

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL

Plaintiff/Petitioner

v.

MAST, HANS ET AL

Defendant/Respondent

Reviewing Court No: 2-23-0072

Circuit Court/Agency No: 2017LA000377

Trial Judge/Hearing Officer: JOEL D BERG

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Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT



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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 10th day of May,
16 2018, at the McHenry County Government Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 THE GOOCH FIRM, by
20 MS. SABINA WALCZYK,
On behalf of the Plaintiff;

21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
22 MR. GEORGE K. FLYNN,
On behalf of the Defendants.

23

24

1 THE COURT: Let's go to work on Dulberg.

2 MS. WALCZYK: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. WALCZYK: Sabina Walczyk on behalf of
5 Dulberg.

6 MR. FLYNN: Good morning. George Flynn on
7 behalf of the Popovich firm and Hans Mast.

8 THE COURT: It is -- it is rare when I know both
9 the plaintiff and the defendant ahead of time. Only
10 through the courtroom, but still unusual.

11 I looked at -- I'm going to tell you what
12 I'm thinking. And then if you choose to argue, you
13 can to -- if you wish to convince me that I'm wrong;
14 or we can go forward. Either is fine.

15 I felt that the 2-615 motion was
16 appropriate because I felt that -- and I -- for a
17 specific reason, not -- not perhaps all the reasons
18 that were cited by the defendant. I felt that the
19 complaint, when it talked about how -- I'm looking
20 for the words, misled -- when it said that the
21 attorneys misled -- lied and misled Mr. Dulberg, I
22 felt that there was some specificity that was going
23 to be required. Because they -- ultimately, these
24 things are going to factor into the statute of

1 limitations issue. And if you're going to say that
2 it was a breach of his duty in lying or misleading,
3 I think we need more particularity in the
4 allegations. You can't just make a conclusory
5 statement to that effect.

6 That's my perspective. What would you
7 like -- I'll give you an opportunity -- opportunity
8 to replead; but if you want to argue against my
9 thinking, I'll listen.

10 MS. WALCZYK: Well, Your Honor, I -- I won't
11 argue with the Court. If Your Honor would like some
12 more specificity as to those certain terms, we can
13 certainly replead and plead those a little bit more
14 specifically to --

15 THE COURT: And with respect to the discovery
16 rule issue --

17 MS. WALCZYK: Uh-huh.

18 THE COURT: -- since it's going to come up one
19 way or another, although I think it's a question of
20 fact, I would like to see it touched upon, because
21 I'm not following the -- the fact that he got more
22 from the arbitrator than had been initially
23 suggested by his attorneys, isn't really telling me
24 anything. So I need maybe a little bit more

1 information to understand the relationship of the
2 two things.

3 With respect to the issue of -- on the
4 2-619, I felt that in light of how I was going with
5 the 2-615, I really couldn't rule on the -- the
6 application of the discovery rule. And, ultimately,
7 I saw that in the long run, it was going to be a
8 question of fact, and I would probably need -- and I
9 could only address that with some more facts than
10 what's just contained in the complaint.

11 With respect to estoppel, I didn't agree --
12 and you can tell me why you think I'm wrong, but I
13 didn't agree with the argument that you were making
14 because it -- it, carried to its logical conclusion,
15 I could mislead and lie to my client about the --
16 about the implications and why he should settle, and
17 then once he agrees to it, then I'm -- I'm released
18 from my breach of my duty.

19 So I don't think that it -- that that was
20 the type of scenario involved when the courts were
21 discussing the estoppel issue.

22 Do you have anything -- do you want to
23 contest that?

24 MR. FLYNN: Not at this time, Your Honor. I --

1 I've always learned that it's better to quit while
2 you're ahead. And with -- without giving a roadmap
3 to the plaintiff, I do think that having their best
4 complaint on file benefits us all.

5 THE COURT: Yes.

6 MR. FLYNN: So going back to the 2-615 issues,
7 again, a legal malpractice case, they've got to
8 plead and prove, not only the legal malpractice, but
9 the elements of the underlying case. And it seemed
10 to me, and as we pointed out, that -- that all of
11 the allegations were very conclusory. That they
12 would have gotten more, they wouldn't have done
13 this, that the -- that Hans Mast and the Popovich
14 firm should have undertaken additional actions in
15 the underlying case, but they don't say what those
16 are. And I think that they -- they're required to
17 if they believe that there was a breach of a duty
18 that led to damages.

19 The high-low agreement, which is very
20 confusing to me and to my client, frankly, because
21 he's never seen it, and as I understand it, that's
22 outside of the four corners --

23 THE COURT: It is outside, but it did lead to an
24 area where I was also a little bit confused. And

1 I -- and I think you touched on -- I'll ask you: Is
2 the complaint having to do with the settlement with
3 the McGuires, or does it somehow relate to the suit
4 that continued with respect to Gagnon and the
5 high-low agreement?

6 MS. WALCZYK: Well, I think it's a little bit of
7 both, because it started with the suit against
8 McGuires, which settled. And then it looks like
9 there was a high-low agreement signed.

10 THE COURT: Okay.

11 MS. WALCZYK: And --

12 THE COURT: Was it signed by Mr. Mast?

13 MS. WALCZYK: Oh, I believe it was signed by
14 Mr. Dulberg. I haven't seen it.

15 THE COURT: Okay.

16 MS. WALCZYK: However, we can attach it if -- if
17 you want --

18 THE COURT: If -- if you are going to allege
19 malpractice as a result of entering into the
20 high-low agreement, yes, I would require you, then,
21 to attach it and to make that a little more
22 explicit.

23 MS. WALCZYK: Yes.

24 THE COURT: Because I -- I came away thinking

1 that was not part of your complaint, but I wasn't a
2 100 percent sure.

3 Also, let's see -- yeah, I need to know
4 with some specificity what facts were concealed and
5 how he was misled. I had problems with,
6 particularly, I had -- paragraphs 20 and 21 and felt
7 that you should have included more in that. And I
8 won't probably say more than that.

9 MS. WALCZYK: Uh-huh.

10 THE COURT: And I -- on the estoppel argument,
11 as I've said, I don't think that it is clear that
12 the signing of the release was something that could
13 be assumed to be knowing and voluntary when the
14 plaintiff is alleging that he was misled as to the
15 ramifications of that. Excuse me. Let's see.
16 Okay.

17 Any -- so I'm granting on the 2-615. I
18 will grant you leave to refile or replead.

19 MS. WALCZYK: Okay.

20 THE COURT: And what else? Is there anything
21 else that we need?

22 MR. FLYNN: Just as a housekeeping, again,
23 depending on what theory you're going under, if it's
24 related to the Gagnon settlement, and we may have

1 more people coming to the party; but if not, then
2 that's it.

3 THE COURT: Yeah. I mean, if you're going to
4 draw that in, then I need it a little more explicit.

5 MS. WALCZYK: Okay.

6 THE COURT: And I got -- in fact -- I'm reading
7 from my notes. I need facts on what was false,
8 misleading and what -- what you mean by coercion.

