

Page 42 1 what? 2 Q. Generally to the best that you can recall. 3 A. Looks like on that day he brought his friend 4 in because before he wanted to consider the offer, he 5 wanted to have his friend come with him to talk about 6 these issues with me. So we went over -- 7 Q. So -- 8 A. Go ahead. 9 Q. No, I'll let you finish. Go ahead. I'm 10 sorry. 11 A. Well, we went over all the issues, all the 12 risks, all the money issues, all of the issues. 13 Q. Do you recall who the friend was? 14 A. Not as I sit here today. 15 Q. From this memo it says, "Paul maintains the 16 McGuires controlled everything that they were doing 17 and you told him that wasn't what the evidence seemed 18 to show." So can you expound on what -- This is 19 really going to be a complicated question, but to the 20 best of your ability, can you explain what the theory 21 of your case was against the McGuires and what the 22 evidence was that was going to -- what evidence was 23 your reason for believing that you couldn't prove 24 your theory?	Page 44 1 negligence claim against the McGuires what the legal 2 elements were that you would have to show? 3 A. I haven't brushed up recently on that area, 4 but I can tell you that under the case law they have 5 to have some oversight and control over what was 6 going on and some involvement in the work and some 7 knowledge higher and above what Paul was doing, and 8 if you look at their testimony, they were not out 9 there, they were not looking at it, they didn't even 10 really know what Paul was doing frankly. 11 Q. And what about David? Did they have to 12 control what David was doing as well? 13 A. I meant David, I'm sorry. 14 Q. Okay. So the McGuires would have to have 15 oversight and control over David Gagnon? 16 A. Over the work. 17 Q. Okay. Over the work. Okay. So William and 18 Caroline did buy the chain saw, correct? 19 A. I believe that is true. 20 Q. Okay. But then David Gagnon was the one 21 operating the chain saw? 22 A. Right. 23 Q. And you would have to show in Paul's case 24 that Bill and Caroline, one or the other, had control
Page 43 1 A. We already talked a little bit about that 2 earlier, but every time we met, we talked about this 3 because this was a subject at the time with the 4 McGuires and given the testimony of the McGuires, 5 given Paul's testimony, given the lack of any 6 evidence that they were controlling any work or even 7 knew what Paul was doing, I felt it was a big, high 8 risk of moving forward on that claim. 9 Q. So I'm going to try to summarize this. 10 Maybe in parts. So in order for the McGuires to be 11 liable for Gagnon's work, Paul would have to prove in 12 his case that the McGuires controlled Gagnon's work, 13 is that accurate? 14 A. Are you asking me if that's an accurate 15 statement of the law? 16 Q. Yes. 17 A. I think that's partially right. There's a 18 lot more to it. It's different branches and elements 19 that you have to prove, control was a factual matter, 20 and he would have to be able to establish there was 21 some oversight. It goes down into some factual 22 issues that you have to be able to show. 23 Q. Okay. So can you -- To the best of your 24 ability, can you kind of walk me through for the	Page 45 1 over David's operation of the chain saw? 2 A. Control could mean a lot of things. They 3 would have to be in a position to instruct him, tell 4 him what to do, be aware of the work that was being 5 done and have some control over what he was doing. 6 Q. Okay. So in your -- Your opinion of the 7 case was that it was insufficient for them to have 8 simply purchased the chain saw and provided it to 9 Gagnon? 10 A. Yeah. 11 Q. And what about if they were paying him? 12 Would that make any difference? 13 A. No. 14 Q. I'm sorry, I don't know or no? 15 A. No. 16 Q. Just bear with me for a second here. And 17 you informed Paul -- I'm sorry, let me back up. In 18 exhibit -- Deposition Exhibit 7, so it's probably 19 6 for you, the email chain between you and Paul, 20 roughly November 18th through the 19th, Popovich 21 000181, on the bottom of that first page, 22 November 18, 2013, at 1:28 p.m. there's an email from 23 you. Do you see that? 24 A. Yes.

