

From: Paul Dulberg Paul_Dulberg@comcast.net 
Subject: Bates numbers added to timeline of McGuire settlement
Date: June 24, 2020 at 1:56 AM
To: Julia C. Williams juliawilliams@clintonlaw.net
Cc: Ed Clinton ed@clintonlaw.net

PD

Hi Julia,

Please find the attached file named 2020-06-23_updated_timeline_of_mcguire_settlement.txt

I removed the old reference numbers used prior to the Bates numbers were assigned

Example of Popovich numbers show up as:
(POP 000181, POP 000181, POP 001204)

Example of Dulberg numbers show up as:
(Dulberg 001516, Dulberg 001520, Dulberg 001522, Dulberg 001523, Dulberg 001524, Dulberg 001525)

Also, I found that I had already sent this to you with the new bates numbers in an old email exchange dated November 19th 2019. The only difference is this time I removed the old reference numbers and updated the file name.

On a side note, driving home tonight I realized the mistake I had made when referring to "ultra hazardous" in the questions I sent tp you yesterday. Ed was correct, Ultra hazardous is usually associated with explosives such as the demolition of a skyscraper. I realize I should have used the term inherently dangerous. I believed Inherently dangerous also carved out an exemption to the employer - independent contractor strict liability issues so I went hunting for where I read that. I found this buried in a text document I saved with some of the research I had done years ago but am no longer sure where I got it or if it applies to Illinois

"The general rule is that an employer is not liable for an independent contractor's misconduct. However, there are three exceptions. An employer may be liable for an independent contractor's misconduct if: (1) the employer was negligent in selecting or retaining an independent contractor; (2) the tasks assigned to an independent contractor are non-delegable; or (3) an independent contractor's work is ultra-hazardous or inherently dangerous."

I hope you see why I'm confused because I see large tree removal in a subdivision with tiny lots, tightly packed with wood framed homes, garages and elevated power lines as inherently dangerous

I can't believe I forgot the first exception for the third, it fits even better.

Anyway, all of this is moot because Gagnon cannot be classified as an independent contractor if McGuire supplied Gagnon with all the tools he used to do the job. Mast should have known this.

Also, on the issue of the McGuire depositions, I mentioned that they perjured themselves several times and so did Gagnon. I would need time to go through and cite references contained in the depositions but a few whoppers I can't forget so I thought I should mention them from memory and I can go back and find the exact places later if you wish.

1. Carolyn or William admits that they had hired a tree removal company prior to the day of the accident to come remove the tree the day after the accident.
?. Please explain why any reasonable person would believe they hired their son and provided him with the chainsaw and ropes to remove a tree if they already had a professional tree removal company coming in the very next day to do the job?
2. Gagnon claims he was being paid an hourly rate to do the work, Carolyn says she was giving her son some money for tax purposes and William claims his wife Caroline was only going to buy Gagnon some pants as a thank you for the tree removal.
? If none of the parties are even relatively close as to any of the specifics for payment from the McGuire to Gagnon, does that make it more or less believable they had a valid contract for Gagnon to do the work as an independent contractor or even as an employee?
Sounds more like son was doing mom and Father-in-law a favor with the parents tools and that no money changed hands, oh, and don't forget, Gagnon claimed Dulberg was being paid hourly as well from the McGuire even though Caroline and William don't claim that in their depositions.
3. Gagnon claimed to have used a chainsaw dozens of times in the past with Dulberg when they were camping to cut up firewood
? Where is there a campground within say 2,000 miles of Illinois where chainsaws are allowed? Besides that I only went camping in the same place as Gagnon once in my life and it was pure happenstance that we were both in the same campground on the same day, we did not "go camping together" ever,
4. either Caroline or William claimed they purchased a chainsaw just in case.... And it was for the all the kids to use
? Just in case what? And Have you seen the other kids, it's 2 girls who are more like barbie dolls than female lumberjacks. This was purchased for the only kid strong enough to use it and that's David Gagnon. Besides, have you ever heard of anyone buying a chainsaw for all their kids to use or ya know just in case?

chain saw for all their kids to use or ya know just in case :

I can go on and on with the unbelievable stories these people told but will wait for your request to see examples before I go digging through their depositions again. It's absolutely comical the stories they told that make no sense and don't even come close to each others.

I'm tired and off to bed

If you need help with anything please let me know

Thanks,
Paul



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dated_...ent.txt

Timeline of McGuire settlement

OCTOBER 22, 2013: Mast makes settlement offer of \$7,500 to McGuires through their attorney Barch claiming Dulberg discussed it with him and agreed.
(POP 000192)

OCTOBER 30, 2013: Mast in an email to Dulberg first expresses doubt about Dulberg's case against Gagnon.
(Dulberg 001531, Dulberg 001533, Dulberg 001534, Dulberg 001535, Dulberg 001536) (POP 000195)

(Note: There is no email evidence of Mast expressing any doubts about the Gagnon or McGuire case until Oct 22, 2013. Only briefly in February of 2013, in relation to the Gagnon deposition and how much it differed from Dulberg's description of the accident, did Mast express anything negative about Dulberg's cases.)