9 MR. FLYNN: So the 615 is granted with leave to
10 replead.

11 THE COURT: Yes.

12 MR. FLYNN: I wasn't clear, I guess, on whether
13 there's an actual ruling on the 619 or --

14 THE COURT: 619, I'm denying because --

15 MR. FLYNN: Okay.

16 THE COURT: -- there's a question of fact --

17 MR. FLYNN: Okay.

18 THE COURT: -- at this stage.

19 And I think that even if they include
20 additional facts in their complaint, I would still
21 come back to it being a question of fact, because
22 I -- there's going to be a lot more about their
23 relationship than I think can be reflected in merely
24 the complaint. I would -- so I mean, if you were to

1 bring another 2-619, feel free.

2 MR. FLYNN: Sure.

3 THE COURT: But I would still think it's going
4 to be a question of fact as to what is clear --
5 Dulberg's claims are with respect to how he was
6 misled or facts were concealed.

7 MR. FLYNN: Okay.

8 THE COURT: Because it's going to depend on
9 their interaction.

10 MR. FLYNN: And it is the -- the language of
11 statute is "knew or reasonably should have been
12 known." And, again, this -- he does have counsel
13 that came in right after my clients got out. So,
14 again, the Blue Water Partners case says you --
15 potentially, you can't bury your head in the sand.

16 THE COURT: No, you can't. But because I -- of
17 the absence of information --

18 MR. FLYNN: Fair enough.

19 THE COURT: -- I was reluctant to go further.
20 The statute of limitations, you might get a little
21 bit farther, but I still might run into a fact
22 question.

23 MR. FLYNN: Understood.

24 THE COURT: So how long do you need?

1 MS. WALCZYK: If I could have 28 days, Your
2 Honor.

3 THE COURT: Sure.

4 MS. WALCZYK: We have a trial coming up.

5 THE COURT: And to answer or otherwise plead?

6 MR. FLYNN: 28, please.

7 THE COURT: All right. That would -- excuse me.
8 Why don't we come back in -- 60 days is July 9th.
9 How about July 11th, a Wednesday? Or do you have --
10 it's all the same to me, so long as I am here.

11 MR. FLYNN: Let's see. I believe I'm going to
12 be out of state that week.

13 THE COURT: Okay. When is it convenient for you
14 to come here? She's here all the time, so I
15 don't --

16 MR. FLYNN: The following week would be --

17 THE COURT: What day works for either of you the
18 following week?

19 MS. WALCZYK: We may actually have a trial that
20 week. That may or may not go; I'm not sure at this
21 point. At least the first two days, if we could do
22 towards the end of week, that would be great for us.

23 THE COURT: 20th?

24 MR. FLYNN: 20th works.

1 MS. WALCZYK: That's perfect.

2 THE COURT: All right. We'll see you on
3 July 20th.

4 MR. FLYNN: Thank you, Your Honor.

5 MS. WALCZYK: Thank you very much.

6 THE COURT: Thank you.

7 (Which were all the proceedings
8 had in the above-entitled cause
9 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, MAUREEN URBANSKI, an official Court
6 Reporter for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before

14 the Honorable THOMAS A. MEYER, Judge of said Court

15 of McHenry County, Illinois, on the 20th day of

16 July, 2018, at the McHenry County Government Center,

17 Woodstock, Illinois.

18 APPEARANCES:

19 THE GOOCH FIRM, by

20 MS. SABINA WALCZYK,

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by

23 MR. GEORGE K. FLYNN,

24 On behalf of the Defendants.

1 THE COURT: Okay. Next is Dulberg versus Mast.

2 MS. WALCZYK: Good morning, your Honor.

3 THE COURT: Good morning. We're missing --

4 MS. WALCZYK: Yes, he's coming.

5 Sabina Walczyk on behalf of Dulberg, who is
6 present.

7 THE COURT: Okay. Good morning.

8 MR. FLYNN: George Flynn on behalf of the
9 Popovich firm and Hans Mast.

10 THE COURT: All right.

11 MS. WALCZYK: Your Honor, we filed a first
12 amended complaint and --

13 THE COURT: In response to the motion to
14 dismiss?

15 MS. WALCZYK: No, no, no. A first amended
16 complaint, and they filed a motion to dismiss.

17 THE COURT: Okay. So you want to brief it?

18 MS. WALCZYK: Yes, please. We're looking for
19 28 and 14.

20 THE COURT: Okay. That ends the briefing
21 schedule on August 31st. All right. We can do the
22 hearing September 12th, a Wednesday.

23 MS. WALCZYK: The 12th?

24 THE COURT: Does that work?

1 MS. WALCZYK: Yes.

2 THE COURT: Okay. That will be 10:00 o'clock.
3 I'm assuming this is not a exhibit (indiscernible),
4 so I don't need courtesy copies. I'll just rely on
5 what's in the court file.

6 MR. FLYNN: Okay. If we can already have
7 courtesy copies of our motion and the first amended
8 complaint attached, I --

9 THE COURT: To be honest, I might have put that
10 away simply because I have no way to store motions
11 for that long. That's why I'm relying on the
12 electronic file.

13 MR. FLYNN: Thank you.

14 MS. WALCZYK: Thank you very much.

15 THE COURT: Thank you.

16 (Which were all the proceedings
17 had in the above-entitled cause
18 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, KATHLEEN STROMBACH, an official
6 Court Reporter for the Circuit Court of McHenry
7 County, Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
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15 *Kathleen Strombach*
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17 Official Court Reporter
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
5 MCHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.)

9 No. 17 LA 377

10 THE LAW OFFICES OF THOMAS)

11 J. POPOVICH, P.C., and)

12 HANS MAST,)

13 Defendants.)

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

20 APPEARANCES:

21 CLAUSEN MILLER, PC, by:

22 MR. GEORGE K. FLYNN,

23 on behalf of the Defendants.
24

1 THE COURT: Counsel, which one you on?

2 MR. FLYNN: Dulberg.

3 THE COURT: Is opposing counsel here?

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

6 THE COURT: I'm sorry, how late?

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

10 THE COURT: And she's in Waukegan now?

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

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

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

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

20 MR. FLYNN: Okay.

21 THE COURT: And we'll work from there.

22 MR. FLYNN: Okay. Thanks, Judge.

23 THE COURT: Thank you.

24

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

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

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

11 THE COURT: 11:30-ish. Fair?

12 MR. FLYNN: Fair.

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

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

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

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

20 THE COURT: Yeah.

21 MR. GLYNN: -- under the 615 standard?

22 THE COURT: Yeah.

23 MR. GLYNN: Okay.

24 THE COURT: (1) there might be some facts in there,

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

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

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

1 future 615 based on the same concepts.

2 Does that make sense?

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

10 THE COURT: I think --

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

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

24 Does that answer your question?

1 MR. FLYNN: I think so.

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

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

9 MR. FLYNN: Sure.

10 THE COURT: -- to file?

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

13 MR. GLYNN: Yes.

14 THE COURT: Okay. So let's put the case out
15 60 days. That will each give you plenty of time, and
16 that will take us to November 13th. That is a Tuesday.
17 Does that day work for you?

18 MR. FLYNN: Yes.

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

1 everybody some effort.