Page 46 1 Q. "In addition, the McGuires' attorney," so 2 it's ATTY, "has offered us, you, 5,000 in full 3 settlement of the claim against the McGuires only. 4 As we discussed, they have no liability in the case 5 for what Dave did as property owners so they likely 6 will get out of the case on a motion." Did I read 7 that correctly? 8 A. Yes. 9 Q. So this is where you told Paul that you 10 didn't believe the McGuires had any liabilities for 11 the reasons -- in part for the reasons we just 12 discussed? 13 A. Right. 14 Q. Ultimately Paul accepted that \$5,000 offer, 15 correct? 16 A. Yes. 17 Q. And you communicated that to the other side 18 later in 2013, does that sound correct to you? 19 A. Yes. 20 Q. I'm uploading Exhibit 10, and it should be 21 Exhibit 10 for you as well, and it's a memorandum 22 dated December 20, 2013, and at the bottom it's 23 POP000884, do you see that? 24 A. Yes.	Page 48 1 risk and he had -- he wanted some time to think about 2 it and consider it. 3 Q. Okay. All right, just bear with me here. 4 Okay, I just uploaded Deposition Exhibit 11, it's a 5 settlement acceptance letter, letterhead from Thomas 6 Popovich's office dated December 26, 2013. Hans, 7 your signature appears on there and it's POP00670. 8 Do you recognize this document? 9 A. That appears to be a letter from Popovich's 10 office to defense counsel. 11 Q. Do you recognize your signature on here? 12 A. Yes. 13 Q. And this is the letter where you accepted 14 the offer on behalf of Paul, is that accurate? 15 A. It appears, yeah. 16 Q. Okay. So the Defendants made the original 17 offer around November 18 and Paul -- 18 November 18, 2013, and Paul accepted it around 19 December 20, 2013. Is that statement accurate? 20 A. I don't have, like I said, independent 21 recollection of the dates. I would just have to go 22 off the documents. 23 Q. Okay. Was there -- If that timeframe is 24 roughly correct, was there anything that occurred
Page 47 1 Q. And that's a memorandum that you wrote to 2 the legal file; is that correct? 3 A. It looks like that. 4 Q. I think I already said this, it's dated 5 December 20, 2013? 6 A. Yes. 7 Q. Okay. And the substance of it, it appears 8 that you had a conversation on December 18th with 9 Paul and that he was authorizing you to accept the 10 \$5,000 settlement? 11 A. Yes. 12 Q. Okay. Do you recall that conversation of 13 December 18? 14 A. I recall having lots of conversations, this 15 is one of them, and generally I do recall the 16 conversations in a general sense, not the exact 17 dates. 18 Q. Okay. So you don't remember anything 19 specific to this December 18th call what you would 20 have discussed? 21 A. Not other than what I've already said we 22 discussed over the time. 23 Q. Okay. 24 A. Paul was weighing his options. He knew the	Page 49 1 during that timeframe that indicated to you, you 2 know, why Paul changed his mind from originally 3 thinking it was too little to now accepting it. Was 4 there anything that stuck out in your mind about 5 that? 6 A. Yeah. 7 Q. Can you expound on that? 8 A. Well, he had his friend with him during our 9 meeting and he reviewed the depositions. 10 Q. Okay. Did he not have the depositions prior 11 to that? 12 A. I remember he asked for copies of them, so I 13 provided them to him. 14 Q. Okay, and when you say the depositions, do 15 you mean just the party depositions, the McGuires and 16 the Gagnon? 17 A. I don't remember if I gave him the doctors. 18 I don't remember which ones I gave him, but I know 19 specifically it was Gagnon and the McGuires. 20 Q. Okay, I'm uploading Dulberg Mast Dep 21 Exhibit 12. This is titled, "Legal Research." And 22 this is hard because there's -- it's 27 pages. Some 23 of them have Bates numbers, but some of them are 24 black on the bottom, so I think the Bates numbers

Page 50 1 didn't -- didn't take, but it's roughly -- looks like 2 roughly 204, maybe 205, Dulberg204, 205 through 3 roughly Dulberg00304 -- Actually, I'm sorry, these 4 aren't going to be continuous. But do you have that 5 packet of legal research in front of you? It appears 6 to be copies out of a -- copies of case law out of 7 the Northeastern Digest. 8 A. I just have the one case here. 9 Q. Just one case? Which -- What's the case 10 title? 11 A. The first one, it's L A J A T O. 12 Q. Okay. Do you -- Did you copy this case law? 13 A. I don't know. 14 Q. Do you recall providing any case law to 15 Paul? 16 A. I don't know if I did or didn't. I don't 17 know if he asked. 18 Q. Okay. Do you recall doing case law 19 research? 20 A. I'm sure I did, yeah. 21 Q. Would have there been a memo or something 22 regarding that research? 23 A. Not necessarily. I was familiar with the 24 law.	Page 52 1 but just, I mean, we're talking now, what is it, 2 7 years later? I haven't been asked to do any 3 research before today's deposition, but so, I mean, 4 if you're asking me for what the case law says, I'd 5 have to look at the case law, if that's what you're 6 asking. 7 Q. I'm asking based on your -- on your 8 experience and knowledge as a personal injury 9 attorney and not necessarily related to Dulberg's 10 case specifically. 11 A. Okay. 12 Q. But based on your knowledge and experience 13 in premises liability cases, what is an independent 14 contractor? 15 A. Someone that works on their own. 16 Q. And can you explain what you mean by on 17 their own? 18 A. Somebody that's hired, like, somebody that's 19 hired to paint the house. 20 Q. Okay. So somebody that's hired by a 21 homeowner or maybe a business? 22 A. Yes. 23 Q. But someone that's hired by a homeowner but 24 the homeowner doesn't -- doesn't tell them how to do
Page 51 1 Q. Okay. Okay. Was there any -- Was there any 2 case law that stuck out to you, any particular cases 3 that stuck out to you? 4 MR. FLYNN: Object to the form. 5 THE WITNESS: You mean stuck out to me with 6 regard to Paul and his case? 7 BY MS. WILLIAMS: 8 Q. No. Were there any applicable cases that 9 stuck out to you one way or the other as to whether 10 the McGuires would be liable? Was there any specific 11 cases that made you think that the McGuires may not 12 be liable given the facts in Paul's case? 13 A. I mean, you deal with this issue a lot and I 14 can't think of one particular name of a case, but 15 these cases all go along the same line, so there were 16 lots of cases on this one particular issue. It 17 wasn't a complicated issue. 18 Q. So particularly the issue of control of 19 Gagnon. 20 A. Of a premises owner's liability for an 21 independent contractor. 22 Q. Okay. So can you explain generally what an 23 independent contractor is? 24 A. I'll give you have an answer if you want,	Page 53 1 their job? 2 A. Right. 3 Q. Did you ever obtain a copy of the McGuires' 4 insurance policy, do you recall? 5 A. I don't have an independent recollection. 6 Q. Did you ever advise Paul as to the limits of 7 the McGuires' policy? 8 A. I'm sure we talked about it. 9 Q. Okay. I just uploaded Dulberg Mast 10 Deposition Exhibit 13 McGuire Interrogatory Answers 11 and they're Bates stamped Dulberg000162 is the first 12 page and there's roughly 14 pages. Do you see that 13 document? 14 A. Yes. 15 MR. FLYNN: This is 14? 16 MS. WILLIAMS: It should be Exhibit 13 -- 17 13 or 14. I think I have it as 13. Yes, okay. And 18 this -- I'm looking at paragraph 15 or at least I'm 19 trying to look at paragraph 15. 20 Q. Okay. In paragraph 15 it looks like there 21 was a question about the homeowner's insurance and 22 the McGuires respond with their personal liability 23 and their medical liability, do you see that? 24 A. Yes.