NOVEMBER 4, 2013: Mast requests a meeting with Dulberg. Dulberg brings Barbara, his mother, to the meeting. Neither Dulberg nor Barbara know what the meeting will be about. It is at this meeting that Dulberg is first informed by Mast that Mast believes Dulberg has no case against the McGuires. Mast makes a number of statements which surprise Barbara. He claims that juries in this area are very conservative and Dulberg can't win against an old lady. Dulberg disagrees. It is at this meeting when Dulberg first gives Mast permission to look into a settlement.
(Dulberg 001531)
(witness: Barbara Dulberg, Paul Dulberg)

NOVEMBER 18, 2013: McGuire's attorney Ronald Barch contacts Mast. He claims he has been given authority to make an offer for \$5,000.
(POP 000181, POP 000181, POP 001204)

Dulberg is informed by Mast in an email. Mast wrote:

"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 some point, so my suggestion is to take the \$5,000 now. "
(Dulberg 001515)

Dulberg answers:

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

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

...

I'm not happy with the offer."

To which Mast replies:

"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."
(Dulberg 001519)

Dulberg replies:

"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?"

To which Mast comments:

"Cause they had no say on how Dave did the work. That is what the evidence from all shows."
(Dulberg 001519)

Dulberg later replies:

"That's their personal issues of control with their own son. I will testify all day long about the things they wanted him to do that he did do throughout the day.

By claiming they had no control over the work dave did after all the preparation, money and time spent out in the yard yelling at him that they wanted certain things done in a particular way I don't see how they get out of the direct over site of the project because now that there is an injury they don't feel they had any real direct control over their own workers actions?

This is ridiculous.

Hans, they have to do better than claim they had no control over David that day. If that's the case why were they there watching the work most of the day? Even Bill had hands on doing some of the work and rarely let David go to long without checking and seeing if things were being done the way Carol and Him wanted it."

Note: Email exchanges from November 18, 2013 onward show that Dulberg was not happy with the offer of \$5,000 and knew nothing of the Mast offer of \$7,500. They also show he feels the McGuires are partially responsible for his injury.

(Dulberg 001516, Dulberg 001520, Dulberg 001522, Dulberg 001523, Dulberg 001524, Dulberg 001525)

NOVEMBER 19, 2013:

Dulberg wrote to Mast:

"Hans,

A while back you told me that the jury's here in this county are primarily conservative and that they know the only reason we are before them is for money.

Not sure if that statement was meant to scare me or not but I do agree, they are, for the most part conservative and I would hope we should make it known we want money for damages, lawyers fees and the medical bills, etc... loud and clear.

We should also make it known to the jury that the parties or their insurance companies have never even offered to pay 1 cent for any of the medical damage and that's why we seek the juries help in settling this dispute. Perhaps if the insurance companies would have paid for these basic things none of us would even be here. but they didn't and now yes after years of waiting I am seeking money to pay for the medical treatments, you as the lawyer and finally myself as I'm the one who has had to suffer the consequences of the Gagnon/McGuire choices on that day.

I cannot believe that a conservative jury isn't going to award anything less than the cost of the medical damages and lawyer fees from them unless something catastrophic changes. I do see them being conservative as to what I will end up with at the end but not the real medical and lawyers bills. Even the conservative juries in this county are not so conservative that they won't give the base bills.

The McGuires insurance is free to go after David for damages if they lose.

Other than fearing a motion to dismiss the suit against the McGuire's

insurance based on some false concept that because they didn't have their finger directly on the chainsaw trigger they hold no responsibility for damages.

what are the real benefits of letting them off so easy?

And I don't want to hear its because 2 parties vs 1 is much easier.

Letting off the McGuires insurance for such a small amount is anything but reasonable and I just can't see any ethical judge in this county not keeping them in the suit all the way for a jury to decide whether they had any part to play in the days events and the level of responsibility they share with David for the consequences considering it was the McGuires project, their land, their choice of who did the labor etc. etc...

When you advised me to seek a settlement with the McGuires insurance, I agreed to look at it only because they didn't 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.