2 Questions?

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

4 THE COURT: Yes.

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

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

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

16 MR. DULBERG: (Inaudible).

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

20 MR. DULBERG: No.

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

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

1 transcript. This is recorded, I believe, --

2 THE COURT: Yeah.

3 MR. FLYNN: -- correct?

4 THE COURT: Yeah, that's fine.

5 MR. FLYNN: Okay.

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

8 MR. FLYNN: Fair enough.

9 THE COURT: Okay? Thank you.

10 MR. FLYNN: Thank you, Judge.

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

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STATE OF ILLINOIS)
COUNTY OF MCHENRY)
SS:)

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



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

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
5 McHENRY COUNTY, ILLINOIS

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

17 ELECTRONICALLY RECORDED Report of
18 Proceedings in the above-entitled cause before the
19 Honorable THOMAS A. MEYER, Judge of said Court of
20 McHenry County, Illinois, on the 15th day of
21 October, 2018, in the McHenry County Government
22 Center, Woodstock, Illinois.

23 APPEARANCES:

24 THE GOOCH FIRM
BY: MS. SABINA WALCZYK

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN

On behalf of the Defendants.

1 THE COURT: Dulberg vs. Mast.

2 MR. FLYNN: Morning, your Honor.

3 THE COURT: Morning.

4 MR. FLYNN: George Flynn for the defendants.

5 Plaintiff's counsel, I believe, is in Judge

6 Costello's courtroom.

7 THE COURT: Okay. We'll pass. Have a seat
8 and we'll call it back.

9 (WHEREUPON, the afore-captioned
10 cause was recalled.)

11 THE COURT: Dulberg?

12 MS. WALCZYK: Yes.

13 THE COURT: Okay.

14 MS. WALCZYK: Good morning, your Honor.

15 Sabina Walczyk on behalf of Dulberg who is present.

16 MR. FLYNN: George Flynn on behalf of the
17 defendants.

18 THE COURT: Okay. Do you have a motion?

19 MS. WALCZYK: Yes, this is our motion to
20 withdraw as well as our motion for extension of
21 time to file a second amended complaint.

22 THE COURT: Any objections?

23 MR. FLYNN: No, Judge.

24 THE COURT: Okay. I will grant as to both of

1 those. I'm going to enter and continue -- I'm
2 going to grant the motion to extend time and enter
3 and continue it until we see who is going to come
4 in, if anybody. So why don't I put the case out
5 28 days. That takes us to November 13th.

6 Does that work for you?

7 MR. FLYNN: It does. In fact, I think we
8 already have a status set for that day.

9 THE COURT: Do we? Yes, we do. Wow, I'm
10 brilliant. All right. So we will see you on that
11 day, and I will grant you 21 days.

12 Have you previously filed an
13 appearance in this case?

14 MR. DULBERG: This would be -- well, I was
15 here last time.

16 THE COURT: No, but did you --

17 MS. WALCZYK: I don't believe so. I don't
18 believe there is an appearance on file.

19 THE COURT: Okay. All right. Then either
20 way, if you don't get an attorney, you have to file
21 an appearance. Make sure you send a copy to him.
22 We don't do that. If you don't do anything, the
23 case will be dismissed. If you get an attorney,
24 then he or she will know what to do.

1 All right. So we will see you
2 November 13th. Anything else?

3 MS. WALCZYK: No.

4 THE COURT: Okay.

5 MS. WALCZYK: Thank you.

6 MR. FLYNN: Have a good day.

7 (Which were all the proceedings
8 had in the above-entitled cause
9 this date.)
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1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) ss:
3

4 I, KRISTINE L. FERRU, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.

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-----*Kristine Ferru*-----
Certified Shorthand Reporter
License No. 084-003898

1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL DISTRICT
4 McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPOVICH, P.C. and
HANS MAST,

11 Defendants.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 13th day of
16 November, 2018, in the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 MS. JULIA WILLIAMS
20 ATTORNEY AT LAW

21 On behalf of the Plaintiff;

22 MR. GEORGE K. FLYNN
23 ATTORNEY AT LAW

24 On behalf of the Defendants.

1 MS. WILLIAMS: Good morning, your Honor. This
2 is line 7, Dulberg versus Pop- --

3 THE COURT: Yes.

4 MS. WILLIAMS: Law Offices of Thomas Popovich.
5 Julie Williams, new counsel on behalf of the
6 plaintiff. We did file an appearance, myself and Ed
7 Clinton, last week. And we also filed a motion for
8 extension of time to file an amended pleading.
9 Opposing counsel has indicated that he's had no
10 objection to that and we'd just like to December 6th
11 and then get a -- and time to answer or respond.

12 MR. FLYNN: Right, the --

13 MS. WILLIAMS: I apologize. I didn't let you
14 introduce yourself.

15 MR. FLYNN: George Flynn for the defendants.
16 That takes us to January 3. Due to -- because of
17 the holiday, if I can have until January 10 --

18 THE COURT: Sure.

19 MR. FLYNN: -- to file a response of pleading --

20 THE COURT: And have you started discovery?

21 MR. FLYNN: We have not. This is -- there's no
22 complaint on file right now.

23 THE COURT: Okay.

24 MR. FLYNN: Actually, I take that back.

1 Mr. Gooch served some discovery shortly before he
2 withdrew. My position would be I'd rather not
3 answer that until we're at issue, but --

4 THE COURT: Let's go towards late February. How
5 is the week of February 25th for status and F-1?

6 MS. WILLIAMS: That should be fine.

7 THE COURT: What days -- what day works for you
8 guys?

9 MS. WILLIAMS: I'm actually really open that
10 week --

11 MR. FLYNN: Same here.

12 MS. WILLIAMS: -- since it's far enough out,
13 so --

14 THE COURT: 25th, Monday?

15 MS. WILLIAMS: 25th works great.

16 THE COURT: All right. I'll see you then.

17 MS. WILLIAMS: At 9:00 a.m. your Honor?

18 THE COURT: 9:00 a.m.

19 MS. WILLIAMS: Thank you.

20 THE COURT: All right. Thank you.

21 (Which were all the proceedings
22 had in the above-entitled cause
23 this date.)
24

1 STATE OF ILLINOIS }
2 COUNTY OF McHENRY } SS:
3

4 I, CRISTIN M. KELLY, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.
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15 
16 Certified Shorthand Reporter
17 License No. 084-004529
18 Date: November 15, 2021
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 25th day of
16 February, 2019, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 THE CLINTON LAW FIRM, by
20 MS. JULIA C. WILLIAMS
On behalf of the Plaintiff;

21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
22 MR. GEORGE K. FLYNN,
On behalf of the Defendants.

23

24

1 THE COURT: Any other agreed or uncontested?
2 Good morning.

3 MR. FLYNN: George Floyd. I believe this is
4 No. 8.

5 MS. WILLIAMS: Yes. Good morning, Your Honor.
6 Julia Williams on behalf of Paul Dulberg. This is
7 No. 8 on the call.

8 THE COURT: Okay.

9 MS. WILLIAMS: So --

10 MR. FLYNN: I have a substitution first.

11 THE COURT: Okay.

12 MR. FLYNN: I switched firms. So I've got the
13 order.

14 THE COURT: All right. Any objections?

15 MS. WILLIAMS: No. And then, Your Honor, we
16 filed a motion for default judgment. I talked to
17 counsel. I don't think it makes sense to move
18 forward with it, because they fully intend to answer
19 the complaint.