Page 54 1 Q. Okay. Now that you see that, do you recall 2 whether you ever got a copy of that policy? 3 A. I don't -- You mean the dec pages or the 4 whole policy? 5 Q. Either. Did you get a copy of the dec 6 pages? 7 A. I have no idea. 8 Q. And you have no idea whether you got a copy 9 of the whole policy? 10 A. Yeah, don't know. 11 Q. But they are representing what their 12 insurance was and the liability there, correct, or 13 their liability coverage there? 14 A. That's what it appears. 15 Q. Okay. And these -- This was -- looks like 16 this was responded to based on the McGuires' 17 signature on roughly the 12th page of the document. 18 It looks like it was August 6th of 2012. 19 A. That's what it appears. 20 Q. Yeah. So prior to when they would have made 21 the settlement offers, correct? 22 A. That's what it appears. 23 Q. Okay. Did you ever talk to Paul about 24 those -- the limits of the insurance policy and how	Page 56 1 Co-Defendants, in other words, the McGuires, does 2 that seem accurate to you? 3 A. Yes. 4 Q. So would you have issued interrogatories in 5 addition to what the McGuires' counsel issued? 6 A. It's probable. 7 Q. Okay. Do you recall one way or the other 8 today as we sit here? 9 A. Not other than it's probable I did. 10 Q. I have not seen those in discovery, so if 11 they exist, we'd ask that they be produced. Do you 12 ever recall talking to Paul about the policy limits 13 of the Gagnon insurance policy? 14 A. It's a topic that frequently comes up. I 15 don't have an independent recollection. 16 Q. Would you have any memos or notes on that? 17 A. I could. I may. I don't have an 18 independent recollection of that. 19 Q. Okay. And, again, that would have been in 20 the file that -- in Thomas Popovich's file? 21 A. Correct. 22 Q. In your knowledge and experience not related 23 to the Dulberg case but just in your general 24 knowledge and experience, are there any situations
Page 55 1 that may be important in his case? 2 A. I suspect we talked about the policy, yeah. 3 Q. Okay. Prior to any settlement discussions? 4 A. Yeah. 5 Q. Okay. But you've already testified you 6 didn't -- You don't know if you -- You don't know if 7 you obtained a copy. What about Gagnon's insurance 8 policy, did you ever obtain a copy of that? 9 A. I don't know. I don't know. 10 Q. Okay. Did you issue interrogatories to 11 Mr. Gagnon? 12 A. I'm sure I did. 13 Q. Let me upload this. Would they have been in 14 Popovich's file if you -- 15 A. Yes. 16 Q. Okay. So I can tell you, I don't recall 17 seeing any documents issued by you. I'm going to 18 upload a document that appears to be interrogatories 19 issued by McGuires' counsel in the case. I'm going 20 to upload it right now. It's Exhibit 14 and Answers 21 to Co-Defendant Interrogatories and it is stamped 22 Dulberg00178. Do you see that document? 23 A. Yes. 24 Q. It appears that these were issued by	Page 57 1 where a homeowner may be strictly liable for someone 2 doing work on their property? 3 MR. FLYNN: I'm just going to object to the 4 hypothetical being inaccurate and incomplete, also 5 calls for an expert opinion. While this witness is a 6 lawyer, I won't necessarily -- I don't expect to call 7 him as an F-2 or F-3 witness in the case. 8 THE WITNESS: So you're asking if a 9 homeowner can be strictly liable for an injury? 10 BY MS. WILLIAMS: 11 Q. Right. 12 A. In general terms, not with regard to this 13 case? 14 Q. No, in general terms. I'm just asking in 15 general terms in your -- based on your experience and 16 knowledge of injury cases. 17 A. I mean, I think -- Not in Paul's case, but I 18 think I could probably think of something that maybe 19 could be -- as products strict liability, there's 20 hazardous materials strict liability, there's 21 different issues that potentially factually if 22 they're applicable could apply, but not in Paul's 23 case. 24 Q. Okay. Just in general, what kind of