I know you work on approximately 33%. Is 33% of 5,000 even worth the time and money you already invested? It's only \$1650 for you and I'm sure your hourly fee eats that up rather quickly, I know mine did back when I had hands and arms that worked so I could charge."
(Dulberg 001517, Dulberg 001518)

NOVEMBER 20, 2013:

Mast sends an email to Dulberg:

"Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation."
(Dulberg 001515, Dulberg 001516)

Dulberg replies:

"Ok we can meet. I will call Sheila today and set up a time. Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor. I need to read it myself and any links to

recent case law in this area would be helpful"

Dulberg agrees to have another meeting with Mast in his office.
(memo of meeting: POP 000003)

Dulberg brings his brother Thomas Kost with him. Before the meeting Dulberg asks Mast to show examples of case laws which demonstrate that McGuires are not partially responsible for the chainsaw accident.
(Dulberg 001515, Dulberg 001516)
(Witness Thomas Kost)

In the meeting Mast uses the example of Tilschner vs Spangler. He claims that the McGuires are not responsible because Restatement of Torts 318 is not applicable in Illinois.

He also claims that the accident was not foreseeable by the McGuires and they had no control over Gagnon's actions.

Mast also gave Dulberg a packet of other examples of case law.
(Dulberg 000204 through Dulberg 000225 and Dulberg 000301 through Dulberg 000305)

Thomas Kost kept a rough set of notes during the meeting.
(Dulberg 001217)

Mast claims that if Dulberg doesn't accept the \$5,000 the McGuires will simply file a motion to get out of the case for free.

Mast said the McGuires do not have to offer anything and are offering \$5,000 to be nice.

Dulberg asked to read the depositions of the McGuires and of Gagnon before making a decision.

Mast writes a Memo to a person named "Jen"

"We have a co-defendant that is not really responsible in this case and they have offered a nominal settlement of \$5,000 in the case. I would like to accept it but I want to have a settlement memo prepared first to show how the money will be disbursed for the client to sign. Therefore, we will not need to call on the balances but we will only need to provide a settlement memo containing only any liens listed on the settlement memo.

Can you please prepare the settlement memo for me as soon as possible so that I can talk to the client about the offer."
(POP 001207)

After the meeting, on the same day, Dulberg goes to the house of a neighbor of the McGuires to ask if they witnessed what was happening on the property the day of the accident. He was looking for a witness that saw the McGuires actively participating in the work being done

and supervising the work.
(POP 000177)(Dulberg 001514)

Later that evening Dulberg writes to Mast:

"Hans,

I'd like to read David's dep before accepting the McGuire offer. Even after reading the McGuire deps and seeing how things easily get skewed in all honesty, I can't blame Carol or Bill for Dave's actions I just thought I was covered under their insurance. I know Carol & Bill thought I was covered as well irregardless of all the half truths in their dep."
(Dulberg 001512)

NOVEMBER 21, 2013: Mast orders Dulberg's deposition
(POP 000593)

DECEMBER 2, 2013: Mast sends Dulberg's own deposition to him by mistake.
(POP 000176)

DECEMBER 4, 2013: Dulberg receives his own deposition in the mail. Dulberg again informs Mast he wants to see Gagnon's deposition.
(Dulberg 001504)

Dulberg writes to Mast:

"Hans,

I wanted to review David Gagnons dep before letting the McGuires off the hook.

And that word "foreseeable" in the McGuire suite...
Well I suppose if I gave anyone a chainsaw and told them to use it, given enough time, an injury is foreseeable, very foreseeable just not hoped for.

And the comment about people not liking friends who sue friends, um well we all should know other than entirely random acts such as auto accidents, train derailments, air plane accidents, etc. Etc.. That most of the time it's those we know who hurt us most often than not. and if it's serious we must be able to sue even if it is or once was a friend."
(Dulberg 001504)

DECEMBER 9, 2013: Mast orders Gagnon's deposition
(POP 000594)

DECEMBER 10, 2013: Mast sends Gagnon's deposition to Dulberg
(POP 000175)

DECEMBER 18, 2013:

Dulberg writes to Mast after reading Gagnon's deposition:

"Hans,

I read through David's dep. it's mostly lies with a few truths. Where should I begin or better yet where would you like me to begin? Almost everything he said was made up, from which end of the branch I was holding, at who's direction I was doing it under and even as to why I was even there on the McGuires property, etc...
Not to mention the nonsense of \$10,000.

...

As far as the McGuires are concerned give me a call."
(Dulberg 001500)

Later that evening Dulberg has a long talk with Mast by phone.

Mast writes the following memo after the call:

"On December 18, 2013, I called Paul today after and 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 McGuire's and he is willing to take their \$5,000 settlement offer."
(POP 000884)

DECEMBER 26, 2013: Mast contacts McGuire's attorney Barch to inform him that they will accept the \$5,000 offer.
(POP 000670)

JANUARY 22, 2014: The Judge approves a motion by McGuires for a good-faith settlement.
(POP 000988, POP 000989)

JANUARY 31, 2014: Final release papers are signed by Dulberg and in the mail.

(Dulberg 001491)

APRIL, 14, 2014: Mast informs Dulberg that he does not wish to take the Gagnon case to trial.

For the first time Mast recommends to Dulberg that he look for alternative counsel that wishes to pursue the matter.
(Dulberg 001484)