20 So we agreed to enter and continue that
21 motion to grant them 14 days to file their answer.
22 And then go ahead and give everyone 21 days to issue
23 written discovery.

24 THE COURT: Okay.

1 MS. WILLIAMS: And then just move forward with
2 discovery. Maybe come back in 60 days?

3 THE COURT: I'll give you longer since you're
4 just starting.

5 MS. WILLIAMS: That would be great.

6 THE COURT: The 28th, Tuesday. That's 90 days.
7 Anytime around there is fine. That's the day after
8 Memorial Day.

9 MS. WILLIAMS: I would prefer to skip the day
10 after Memorial Day.

11 THE COURT: Okay.

12 MS. WILLIAMS: But anytime that week is...

13 THE COURT: How about the 31st, which is a
14 Friday.

15 MS. WILLIAMS: Could we do the 30th?

16 THE COURT: Yeah.

17 MS. WILLIAMS: Is that okay with you?

18 THE COURT: Of course.

19 MR. FLYNN: Sure. I was just -- I was just
20 thinking about booking a tee time after court, but
21 that's okay.

22 THE COURT: May 30th then, 9:00 a.m., status at
23 1:00.

24 MS. WILLIAMS: Thank you, Your Honor.

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THE COURT: Okay. Thank you.

(Which were all the proceedings
had in the above-entitled cause
this date.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, MAUREEN S. URBANSKI, an Official Court
6 Reporter for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
14

15 Maureen S. Urbanski

16 Certified Shorthand Reporter
17 License No. 084-003308
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 25th day of
16 February, 2019, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 THE CLINTON LAW FIRM, by
20 MS. JULIA C. WILLIAMS
On behalf of the Plaintiff;

21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
22 MR. GEORGE K. FLYNN,
On behalf of the Defendants.

23

24

1 THE COURT: Any other agreed or uncontested?
2 Good morning.

3 MR. FLYNN: George Flynn. I believe this is
4 No. 8.

5 MS. WILLIAMS: Yes. Good morning, Your Honor.
6 Julia Williams on behalf of Paul Dulberg. This is
7 No. 8 on the call.

8 THE COURT: Okay.

9 MS. WILLIAMS: So --

10 MR. FLYNN: I have a substitution first.

11 THE COURT: Okay.

12 MR. FLYNN: I switched firms. So I've got the
13 order.

14 THE COURT: All right. Any objections?

15 MS. WILLIAMS: No. And then, Your Honor, we
16 filed a motion for default judgment. I talked to
17 counsel. I don't think it makes sense to move
18 forward with it, because they fully intend to answer
19 the complaint.

20 So we agreed to enter and continue that
21 motion to grant them 14 days to file their answer.
22 And then go ahead and give everyone 21 days to issue
23 written discovery.

24 THE COURT: Okay.

1 MS. WILLIAMS: And then just move forward with
2 discovery. Maybe come back in 60 days?

3 THE COURT: I'll give you longer since you're
4 just starting.

5 MS. WILLIAMS: That would be great.

6 THE COURT: The 28th, Tuesday. That's 90 days.
7 Anytime around there is fine. That's the day after
8 Memorial Day.

9 MS. WILLIAMS: I would prefer to skip the day
10 after Memorial Day.

11 THE COURT: Okay.

12 MS. WILLIAMS: But anytime that week is...

13 THE COURT: How about the 31st, which is a
14 Friday.

15 MS. WILLIAMS: Could we do the 30th?

16 THE COURT: Yeah.

17 MS. WILLIAMS: Is that okay with you?

18 THE COURT: Of course.

19 MR. FLYNN: Sure. I was just -- I was just
20 thinking about booking a tee time after court, but
21 that's okay.

22 THE COURT: May 30th then, 9:00 a.m., status at
23 1:00.

24 MS. WILLIAMS: Thank you, Your Honor.

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THE COURT: Okay. Thank you.

(Which were all the proceedings
had in the above-entitled cause
this date.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, MAUREEN S. URBANSKI, an Official Court
6 Reporter for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
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17 License No. 084-003308
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1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL DISTRICT
4 McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPOVICH, P.C. and
HANS MAST,

11 Defendant.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 30th day of May,
16 2019, in the McHenry County Government Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 MS. JULIA WILLIAMS
20 ATTORNEY AT LAW

21 On behalf of the Plaintiff;

22 MR. GEORGE K. FLYNN
23 ATTORNEY AT LAW

24 On behalf of the Defendants.

1 THE COURT: Yes?

2 MS. WILLIAMS: Good morning, your Honor. This
3 is Dulberg versus Popovich. It's line 2 on your
4 call. I'm Julia Williams. I represent the
5 plaintiff.

6 MR. FLYNN: Good morning, your Honor. George
7 Flynn for the defendants.

8 MS. WILLIAMS: So defendants have answered. We
9 filed a motion for default. We'll withdraw that
10 motion. It was entered --

11 THE COURT: Okay.

12 MS. WILLIAMS: -- and continued to today.
13 Written discovery's been issued and defendants have
14 answered, as the plaintiff. We tendered documents
15 today. We have not tendered our written answers
16 yet. We expect to do that within 7 days.

17 THE COURT: All right. Go ahead.

18 MS. WILLIAMS: This case -- this is a legal
19 malpractice case, so it's a case within a case.
20 We've tendered, I believe, over 2,000 pieces of
21 paper, essentially. It's all electronic, but --

22 THE COURT: Yeah.

23 MS. WILLIAMS: -- but over 2,000 pages, and
24 counsel's indicated that he tendered about 1500

1 pages. So we anticipate the review of that taking
2 some time. There were several depositions taken in
3 the underlying case and those all need to be
4 reviewed by both counsel to make sure that we have
5 everything from the underlying case that was done in
6 the underlying case. And then we need to decide are
7 there any fact issues from the underlying case that
8 we need to hash out in this case. And then I think
9 we can start taking party deps. So I think we need
10 a bit of time to get through the 3,000-some pieces
11 of paper --

12 THE COURT: All right. So I was going to give
13 you 90 days.

14 MS. WILLIAMS: I think that sounds good.

15 THE COURT: That's --

16 MR. FLYNN: That is to get started on --

17 THE COURT: Yeah, just put it out for status on
18 F1 and I'll let you progress at your own speed.
19 When in late August works for you?

20 MS. WILLIAMS: I am out that last -- that
21 entire -- family vacation that entire last week of
22 August.

23 THE COURT: Okay.

24 MS. WILLIAMS: If we could do sometime during

1 the week of the 19th --

2 MR. FLYNN: Sure.

3 MS. WILLIAMS: -- or we can go into September
4 1st, but whatever defendant --

5 THE COURT: What's your preference?

6 MR. FLYNN: Doesn't matter to me. Why don't we
7 go into September just to be safe? As long as it's
8 not the week of the (indiscernible).