Page 58 1 hazardous -- When you say hazardous, are you talking 2 about hazardous chemical-type cases? 3 A. There's a string of cases when you're 4 dealing with hazardous chemicals and hazardous 5 materials, like a bomb or something like that, things 6 like that. 7 Q. Okay. Okay. Are there any, like, hazardous 8 actions? Could something be considered, like, some 9 type of action be considered hazardous? 10 A. What do you mean by action? Activity? 11 Q. Yeah, like, I'm trying to give you an 12 example because I'm just trying to understand it more 13 than anything else. Yeah, is there an activity that 14 you could be doing on your property, I don't know, 15 like, what about tearing down your home, would that 16 be considered -- would that be something that could 17 be hazardous? 18 A. There would have to be statutory authority 19 for that and there isn't. 20 Q. Okay. Okay. Okay. So generally for strict 21 liability there has to be some type of statutory 22 authority for that? 23 A. Or common law. Yeah. They have a 24 particular fact pattern.	Page 60 1 Q. On -- When you were talking to Paul about 2 settlement in the general timeframe of 3 November-December 2013, did you ever suggest at that 4 time that he seek alternative counsel or any 5 recommendation related to that? 6 A. I think that did come up. 7 Q. Do you recall what your advice to him was or 8 what the discussion was? 9 A. I think, you know, we always talk about the 10 risks of not settling and further down the road what, 11 you know, having to try the case and having to try 12 prove the case or getting a motion for summary 13 judgment, having the costs exceed the benefits and 14 all that, and I think my position with Paul, since he 15 didn't give a relatively very good deposition, my 16 thought was we were going to have a tough time, an 17 uphill battle, and he can always seek other counsel 18 if he doesn't agree with me. 19 Q. And you just stated that you thought Paul 20 didn't give a very good deposition, that may not have 21 been your exact language, but roughly that the 22 deposition wasn't great. Can you explain what -- as 23 you recall it, what about the deposition was 24 problematic?
Page 59 1 Q. Okay. But this case particularly is simply 2 a negligence case. Paul's case against the McGuires 3 was a simple negligent failure to control case in 4 your opinion? 5 A. That's what was pled. 6 Q. Okay. Did you ever make any -- ever 7 consider pleading any other allegations? 8 MR. FLYNN: Object to the form. 9 THE WITNESS: I don't -- No. Not that I 10 recall. 11 MS. WILLIAMS: Okay. Can we take about a 12 4-minute break? 13 MR. FLYNN: Sure. 14 MS. WILLIAMS: Let's just take -- I just 15 want to take a quick break and review my notes and I 16 want to give everybody an opportunity to kind of 17 stretch for a second. I'm going to go on mute. 18 MR. FLYNN: Okay. 19 (Whereupon, a break was taken, 20 after which the following 21 proceedings were had:) 22 MS. WILLIAMS: Let's go back on the record. 23 Okay, thank you everyone. Okay, just a little bit 24 more here.	Page 61 1 A. I mean, he even agreed with me, but he just 2 doesn't do a very good job. 3 Q. You mean -- Can you expand on that a little 4 bit? 5 A. As a witness, as I recall, again, it's been 6 quite some time, as I recall he was -- his testimony 7 wasn't given -- wasn't strong, it wasn't definite, it 8 didn't have credible points and some points were 9 incredible when compared to other -- other testimony. 10 I mean, there's just a lot -- there was a lot of 11 problems with his testimony. 12 Q. Okay. Do you recall the circumstances that 13 Paul described as to why he came to the McGuires'? 14 A. I think he was either going to pick up 15 something or drop something off. 16 Q. Okay. 17 A. I don't really recall. I'm just thinking 18 back now. 19 Q. Okay. Do you recall whether he was asked to 20 come over to help with the tree, to help take down 21 the tree? Was that the purpose of his visit? 22 A. I don't recall that. 23 Q. Would it matter as for liability whether it 24 was or wasn't?

