

From: Paul Dulberg Paul_Dulberg@comcast.net 
Subject: Mast deposition
Date: June 18, 2020 at 9:24 AM
To: Julia C. Williams juliawilliams@clintonlaw.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

PD

Hi Julia,

Please find the attached evidence_list.txt and questions_for_mast.txt that we wish to discuss with you next week before Mast's deposition.

Thank you and stay safe,
Paul



evidence_list.txt



questions_for_
mast.txt

- 1) There is no evidence of any communication about the 7,500 offer leading up to or at any time following Oct 22, 2013.
- 2) The 7,500 offer was never discussed at the November 4, 2013 meeting that Mast requested to discuss the McGuire case. A witness at the meeting can confirm this.
- 3) It is not possible to explain why Mast called the November 4th meeting to discuss the McGuire case with Dulberg if they already made an offer 4 weeks earlier and were waiting for Barch to reply at that time.

Barch made the 5,000 offer on November 18, 2013

- 4) It is clear that Dulberg disagreed with the 5,000 offer from first hearing about it on Nov 18 until finally agreeing on December 24th. The 7,500 offer was not mentioned once during these Mast-Dulberg exchanges.
- 5) Dulberg quickly called for a meeting with Mast. The 7,500 offer was not discussed at the November 20th meeting. A witness at the meeting can confirm this.
- 6) It is not possible to explain why Mast called the November 20th meeting or what was discussed if Dulberg already agreed to 7,500.

MAIN TOPICS:

MISSING DOCUMENTS FROM FILE

OCTOBER 22, 2013 OFFER FROM MAST TO BARCH OF \$7,500

THE NOVEMBER 4th, 2013 MEETING IN MAST'S OFFICE

NOVEMBER 18, 2013 COUNTER-OFFER FROM BARCH TO MAST OF \$5,000

THE NOVEMBER 20th, 2013 MEETING IN MAST'S OFFICE

COMMUNICATION WITHIN POPOVICH LAW FIRM ABOUT DULBERG CASE

DOUBTS ABOUT MCGUIRE LIABILITY AND REASONS FOR LETTING MCGUIRES OUT OF CASE

ADVICE TO ACCEPT \$5,000

DOUBTS THAT GAGNON CAN BE FOUND NEGLIGENT IN COURT

[illegible]

Questions on each topic listed below.

MISSING DOCUMENTS FROM FILE

Did you send interrogatory questions to Gagnon? Did you send a request to produce documents to Gagnon?

Did you ever receive Gagnon's answers to interrogatory questions submitted by you? If yes, why were they not included in Dulberg's case file that you gave to him when you withdrew from counsel? If yes, why were they not included in the documents produced in this lawsuit? If yes, then why to this date does nobody seem to have a copy of them?

In the documents turned over to Dulberg when you withdrew from counsel, there is a request to produce for Gagnon prepared by you but there is no evidence that Gagnon ever turned over any of the documents requested. One of the documents you requested of Gagnon was a certified copy of his insurance policy. Did you ever receive any of the documents which you requested Gagnon to produce? Did you ever receive a certified copy of Gagnon's insurance policy? If yes, why were they not included in the documents you gave to Dulberg when you withdrew from counsel?

In an email from you to Dulberg dated February 26, 2015 about the case file you handed over to Dulberg you wrote, "I don't think I have any insurance policies in the file." Since you requested both the McGuires and Gagnon to produce certified copies of their insurance policies, why didn't you have a certified copy of either insurance policy in Dulberg's case file?

Why did you repeatedly inform Dulberg that Gagnon's insurance limit was \$100,000?

How did you obtain information that the Gagnon policy limit was \$100,000?

Did you send a request to produce documents to the McGuires? If yes, why was it not included in the documents you handed over in relation to this lawsuit so far?

In the request to produce which you gave to the McGuires, you asked for a certified copy of their insurance policy. They answered that they will give it to you when they receive it. Did you ever receive it?

A certified copy of the McGuires insurance policy was not included in the case documents that you turned over to Dulberg when you withdrew from counsel. It was also not included in the documents you turned over in this present lawsuit. Why not?

OCTOBER 22, 2013 OFFER FROM MAST TO BARCH OF \$7,500

Did you make an offer to settle the McGuire case for \$7,500 to Ronald Barch on October 22, 2013?

If yes, did Dulberg authorize you to make that offer?

Do you have any documented evidence that Dulberg authorized you to make that offer? Do you have any evidence Dulberg authorized you to seek a settlement with the McGuires on or before October 22, 2013?

At what time did you discuss making the original \$7,500 offer made on October 22, 2013 with Dulberg?

Was it discussed at a meeting? When was the meeting?

We have no record of an email exchange between you and Dulberg about a \$7,500 settlement offer. How did you communicate with Dulberg about

the \$7,500 offer?