9 MS. WILLIAMS: So any time the 3rd, 4th, 5th, or
10 6th?

11 THE COURT: All are fine. So what's your
12 preference?

13 MS. WILLIAMS: How's (indiscernible)?

14 MR. FLYNN: That's fine.

15 THE COURT: Sorry. What date?

16 MS. WILLIAMS: September 5th.

17 THE COURT: Okay. We'll see you then.

18 MS. WILLIAMS: At 9:00 a.m.?

19 THE COURT: Yeah.

20 MS. WILLIAMS: Thanks, your Honor.

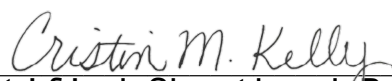
21 MR. FLYNN: Thanks, Judge.

22 THE COURT: Thank you.

23 (Which were all the proceedings
24 had in the above-entitled cause
this date.)

1 STATE OF ILLINOIS }
2 COUNTY OF McHENRY } SS:
3

4 I, CRISTIN M. KELLY, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.
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15 
16 Certified Shorthand Reporter
17 License No. 084-004529
18 Date: November 17, 2021
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1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL DISTRICT
4 McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPVICH, P.C. and HANS
MAST,

11 Defendants.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 5th day of
16 September, 2019, in the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 MS. JULIA WILLIAMS
20 ATTORNEY AT LAW

21 On behalf of the Plaintiff;

22 MR. GEORGE K. FLYNN
23 ATTORNEY AT LAW

24 On behalf of the Defendants.

1 THE COURT: Okay. Agreed or uncontested?
2 Failing that, I'll start with my call. Dulberg
3 versus Mast.

4 MS. WILLIAMS: Good morning, your Honor. Julia
5 Williams on behalf of the plaintiff. I'm waiting
6 for defendant. He said he'd be about five minutes
7 late.

8 THE COURT: All right. We'll pass.
9 (Whereupon the afore-captioned
10 cause was recalled.)

11 THE COURT: Anybody else ready?

12 MS. WILLIAMS: Good morning, your Honor.

13 THE COURT: Okay.

14 MS. WILLIAMS: On Dulberg, the first -- first
15 line on your call. Julia Williams on behalf of Paul
16 Dulberg.

17 THE COURT: Morning.

18 MR. FLYNN: Good morning, your Honor. George
19 Flynn on behalf of defendants.

20 MS. WILLIAMS: So we're here on status of
21 discovery. We've done written discovery. We've got
22 some -- kind of 201(k) issues. It's not adversarial
23 201(k), but we need to do some 201(k) --

24 THE COURT: Okay.

1 MS. WILLIAMS: -- conferences. We were actually
2 going to meet after this today and take some time.
3 We have -- we have asserted some privilege, some
4 attorney-client privilege to some of the documents.
5 We are likely going to waive that privilege, so we
6 need to produce some additional documents from
7 subsequent counsel. It's a legal malpractice case.
8 Counsel subsequent to Popovich's firm.

9 THE COURT: All right.

10 MS. WILLIAMS: So why don't we take some time to
11 do that. If it's okay with the Court, maybe 60 days
12 to resolve all these issues, get the new
13 supplemental, and then move into (f)(1)s.

14 THE COURT: Okay. What date did you have in
15 mind? That puts us into November.

16 MS. WILLIAMS: Early, mid -- early to
17 mid-November, I guess, would be --

18 THE COURT: What day?

19 MS. WILLIAMS: I would like to avoid the last
20 week.

21 MR. FLYNN: Any date in November is fine with
22 me, your Honor. I would like to have a resolution
23 of the privilege issue, though. It sounds like the
24 decision hasn't been made, so --

1 MS. WILLIAMS: I think we're waiving privilege.
2 I'll say it on the record, we're going to waive
3 privilege.

4 MR. FLYNN: Okay.

5 THE COURT: Okay.

6 MR. FLYNN: The only other issue that was
7 raised -- I just reviewed the written discovery
8 yesterday and you had (indiscernible) 201(k) that
9 there was a bankruptcy that was mentioned kind of
10 vaguely in one of the answers. It sounds or appears
11 that either the bankruptcy judge or the trustee had
12 enforced or required a mediation and a high-low
13 agreement. To the extent that those documents are
14 responsive to any of the requests -- and I'll have
15 to go through them to see if they are. Otherwise
16 I'll just issue a supplemental, but I think the
17 bankruptcy file and communications with the trustee
18 are probably responsive to our discovery, so I would
19 just request that those be included in our --

20 MS. WILLIAMS: I think we produced a number of
21 the bankruptcy issues, but we can talk about it
22 today and definitely try to work out -- there's
23 definitely -- there was a bankruptcy. We're not
24 trying to hide that bankruptcy, so. And the trustee

1 did resolve -- there was an arbitration based on the
2 trustee's recommendation in the bankruptcy for the
3 individual.

4 THE COURT: How's November 4th, Monday?

5 MS. WILLIAMS: That works for me, your Honor.

6 THE COURT: Okay. Then we will see you then,
7 status (f)(1).

8 MR. FLYNN: Thank you, your Honor.

9 THE COURT: Thank you.

10 (Which were all the proceedings
11 had in the above-entitled cause
12 this date.)
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1 STATE OF ILLINOIS }
2 COUNTY OF McHENRY } SS:

3
4 I, CRISTIN M. KELLY, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.

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15 *Cristin M. Kelly*
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17 Certified Shorthand Reporter
18 License No. 084-004529
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendant.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 4th day of
16 November, 2019, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 THE CLINTON LAW FIRM, by

20 MS. JULIA C. WILLIAMS, (Via CourtCall)

21 On behalf of the Plaintiff,

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by

23 MR. GEORGE K. FLYNN,

24 On behalf of the Defendants.

1 THE COURT: All right. Let's go Dulberg versus
2 Mast. Good morning. This is Judge Meyer. I'm a
3 little early. I've got two cases on CourtCall. Is
4 anyone on the phone for Dulberg versus Mast?

5 MS. WILLIAMS: Yes, your Honor. Good morning.
6 This is Julia Williams on behalf of Paul Dulberg.

7 THE COURT: All right. Here we have in court
8 here Mr. Dulberg, am I correct?

9 MR. DULBERG: Correct.

10 THE COURT: And counsel?

11 MR. FLYNN: George Flynn on behalf of Popovich.

12 THE COURT: Okay. I'll ask counsel here in
13 court, what's going on?

14 MR. FLYNN: Judge, we are here for a status and
15 my motion. I've got a motion to file an amended
16 affirmative defense which I understand is -- has no
17 objection.

18 THE COURT: Is that correct, counsel, no
19 objection?

20 MS. WILLIAMS: No. Given the pleading standard,
21 there is no objection.

22 THE COURT: Okay. All right. What have we done
23 in (f)(1)?

24 MR. FLYNN: We haven't taken any depositions.

1 We have exchanged written discovery. There is some
2 outstanding supplemental answers owed by the
3 plaintiff. My understanding they are out for
4 signature.

5 You may recall last time we were here, your
6 Honor, there was an indication on the record that
7 the plaintiff is waiving a previously raised
8 attorney-client privilege.

9 THE COURT: Okay.

10 MR. FLYNN: So I think they are amending the
11 discovery answers and possibly producing more
12 documents. I'm not sure.