Page 62	Page 64
1 A. As by who? As to whose liability? 2 Q. I'm sorry, his and McGuire's liability. 3 A. As to how he got there? 4 Q. Whether he was -- whether he was invited for 5 the purpose of assisting with the removal of the 6 tree. 7 MR. FLYNN: Object to the form. Just 8 invited by whom? 9 THE WITNESS: Yeah, that's a complicated 10 question, but I don't think -- 11 BY MS. WILLIAMS: 12 Q. Let me clarify if I can. Okay. So my 13 question was does it matter if the McGuire's invited 14 Paul to their residence to remove the tree on that -- 15 on the June -- roughly June, I believe, 2011 date? 16 MR. FLYNN: Object to the hypothetical. 17 THE WITNESS: I don't think it matters. 18 BY MS. WILLIAMS: 19 Q. Okay. Would it matter if they were paying 20 Paul? 21 A. That's not the issue. The issue is Dave. 22 Q. Okay. So the relationship between the 23 McGuire's and Paul is somewhat irrelevant? 24 A. I'm just saying the issue really that --	1 Paul to file for bankruptcy? 2 A. Would not. 3 Q. Okay. And then sometime after the McGuire 4 settlement but before the -- but while the Gagnon -- 5 the claims against David Gagnon were still pending 6 you withdrew from the case; is that correct? 7 A. The law firm did. I -- Again, he hired the 8 law firm. 9 Q. Sure. Sure. I'm sorry. The Popovich firm 10 withdrew? 11 A. Right. 12 Q. And I -- Let's see -- I think we're on 13 Exhibit 14. 14 THE REPORTER: 15. 15 MS. WILLIAMS: 15, okay. 16 Q. I have, I think, one more and then -- Okay, 17 I am uploading Exhibit 15, Dulberg Mast Dep 18 Exhibit 15. It's a motion to withdraw and it's four 19 pages and on the first page it has a Dulberg versus 20 Gagnon case caption and file stamped March 13, 2015. 21 Do you have that document? 22 A. Yeah. 23 Q. And this is the Popovich's firm motion to 24 withdraw as counsel for Paul Dulberg in the Dulberg
Page 63	Page 65
1 about liability is Dave's relationship with them. 2 Q. Because Dave is the one that controlled the 3 chain saw that injured Paul, is that accurate? 4 A. He was the one hired to do the work or asked 5 to do the work, however, whatever that background 6 was. 7 Q. And Caroline and William McGuire both 8 testified that they had never used a chain saw; is 9 that correct? 10 A. I think that's accurate. I'd have to 11 refresh my memory, but that sounds right. 12 Q. Okay. Do you remember discussing bankruptcy 13 with Paul? 14 A. I don't remember that. 15 Q. Do you remember that Paul filed for 16 bankruptcy? Do you recall that? 17 A. I saw a -- Maybe I didn't see one. I 18 remember there was some sort of bankruptcy matter. I 19 don't know the dates or when it came up. 20 Q. Okay. Do you recall if you advised Paul to 21 file for bankruptcy? 22 A. I don't advise people to file for 23 bankruptcy. 24 Q. All right. So you would not have advised	1 versus Gagnon-McGuire case, correct? 2 A. Yes. 3 Q. And you drafted or caused this motion to be 4 drafted and filed? 5 A. Yes. 6 Q. And was it granted that same day it was 7 filed? 8 A. I'm sure it had to be noticed up. 9 Q. Okay. On the notice of motion it looks like 10 it was noticed for March 13, filed on March 13, but 11 sent to the service list on March 5th, does that seem 12 accurate? 13 A. That's what it says. 14 Q. But at any rate, you withdrew sometime in 15 roughly March of 2015? 16 A. It appears that way. Again, I don't have an 17 independent recollection of the date. 18 Q. Okay. Okay. That's fine. And I didn't see 19 it -- an order actually showing the exact date of 20 when you withdrew. Can you explain why you withdrew 21 from the case? 22 A. The short version is just we had a 23 difference of opinion. 24 Q. Can you give me the long version or slightly