Do you have any record of communication with Dulberg about making the \$7,500 offer at any time before the offer was made on October 22, 2013?

Do you have any record of communication between you and Dulberg from any time after the offer of \$7,500 was made on October 22, 2013 that mentions the offer explicitly or implicitly?

THE NOVEMBER 4th, 2013 MEETING IN MAST'S OFFICE

Who was at the November 4 meeting? (Answer: Paul Dulberg, Hans Mast, Barbara Dulberg)

Who called for the meeting?

What was the purpose of the November 4 meeting?

What were the topics discussed?

Was the \$7,500 offer made on October 22 discussed at the November 4th meeting?

Were any decisions made at this meeting?

What follow-up activity happened as a result of the meeting?

If looking into a settlement was first discussed with Dulberg at this meeting of November 4, 2013, how could you make the \$7,500 offer on October 22, 2013 and claim that Dulberg agreed to it?

NOVEMBER 18, 2013 COUNTER-OFFER FROM BARCH TO MAST OF \$5,000

When Ron Barch made a counter-offer of \$5,000 to settle the McGuire case on November 18, 2013, how did Dulberg respond?

Dulberg's email reply to the \$5,000 offer of November 18, 2013, dated November 19, 2013, states:

"When you advised me to seek a settlement with the McGuire's insurance, I agreed to look at it only because they did not have their hands directly on the trigger of the chainsaw and that you would get at the least the medical bills paid for out of it. I thought that was made clear in your office."

Did you advise Dulberg to seek a settlement with the McGuires as he stated in this email?

Was it first discussed during a meeting in your office as he stated?

During which meeting was that discussed?

Was it at the November 4th meeting or at an office visit that happened earlier?

When Barch made a counter-offer of \$5,000 on November 18, 2013, there were at least 100 email exchanges between you and Dulberg from November 18th onward with numerous disagreements over whether to accept the offer.

But when the original offer was made from Mast to Barch for \$7,500 on October 22, 2013 we don't have evidence of a single email exchange, text message, meeting, or any evidence of a single piece of communication discussing the offer between you and Dulberg in the time leading up to the day the offer was made.

We also do not have any single piece of communication between you and Dulberg since the time the offer was made that mentions the original offer of \$7,500 explicitly or implicitly.

How do you explain this discrepancy?

Do you believe that Dulberg was aware that the offer of \$5,000 was actually a counter-offer to your proposal of \$7,500 made on October 22, 2013?

Do you have any evidence that Dulberg was aware that the McGuire offer of \$5,000 was actually a counter-offer to the offer you initiated on October 22, 2013?

ABOUT THE NOVEMBER 20th, 2013 MEETING IN MAST'S OFFICE

who was at the November 20th meeting? (Answer: Paul Dulberg, Hans Mast, Thomas Kost)

who called for the meeting?

what was the purpose of the November 4 meeting?

What were the main topics discussed?

Was the \$7,500 offer made on October 22 discussed at the November 20th meeting?

Were any decisions made at this meeting?

Did Dulberg agree to accept the \$5,000 counter-offer made by Barch on November 18 at the meeting?

What were his grounds for disagreeing with the \$5,000 counter-offer if it was Dulberg himself that initiated an offer of \$7,500 on October 22nd?

Did you point out to him that there is only a \$2,500 difference in between the offer and the counter-offer?

Did you suggest that he reply by offering to accept less than \$7,500 but more than \$5,000, like, for example, \$6000?

Was there any attempt to make another counter-offer for any amount higher than \$5,000 but lower than \$7,500? Why not?

Did you hand Dulberg documents of case laws at the meeting of November 20, 2013?

What was the purpose of providing him with documents of case laws?

What case laws were in those documents?

Did you discuss cases at the meeting?

Which cases were discussed?

What were you trying to explain to Dulberg by discussing those cases?

Why did you choose those cases to use as examples?

In what way were those cases applicable to the situation with the McGuires?

At the meeting did you say something about how the restatement of torts 318 doesn't apply in Illinois and that fact affects the case against the McGuires?

Can you explain how the restatement of torts 318 affected Dulberg's case against the McGuires?

Did you cite the case of Tilschner vs Spangler to Dulberg during the November 20th meeting?

Why? How was the Tilschner vs Spangler case similar to what happened to Dulberg at the McGuires?

DOUBTS ABOUT MCGUIRE LIABILITY

When did you first express doubts to Dulberg about whether McGuires were liable for Dulberg's injuries?

What were those doubts?

When did you first inform Dulberg that you were unwilling to take the McGuire case to trial and that he should seek a settlement?

How did you reach the conclusion that the McGuires had no financial liability for what happened to Dulberg on their property?

Who did you consult with before coming to this conclusion?

when did you come to this conclusion?