13 THE COURT: Is that correct, counsel, not
14 putting you on the spot, but is that an accurate
15 representation?

16 MS. WILLIAMS: Right. So I think we have
17 produced pretty much everything we have, but I can
18 talk to counsel about the documents. But we are
19 amending -- supplementing some of the discovery
20 responses, and I'm working with my client on that
21 now. And then I think there might be a couple other
22 outstanding discovery issues that's something that
23 counsel and I have been working on, and I think will
24 be resolved --

1 THE COURT: Okay.

2 MS. WILLIAMS: -- fairly quickly.

3 THE COURT: With that all being said, since
4 you're still doing written, how about I put it on 90
5 days? That takes us to early February. February 3
6 is a Monday. Does that day work, or did you have
7 something else in mind?

8 MR. FLYNN: Let's see.

9 MS. WILLIAMS: That's fine with me if that's
10 fine with counsel.

11 MR. FLYNN: That's fine with me. It's the day
12 after the Super Bowl, but I'm really too old these
13 days to have much fun for it. So --

14 THE COURT: All right. So it will be February 3
15 status (f)(1).

16 MS. WILLIAMS: Thank you, your Honor.

17 THE COURT: All right. I'll grant you to file
18 the amended.

19 MR. FLYNN: Thank you, your Honor.

20 THE COURT: All right. Thank you.

21 (Which were all the proceedings
22 had in the above-entitled cause
23 this date.)
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, JUDY CARLSON, an official Court Reporter
6 for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
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17 Certified Shorthand Reporter
18 License No. 084-003347
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 3rd day of
16 February, 2020, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 THE CLINTON LAW FIRM

20 BY: MS. JULIA C. WILLIAMS
On behalf of Plaintiff;

21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC

22 BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

23

24

1 THE COURT: Any other agreed, uncontested or
2 sides?

3 MS. WILLIAMS: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. WILLIAMS: Julia Williams. We're here on
6 Dulberg vs. --

7 THE COURT: Okay. The Dulberg vs. Mast.

8 MS. WILLIAMS: Yes, that's correct. And I'm --

9 MR. FLYNN: Good morning, Your Honor.

10 MS. WILLIAMS: -- for plaintiff.

11 MR. FLYNN: George Flynn for defendants.

12 THE COURT: Okay. What are we doing?

13 MS. WILLIAMS: We're just going to set it out
14 again for status on discovery. We are pretty well
15 finished with written discovery, at least between
16 the parties.

17 THE COURT: Really old for F1 written --

18 MS. WILLIAMS: Right. Here's our -- we're
19 actually -- we should be done today. We had some
20 201(k) issues.

21 THE COURT: Okay.

22 MS. WILLIAMS: We are going to the law firm to
23 look through their -- through their documents today.
24 I believe everything has been produced, but we just

1 want to verify -- there were some blank pages, and
2 we just want to verify --

3 THE COURT: Okay.

4 MS. WILLIAMS: -- what those are.

5 So I think we're actually going to be fully
6 completed with that today and looking to do --
7 getting ready to do deps, I think, is our next
8 step --

9 THE COURT: How many are --

10 MS. WILLIAMS: -- for depositions.

11 THE COURT: How many F1 deps do you anticipate?

12 MS. WILLIAMS: Well, we'll have probably two.

13 One from the firm and one -- defendant counsel and
14 then defendant firm.

15 THE COURT: Okay.

16 MS. WILLIAMS: And then, obviously, the
17 plaintiff. Now, whether we need more witness
18 deps -- this is a legal malpractice case. Witness
19 deps were taken in the underlying case. I don't
20 know if we're going to need to take those a second
21 time to --

22 THE COURT: I think I pre-tried the underlying
23 case. I have a recollection of this, so -- but I'm
24 not a hundred percent sure, so just throwing that

1 out there...

2 MS. WILLIAMS: Okay.

3 MR. FLYNN: I think I did see Your Honor's name
4 in connection with maybe one order in the case; but
5 I don't see it as an issue.

6 THE COURT: Okay. I'll periodically throw it
7 out there. But in any event, so if we come back in
8 60 days, do you think that gives you enough time to
9 complete?

10 MR. FLYNN: I think it gives us enough time to
11 complete the main F1 witnesses.

12 MS. WILLIAMS: At least the three parties.

13 MR. FLYNN: There were -- there were four --
14 four or five doctors deposed in the underlying case.
15 And four other five other --

16 THE COURT: All right.

17 MR. FLYNN: -- (indiscernible). I don't know if
18 we'll need to redo everybody, but I think we'll have
19 a better idea after we take the party deps.

20 THE COURT: All right. Let's put it out 60
21 days. Can you make April 3rd, a Friday?

22 MS. WILLIAMS: Yes. Let me just double-check.

23 THE COURT: Okay.

24 MS. WILLIAMS: But I believe that's just fine.

1 And that will be status completion of F1. That's --
2 yes.

3 THE COURT: That's just to tell me what we're
4 supposed to be doing.

5 MS. WILLIAMS: Sure. So status completion of
6 F1s on April 3rd, and we'll come back.

7 THE COURT: Okay.

8 MS. WILLIAMS: Thank you very much.

9 MR. FLYNN: Thanks, Judge.

10 THE COURT: Thank you.

11 (Which were all the proceedings
12 had in the above-entitled cause
13 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, MAUREEN S. URBANSKI, an Official Court
6 Reporter for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
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15 Maureen S. Urbanski
16 Certified Shorthand Reporter
17 License No. 084-003308
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 5th day of June,
16 2020, at the McHenry County Government Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 THE CLINTON LAW FIRM, by

20 MS. JULIA C. WILLIAMS (via Zoom),

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by

23 MR. GEORGE K. FLYNN,

24 On behalf of the Defendants.

1 THE COURT: All right. The next one is Dulberg
2 versus Mast.

3 MS. WILLIAMS: Good morning, your Honor.
4 Julia Williams for Plaintiff, Paul Dulberg, on the
5 phone.

6 THE COURT: Okay. And Mr. Dulberg is here. Do
7 you expect the Defendant to show?

8 MS. WILLIAMS: Yes. Mr. George Flynn will be
9 there this morning, so if you want to pass it if
10 he's not there.

11 THE COURT: He just walked in.

12 If you could, introduce yourself.

13 MR. FLYNN: Good morning. George Flynn for
14 Defendant.

15 THE COURT: All right. I'll ask counsel here,
16 what is going on?

17 MR. FLYNN: Judge, we took Mr. Dulberg's
18 deposition a few months ago. My client, Hans Mast,
19 who is the primary handling attorney, was scheduled
20 for his deposition, postponed that, and now it is
21 scheduled for, I believe, June 25th.

22 THE COURT: Okay.

23 MR. FLYNN: After his deposition is taken by the
24 Plaintiff, I'll be able to determine what, if any,

1 other (f)1 witnesses I might --

2 THE COURT: Okay. Counsel on the phone, did you
3 get all that?

4 MS. WILLIAMS: Yes. Yes. And we have spoken,
5 so we're in agreement.

6 THE COURT: All right. So what is your
7 agreement?

8 MS. WILLIAMS: We're in agreement that after
9 Mr. Mast's deposition, we'll reassess as to whether
10 there's any further (f)1 or (f)2s that need to be
11 taken.

12 THE COURT: Do you want to come back in August
13 or September?

14 MR. FLYNN: Either one would be fine with me.

15 MS. WILLIAMS: I would say early September, just
16 in case there are any other (f)1s and then -- so we
17 can finish those up over the summer.