Page 66 1 longer? 2 A. Well, we have difference of opinion but Paul 3 was a bit difficult, so I just had to -- there were a 4 couple times that I told him I was going to withdraw 5 and then he begged me not to and so I didn't, but 6 then ultimately he -- it got pretty -- it got pretty 7 tough. He was saying some unfavorable, unflattering 8 things and I just decided we're not going to get 9 anywhere, I'm going to move on. 10 Q. Okay, so you -- the client relationship 11 broke down and you withdrew? 12 A. Yes. 13 Q. Okay. Was there anything about Gagnon's 14 liability or your thoughts on his liability that 15 would have caused you to withdraw? 16 A. That was another aspect of it. Paul was 17 looking for the stars and the moon and I didn't see 18 it. 19 Q. And when you say Paul was looking for the 20 stars and the moon, you mean -- Well, what do you 21 mean by that? 22 A. He was looking for a lot of money. 23 Q. Okay, and what was your opinion as to David 24 Gagnon's liability in the case?	Page 68 1 A. Anything other than what? Pretty much 2 everything was not good. 3 Q. Okay. I mean, anything that we haven't 4 really discussed here today. We've talked about 5 Paul's testimony, Gagnon's testimony a little bit, 6 the McGuires, the premises liability. We talked -- 7 You mentioned the doctors' depositions. Is that sort 8 of the general gamut of it? 9 A. That's the whole case. 10 Q. Okay. Have you ever had any other chain saw 11 liability cases other than this particular case? 12 A. I'm sure I have. I don't -- If you're going 13 to ask me to name a date, I don't know. I mean, it's 14 not a common issue, but it comes up from time to 15 time. 16 Q. Okay. Did you state -- Did you seek out a 17 liability expert, a chain saw liability expert, 18 during the time you were representing Paul? 19 A. No. 20 Q. Is there a reason for that? 21 A. That's always a possibility. It's always a 22 consideration, but I had to consider even more 23 whether we could even get to prove a credible case 24 and that was my first object, my first -- my first
Page 67 1 A. I didn't think much of the liability issue. 2 I thought it was going to be a long, tough haul given 3 that -- 4 Q. And -- 5 A. -- Paul was going to be our only witness on 6 our side pretty much. 7 Q. Okay, and there were no other witnesses 8 other than Paul and David; is that correct? 9 A. Correct. 10 Q. And what about -- Anything related to, like, 11 the actual injury, the doctors' depositions or 12 anything like that? 13 A. That all -- It was the whole ball of wax. 14 The doctors weren't supporting his claim. Dave was 15 saying he's a liar, he tried to bribe him. There was 16 just a lot of -- a lot of bad stuff, not enough good 17 stuff. 18 Q. Okay, and then at that point you and Paul 19 disagreed and Paul retained alternative counsel? 20 A. Right. 21 Q. Okay. Was there anything else about the 22 case that you can recall right now that gave you 23 pause as to the liability either to the McGuires or 24 David Gagnon?	Page 69 1 tier. It doesn't do any good to hire an expert if 2 you don't have a good case. 3 Q. Okay. Okay. If you were going to take the 4 case to trial, at that point would you have hired an 5 expert, chain saw expert? 6 A. For this case, I don't know. I'd have to 7 look at it again and see what we need to prove, what 8 they're arguing. There's -- As I recall, they 9 weren't arguing the chain saw -- They weren't 10 arguing. He didn't get hit with the chain saw. So 11 I'm not real sure. I'd have to think whether we need 12 to prove -- what we need to prove, anything more than 13 that. 14 Q. Okay. 15 A. It was more what happened, who caused it to 16 happen, not that it happened. 17 Q. Okay. Is there a difference between an 18 independent contractor and an employee? 19 A. In terms of what? In terms of duty or what? 20 Q. Right. In terms of the supervisor's duty. 21 So if the Gagnons -- If Gagnon was, and this is a 22 hypothetical, if Gagnon was an employee of his 23 parents as opposed to an independent contractor, 24 would there be a liability difference?