Did you consult anyone with specialized knowledge or expertise in homeowner liability cases while coming to this conclusion?

Did you note that your client claimed he was invited by Gagnon to the McGuires to see if he wanted the firewood, not to work? Is that your understanding of why Dulberg was at the McGuire's property?

Did you note that your client claimed he was sitting with Carolyn for at least an hour watching Gagnon working with William McGuire, and after William McGuire refused to work any longer it was Carolyn

McGuire that first asked Dulberg if he could help Gagnon?

Did you note that the McGuires purchased the chainsaw, that they claimed the chainsaw was new, and that they were in possession of the chainsaw and provided it for Gagnon to use contrary to the clear warnings on the cover and opening pages of the chainsaw owners manual? Is that your understanding of what happened?

Did you note that the McGuires were in possession of the owners manual and that the manual explicitly has clear warnings written on the cover, on the opening pages and throughout the manual to not do what they admit to allowing to be done with it?

After considering these facts, do you still feel that the McGuires had no financial liability for what happened to Dulberg on their property?

COMMUNICATION WITHIN POPOVICH LAW FIRM ABOUT DULBERG CASE

Was there any internal meetings at the Popovich firm discussing any course of action concerning the Dulberg case?

How many internal discussions would you say took place?

Where did these internal discussions take place?

When did these discussions take place?

Who attended these discussions?

Are there any discussions that stick out in your mind as you sit here today?

What is significant about the discussion that would bring it to your mind today?

Were there any changes in the direction of the case?

When did the decision to change the direction of the case take place?

why?

Did anyone in the firm order you to change the direction of the case?

If so, who ordered that the direction of the case be changed?

What was the nature of the changes?

ADVICE TO ACCEPT \$5,000

When did Dulberg tell you he would agree to the \$5,000 counter-offer?

Considering that \$5,000 is such a small amount of money relative to Dulberg's medical bills and practically nothing compared to future lost wages, why would you urge your client to sign a release barring any future legal action against the McGuires connected to the chainsaw accident in exchange for such an insignificant sum?

Why were you so sure the presiding judge would allow the McGuires to get out of the case on a motion considering the same Judge allowed the complaint to proceed to discovery?

Why didn't you believe the judge would allow the case against the McGuires to proceed to trial?

If you did not wish to take the McGuire case to trial, why wouldn't you simply advise your client to seek alternative counsel rather than to settle with the McGuires for an amount that wouldn't pay for 10% of his medical bills or anything towards future lost wages?

If you felt the McGuires were not liable for Dulberg's injuries and you felt it would be difficult to prove Gagnon liable, why didn't you suggest Dulberg seek alternative counsel before accepting the \$5,000 settlement with the McGuires?

DOUBTS THAT GAGNON CAN BE FOUND NEGLIGENT IN COURT

When did you first express doubts about whether Gagnon could be proven to be liable for Dulberg's injuries? What were those doubts?

When did you first inform Dulberg that you were unwilling to take the Gagnon case to trial?

Did you inform Dulberg you were unwilling to take the case against Gagnon to trial at any time before he signed the agreement which released the McGuires from the case?

What new information did you receive between November of 2013 and April 14, 2014 that made you change your mind and convinced you that you would be unwilling to take the Gagnon case to trial.

If none, then why didn't you inform Dulberg you were unwilling to take the Gagnon case to trial before or while urging him to settle for \$5,000 with the McGuires?

If Dr Levin diagnosed Dulberg with dystonia in August of 2013 and Dr Kujawa diagnosed Dulberg with task specific focal dystonia definitely caused by trauma to his right arm in September of 2013, why did you

feel that injury due to Dulberg's chainsaw accident was difficult to prove?

Did you read Gagnon's and Dulberg's depositions in order to compare the detailed differences in their version of the days events and the accident?

Did you note that Gagnon's description of the accident given to you by phone was very different from how it is described in his deposition? In his description over the telephone he never mentioned anything about Dulberg moving his arm. Later in the deposition he claimed Dulberg moved his right arm into the chainsaw blade. How do you account for this difference?

Did you notice that the description of the chainsaw accident given by Dulberg was completely different from the description of the accident given by Gagnon? For example, Dulberg describes the branch being cut to be about 15 feet long while Gagnon describes it as about 5 feet long. Dulberg describes holding the base of the branch with one hand while Gagnon describes Dulberg holding a 5 foot branch vertically with his left hand above the place where Gagnon was cutting and his right hand holding the same branch below the place where Gagnon was cutting. How do you account for such a large discrepancy?

Can you please describe how it is physically possible, using Gagnon's description of the accident given in the deposition, how Dulberg was cut on the lower portion of his right forearm perpendicular to the forearm? (Gagnon described Dulberg holding a branch with his left hand above where Gagnon was cutting and with his right hand below where Gagnon was cutting.)