18 THE COURT: All right. How about September
19 10th, Thursday, at 9:00 a.m.?

20 MS. WILLIAMS: That works for me.

21 Thank you, your Honor.

22 THE COURT: All right. That will be status
23 (f)1. We'll see you then.

24 MR. FLYNN: Thank you, your Honor.

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MS. WILLIAMS: Thank you, your Honor.

(Which were all the proceedings
had in the above-entitled cause
this date.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, KATHLEEN STROMBACH, an official
6 Court Reporter for the Circuit Court of McHenry
7 County, Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
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15 *Kathleen Strombach*
16 Kathleen Strombach
17 Official Court Reporter
18 License No. 084-003755
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 10th day of
16 September, 2020, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 THE CLINTON LAW FIRM, by

20 MS. JULIA C. WILLIAMS (via Zoom),

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by

23 MR. GEORGE K. FLYNN,

24 On behalf of the Defendants.

1 THE COURT: Good morning.

2 MS. WILLIAMS: Good morning, your Honor.

3 THE COURT: We've got Julia Williams.

4 Ms. Williams, are you on Dulberg?

5 MS. WILLIAMS: Yes, that's correct, your Honor.

6 THE COURT: And forgive my ignorance, are you
7 with the Plaintiff?

8 MS. WILLIAMS: I am, your Honor. I represent
9 the Plaintiff.

10 THE COURT: Okay.

11 MS. WILLIAMS: And counsel for Defendant should
12 either be present in court or on the phone.

13 THE COURT: Not on the phone. Ms. Wong, can you
14 hear me? Are you on Dulberg?

15 MS. WONG: No, I'm here for Hill.

16 THE COURT: Okay. Then I'm going to pass.
17 Mr. Dulberg is here in court. I'm going to wait,
18 then, you know, because we're up for status anyway.
19 So I'll wait a few minutes see if defense counsel
20 shows.

21 MS. WILLIAMS: Your Honor, defense counsel will
22 not be on the call. I did speak with him, though,
23 yesterday.

24 THE COURT: Okay. Okay. All right. Then let

1 me deal with Hill. Pass.

2 (Whereupon the afore-captioned
3 cause was recalled.)

4 THE COURT: Okay. You're going to have to come
5 closer because the mic is on my computer.

6 Counsel, for the record, your name is?

7 MR. FLYNN: George Flynn, F-L-Y-N-N.

8 THE COURT: Counsel, can you hear him?

9 MS. WILLIAMS: Yes, I can, your Honor.

10 THE COURT: Okay. And your name, for the
11 record?

12 MR. DULBERG: Paul Dulberg.

13 THE COURT: Did you hear that?

14 MS. WILLIAMS: Yes, your Honor.

15 THE COURT: Okay. Counsel, on Zoom, it's your
16 motion.

17 MS. WILLIAMS: Julia Williams for Paul Dulberg.
18 This is my motion to withdraw as counsel for
19 Mr. Dulberg.

20 Mr. Dulberg is present in court and has
21 been served with the motion, so we would just like
22 the right to -- the opportunity to withdraw today,
23 if it pleases the Court.

24 THE COURT: Okay. Any comment, Mr. Dulberg? I

1 don't want to get into the nature of your
2 relationship, but do you have anything to say, an
3 objection to the motion?

4 MR. DULBERG: No, Judge.

5 THE COURT: Okay. Counsel, do you have anything
6 to add?

7 MR. FLYNN: I have some comments. I don't have
8 a specific objection, but I would like to make a
9 little bit of a record, if I may.

10 THE COURT: Okay.

11 MR. FLYNN: Judge, this is a legal malpractice
12 case. This is Mr. Dulberg's second set of attorneys
13 that have withdrawn from the case. The first one
14 was Tom Gooch.

15 The legal malpractice case was filed more
16 than two years after my client --

17 THE COURT: If you're going to ask me to do
18 something substantive --

19 MR. FLYNN: I'm not. But maybe housekeeping.

20 THE COURT: Okay.

21 MR. FLYNN: So the case was filed more than two
22 years after the withdrawal. There's a statute of
23 limitations issue it was raised on the motion to
24 dismiss. It's alive in the case. I propose

1 Mr. Dulberg -- the discovery rule that he is relying
2 on, the information that he's relying on, actually
3 came from Mr. Gooch.

4 So communications that gave rise to his
5 knowledge of the malpractice case and the damages
6 came from his communications with Mr. Gooch.

7 THE COURT: Okay. So what are you asking me to
8 do? I don't need background but just --

9 MR. FLYNN: Sure. Well, I served supplemental
10 discovery after the deposition. Ms. Williams asked
11 me for an extension a month ago, and I agreed to it,
12 but then I got the motion to withdraw.

13 So my concern is is that I'm not going to
14 get this discovery.

15 THE COURT: Not within 21 days.

16 MR. FLYNN: Okay. I just wanted to lay the
17 record because I probably will have to file a motion
18 to compel, and I want the record -- the documents to
19 be preserved but then the answers obviously to be
20 preserved as well.

21 THE COURT: Okay. Did you hear that,
22 Ms. Williams?

23 MS. WILLIAMS: Right. I just wanted to clarify
24 one thing. There was a motion to dismiss filed

1 early in the case. I did not brief that. I was not
2 involved in that motion. It was denied. But then
3 there's, I think, an affirmative defense for statute
4 of limitations. So that's how it's alive in the
5 case. The motion to dismiss has been ruled on. I
6 don't think that was entirely clear, so just to
7 clarify.

8 THE COURT: Okay. Well, I will wait for the
9 motion to compel. I'm not going to do anything.
10 That's why I cut you off because -- I'm speaking to
11 Mr. Dulberg -- we're not going to address it further
12 today.

13 So I will grant your motion to withdraw. I
14 will give Mr. Dulberg 21 days in which to retain new
15 counsel.

16 Who is going to do the order?

17 MR. FLYNN: I've got the draft.

18 THE COURT: Okay. Defense counsel has agreed to
19 draft the order.

20 So, Mr. Dulberg, you will have until
21 October 1st to retain new counsel. That's 21 days
22 from today. And let's come back October 8th. Does
23 that work?

24 MR. DULBERG: I would ask one thing.

1 THE COURT: I'm sorry?

2 MR. DULBERG: I would ask one thing. In today's
3 COVID, it's hard to get in-person appointments with
4 attorneys to hire them right now. Some of them are
5 not doing it. 21 days is -- is really --

6 THE COURT: 21 days is what the rule says. I'm
7 going to follow the rule. If it turns out that
8 there is a problem -- all this requires is that
9 somebody files an appearance. So you are going to
10 have to file an appearance if you don't have an
11 attorney. I don't know if you have already filed
12 one on your own, but if you -- have you filed an
13 appearance already?

14 MR. DULBERG: I don't believe so.

15 THE COURT: I'm sorry?

16 MR. DULBERG: I don't believe so.

17 THE COURT: Okay. It's not going to cost you
18 anything because it's already been paid for, but all
19 you have to do is file an appearance within 21 days,
20 and that doesn't mean are you prevented from
21 retaining counsel later on.