Page 70 1 MR. FLYNN: Object to the hypothetical. 2 It's inaccurate and incomplete. 3 THE WITNESS: That's a very complicated 4 question, even though it doesn't sound like one. It 5 depends on lots of things. 6 BY MS. WILLIAMS: 7 Q. Okay. We've already talked about an 8 independent contractor. So just in your experience 9 and knowledge, what is a supervisor's duty as to an 10 employee? That's actually a really terrible 11 question. Let's strike that question. 12 Is there a difference -- Is there a 13 difference between the control aspect of -- Would 14 an -- Let me start again. This is a complicated 15 question, more complicated than I'm anticipating 16 right now. Okay. 17 We've generally established that in order 18 for an -- someone who hires an independent contractor 19 to be liable for the actions of that independent 20 contractor, they would have to control the work. In 21 a situation, an employer-employee situation, is that 22 control element also present when considering 23 liability? Does the employer have to control the 24 work of the employee in the same way?	Page 72 1 Q. And there are -- 2 A. Go ahead. 3 Q. So there would be different elements if 4 something was an employer-employee situation, that 5 would be different law, different case law? 6 A. Yeah, there's a different cause of action. 7 Q. Okay. 8 A. Different elements potentially have to be 9 pled and proved. 10 Q. Okay. But in this case you were trying to 11 prove -- In Dulberg's case against the McGuires and 12 Gagnon you were trying to show that -- The theory of 13 the case was that Gagnon was not an employee, but an 14 independent contractor, and the McGuires had to 15 control him in order to be liable? 16 A. Well, that's ultimately what it appeared. 17 You followed the evidence, you follow the facts, so 18 if it turned out it was employee-employer-employee 19 relationship, that's a different evaluation. 20 Q. Okay. So but, for the most part, you 21 were -- your evaluations of the liability were based 22 on an independent contractor analysis? 23 A. Well, that's where it went because of the 24 evidence.
Page 71 1 A. I think there are -- 2 MR. FLYNN: I just want to raise an 3 objection for the record. I object to the form. I 4 think that the premise of the question indicated that 5 we already established some legal precedent. I don't 6 think that's the case. I don't think that he's 7 testified to that, so, again, I'll just object to the 8 form. But if you can -- 9 THE WITNESS: You're asking me to compare 10 two different theories without a fact pattern, but 11 there's a lot to each issue and it's hard to just 12 say, well, if you have this, then you have that. 13 There's a lot of different facts that apply, but now 14 I'm forgetting what you asked initially about the 15 employer-employee question. 16 BY MS. WILLIAMS: 17 Q. So I guess my question to the point of is an 18 employer liable for their employees in a different 19 way than a homeowner would be liable for an 20 independent contractor? 21 A. I think -- 22 Q. Based on -- You go ahead. 23 A. I think under the law there are different 24 elements to those actions.	Page 73 1 MS. WILLIAMS: Okay. I'm going to go on 2 mute for just a second so you guys don't hear me 3 shuffling papers, but I think I'm almost finished 4 here or may be finished. 5 MR. FLYNN: Okay. 6 BY MS. WILLIAMS: 7 Q. Okay. Just a couple more questions and then 8 we'll wrap things up here. When did you first advise 9 Paul that you didn't think the claims against Gagnon 10 were going to be very strong? 11 A. Probably day one. 12 Q. Before the settlement with the McGuires? 13 A. Yeah. 14 Q. And did you discuss that several times prior 15 to that McGuire settlement? 16 A. Like I said, we discussed those issues every 17 time we'd meet, liability issues, damages issues. 18 Q. Do you recall any particular instances, like 19 maybe after Paul's deposition, after David's 20 deposition, did that stick out in your mind at all? 21 A. Discussing what, the issues of liability 22 against Gagnon? 23 Q. Yes. 24 A. Those are probably something we talked about

Page 74 1 every visit. 2 Q. Okay. So we discussed this a little bit 3 before, but I believe the testimony was that the 4 McGuires testified that they purchased the chain saw 5 and I believe you said yes, that was your 6 recollection as well; is that correct? 7 A. That sounds right. I just don't have an 8 independent recollection at this point. 9 Q. Okay. If the McGuires -- Let's assume 10 that -- Just for the purposes of this, let's assume 11 that the McGuires did -- it was their chain saw, they 12 purchased it and let Gagnon use it on their property. 13 Would they have any duties to share the manual of 14 that chain saw with Gagnon or provide any other 15 education as to the use of the chain saw to Gagnon? 16 A. All right, so you're asking me to make a 17 judicial decision whether they had a duty or not? 18 Q. No, I'm asking you in your experience with 19 these types of cases is there any duty there for 20 them. 21 A. All right, so a legal duty? 22 Q. Right. Right. And -- Go ahead, George. 23 MR. FLYNN: Yeah, I'll just object. I mean, 24 there isn't any evidence that Gagnon asked for a	Page 76 1 operate it effectively yourself safely. 2 Q. Sure. Okay. And -- 3 A. So I mean -- 4 Q. Okay. But today you're not giving an 5 opinion one way or the other whether they had a duty 6 to provide warnings, whether they had a duty to 7 provide the manual, fair enough? 8 A. Yeah, legal wise, no, I'm not giving you a 9 legal opinion on that. 10 MS. WILLIAMS: Okay. Okay, I don't think I 11 have anything further. 12 MR. FLYNN: I actually have just a few 13 follow-ups to that. 14 MS. WILLIAMS: Sure. 15 EXAMINATION 16 BY MR. FLYNN: 17 Q. Hans, is your understanding based on the 18 evidence that there were only two eyewitnesses to 19 Mr. Dulberg's accident, correct? 20 A. Correct. 21 Q. That was Mr. Dulberg himself and David 22 Gagnon? 23 A. Correct. 24 Q. And did you have an understanding as to how
Page 75 1 manual, for one, but as far as him providing legal 2 opinions not based on the facts of this case, I'm 3 just going to caution him not to provide what could 4 be considered an expert opinion. 5 THE WITNESS: You don't want me to answer? 6 MR. FLYNN: It's up to you. I don't know if 7 you can. 8 THE WITNESS: I don't remember the question. 9 You're asking me should the McGuires have given 10 Gagnon the manual to the chain saw? 11 BY MS. WILLIAMS: 12 Q. Yes. 13 A. Sure, if he asked for it or if they wanted 14 to give it to him. 15 Q. Are there any other warnings that they 16 should have provided? 17 A. See, I mean, you're asking me to -- I get 18 the question, but I'm saying you're asking me to 19 evaluate the conduct of both parties and interpret 20 something and I don't know that that's my position as 21 a witness, but should they have warned him? You 22 know, sure, go ahead and warn him, but obviously when 23 you take on a piece of equipment that you're skilled 24 and experienced in operating, you should be able to	Page 77 1 the evidence and testimony shook out as to each 2 gentleman's version of the accident and how it 3 occurred? 4 A. Well, as I said before, I thought Paul's 5 case was going to be very difficult to prove based on 6 the testimony of everybody, credibility issues, and 7 the lack of evidence to support and prove. 8 Q. David Gagnon's testimony regarding the facts 9 surrounding the accident differed from Paul Dulberg's 10 version of the facts, correct? 11 A. Correct. 12 Q. You took that into account in your 13 evaluation and analysis of the case? 14 A. Definitely. 15 Q. Did you also take into account your 16 professional analysis of Paul Dulberg's performance 17 as a witness at his discovery deposition? 18 A. Definitely. 19 Q. You didn't think he made a very good witness 20 for himself, did he? 21 A. He even admits he didn't and I don't think 22 he -- I think -- that was one of the worst -- that 23 was one of my worst fears with this case. I had lots 24 of cases and on a scale of weak witnesses, he's

Page 78 1 probably up at the top, and I'm not putting him down, 2 that's just a reality and I think he even 3 acknowledged that reality. 4 Q. Okay. Not everyone is a professional 5 witness? 6 A. Right. 7 Q. Okay. Generally speaking, your evaluation 8 of the case hinged in part on whether the McGuires 9 controlled the manner and method of the use of the 10 chain saw, correct? 11 A. Right. 12 Q. Do you have any recollection as to what the 13 McGuires were doing while the work was being done? 14 A. They were inside the house, just another day 15 to them. They weren't even -- I don't think even 16 paying attention to what was going on outside. 17 Q. Did Mr. McGuire testify that he was watching 18 television inside the house while David was working 19 on the tree? 20 A. They were both inside as I recall. 21 Q. Your recommendation or suggestion that 22 Mr. Dulberg settle the case for \$5,000 was based on 23 your analysis of the entire case, including the risks 24 and benefits of going forward and potentially losing	Page 80 1 THE WITNESS: I'll waive signature. 2 MS. WILLIAMS: We'll order the original, 3 E-tran. 4 MR. FLYNN: I'll take a regular and a mini 5 copy. 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24
Page 79 1 the case at trial, correct? 2 A. Yes. 3 Q. Did you have any way to predict whether the 4 case would result in a verdict on behalf of the 5 plaintiff in the case against the McGuires? 6 A. I'm sorry? 7 Q. Did you have any -- Did you have any 8 certainty as to whether Mr. Dulberg could prevail at 9 trial on liability against the McGuires? 10 A. I would have staked a lot that we would not 11 have recovered in the case and just something that 12 didn't come up with the direct is they didn't offer 13 the arbitrator to me. That was something that was 14 later decided. I talked to them about that. They 15 did not offer that to me, so that was not an option 16 to me. 17 Q. So you were -- Based on your professional 18 judgment, you suggested that you attempt to settle 19 the matter as opposed to taking it to trial versus 20 the McGuires, correct? 21 A. Right. 22 MR. FLYNN: Okay. That's all I have. 23 MS. WILLIAMS: I have no follow-up. 24 THE REPORTER: Signature?	Page 81 1 DECLARATION UNDER PENALTY OF PERJURY 2 3 I, HANS MAST, do hereby certify under 4 penalty of perjury that I have read the foregoing 5 transcript of my deposition taken on June 25, 2020; 6 that I have made such corrections as appear noted 7 herein in ink, initialed by me; that my testimony as 8 contained herein, as corrected, is true and correct. 9 Dated this ____ day of _____, 10 20__, at _____, Illinois. 11 12 13 14 _____ 15 HANS MAST 16 17 18 19 20 21 22 23 24

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)
3

4 I, Barbara G. Smith, Certified Shorthand
5 Reporter and Notary Public in and for the County of
6 Cook, State of Illinois, do hereby certify that on
7 the 25th of June, A.D., 2020, the deposition of the
8 witness, HANS MAST, called by the Defendants, was
9 taken remotely before me, reported stenographically
10 and was thereafter reduced to typewriting through
11 computer-aided transcription.

12 The said witness, HANS MAST, was first duly
13 sworn to tell the truth, the whole truth, and nothing
14 but the truth, and was then examined upon oral
15 interrogatories.

16 I further certify that the foregoing is a
17 true, accurate and complete record of the questions
18 asked of and answers made by the said witness, at the
19 time and place hereinabove referred to.

20 The signature of the witness was waived by
21 agreement.

22 The undersigned is not interested in the
23 within case, nor of kin or counsel to any of the
24 parties.

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1 Witness my official signature and seal as
2 Notary Public, in and for Cook County, Illinois on
3 this 7th day of July, A.D., 2020.
4

5
6 

8 Barbara G. Smith, CSR, RPR
9 Notary Public
200 West Jackson Boulevard, Suite 600
Chicago, Illinois 60606

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11 License No. 084-002753
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