22 So file it in 21 days, if you don't have an
23 attorney. If you have an attorney, great. He'll
24 file it or she'll file it, and then we'll see you on

1 October 8th.

2 MR. FLYNN: I do have a conflict that day.

3 THE COURT: Okay.

4 MR. FLYNN: I can do the 9th. I don't know if
5 that works.

6 THE COURT: For some reason I thought that was
7 bad. Yeah, I'm potentially not here. I can go the
8 15th or the 7th. What is your preference?

9 MR. FLYNN: On the 15th I have a deposition that
10 morning. The 7th will work.

11 THE COURT: Okay. We'll see you on the 7th.

12 Counsel will draft the order and send you a
13 copy as well, Ms. Williams.

14 Is there anything else?

15 MR. FLYNN: I think we're all secure on status
16 on (f)1 depositions. I guess I can just report that
17 Mr. Dulberg's been deposed. No other (f)1s have
18 gone.

19 THE COURT: Okay. We'll resume monitoring
20 discovery status when we come back.

21 MR. FLYNN: Fair enough. Thanks, Judge.

22 (Which were all the proceedings
23 had in the above-entitled cause
24 this date.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, KATHLEEN STROMBACH, an official
6 Court Reporter for the Circuit Court of McHenry
7 County, Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
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15 *Kathleen Strombach*
16 Kathleen Strombach
17 Official Court Reporter
18 License No. 084-003755
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 7th day of
16 October, 2020, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 KARBAL COHEN ECONOMOU SILK DUNNE, LLC
20 BY: MR. GEORGE K. FLYNN
On behalf of Defendants;

21

22

23

24 ALSO PRESENT: Mr. Paul Dulberg

1 THE COURT: Dulberg. Okay. For the record?

2 MR. FLYNN: George Flynn on behalf of the
3 Popovich firm and Hans Mast.

4 MR. DULBERG: Paul Dulberg.

5 THE COURT: Okay. Mr. Dulberg's filed a motion
6 seeking leave to -- for additional time to retain
7 counsel.

8 Mr. Dulberg, did you file an appearance?

9 MR. DULBERG: Yes, I did.

10 THE COURT: Okay. And it recovered. You filed
11 a motion to compel?

12 MR. FLYNN: We did.

13 THE COURT: All right. Mr. Dulberg, what are
14 you asking for?

15 MR. DULBERG: 21 days additional.

16 THE COURT: Okay. Excuse me, I'm looking for
17 the file. Yeah, I've got an appearance.

18 Have you gotten the appearance?

19 MR. FLYNN: I have, Your Honor.

20 THE COURT: All right. Any objection to my
21 continuing this for 21 days -- excuse me, for status
22 on your motion to compel?

23 MR. FLYNN: Your Honor, the last time we were
24 here, I think the Court admonished Mr. Dulberg --

1 THE COURT: I'm sorry. I'm not --

2 MR. FLYNN: I'm sorry. The last time we
3 appeared before Your Honor, the Court explained to
4 Mr. Dulberg the statute and court rule --

5 THE COURT: Well, he's --

6 MR. FLYNN: -- provides for 21 days --

7 THE COURT: He's filed an appearance.

8 MR. FLYNN: He's filed an appearance --

9 THE COURT: He's covered.

10 MR. FLYNN: -- so the motion is really
11 unnecessary. As far as responding to the motion to
12 compel, which was filed after his motion for an
13 extension, this discovery is -- is -- he's been
14 evading this discovery for --

15 THE COURT: Well --

16 MR. FLYNN: -- over a year.

17 THE COURT: -- over objection, I'm going to
18 enter and continue your motion 21 days. That takes
19 us to October 27th. That's a Tuesday. Can you both
20 make it on that day at 8:45?

21 MR. DULBERG: Yes, Your Honor.

22 THE COURT: Anytime around there is fine.

23 MR. FLYNN: 10-27?

24 THE COURT: Yeah.

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MR. FLYNN: That would work.

THE COURT: Okay. That works.

MR. FLYNN: Thank you.

THE COURT: Counsel, if you can draft the order.

MR. FLYNN: All right.

THE COURT: And then we'll see you back on
October 27.

MR. FLYNN: 8:45.

THE COURT: Thank you.

(Which were all the proceedings
had in the above-entitled cause
this date.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, MAUREEN S. URBANSKI, an Official Court
6 Reporter for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
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15 Maureen S. Urbanski
16 Certified Shorthand Reporter
17 License No. 084-003308
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY.)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 27th day of
16 October, 2020, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 THE LAW OFFICE OF ALPHONSE A. TALARICO, by
20 MR. ALPHONSE A. TALARICO,

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN,

24 On behalf of the Defendants.

1 THE COURT: Good morning, this is Judge Meyer.
2 First case up is Dulberg versus Mast. Is it
3 Alphonse Talarico?

4 MR. TALARICO: Yes. Good morning, Judge.

5 THE COURT: Good morning. Here in court we
6 have -- and don't forget, please keep your voice up
7 because the mic is over here, not there.

8 MR. FLYNN: George Flynn for the Defendants.

9 THE COURT: Did you hear him?

10 MR. TALARICO: No, I didn't.

11 MR. FLYNN: George Flynn for Defendants.

12 THE COURT: George Flynn for the Defendants.
13 And?

14 MR. DULBERG: Paul Dulberg.

15 THE COURT: And Mr. Dulberg. I'll ask defense
16 counsel -- I know plaintiff's counsel just filed an
17 appearance, so defense counsel, what is going on?

18 MR. FLYNN: Judge, we have a pending motion to
19 compel. I do have a question about the appearance
20 that was filed. It was termed as an additional
21 appearance, but there are no other attorneys of
22 record right now. So I'm not sure why it was filed
23 as an additional. I assume that this counsel will
24 be lead counsel.

1 THE COURT: Can you hear, Mr. Talarico?

2 MR. TALARICO: Yes, I can.

3 THE COURT: Okay. Your response?

4 MR. TALARICO: Yes. The reason I filed as an
5 additional is because my client had filed a pro se
6 appearance, so he is of record.

7 THE COURT: Okay. That resolves it for me.

8 Any other questions?

9 MR. FLYNN: Sure enough. So we have a pending
10 motion to compel.

11 THE COURT: All right. Mr. Talarico, have you
12 seen the motion to compel?

13 MR. TALARICO: Very quickly, yes, Judge, I
14 have.

15 THE COURT: I'm going to ask defense counsel,
16 because I did not read it for today, what are you
17 asking for?

18 MR. FLYNN: Communications between Mr. Dulberg
19 and his prior counsel, Tom Gooch, which forms the
20 basis for the discovery rule argument in response to
21 a statute of limitations defense.

22 THE COURT: Did you hear all that?

23 MR. TALARICO: I did.

24 THE COURT: All right. What do you want to do?

1 I'll give you time if you are asking for time.

2 MR. TALARICO: Yes, Judge. Since I've only been
3 on the case a few days, I would ask to have
4 additional time to respond.

5 THE COURT: All right. How about we continue
6 the case 28 days-ish. I'll enter it to continue the
7 motion, and we'll come back for status of compliance
8 28 days is November 24th. That's the week of
9 Thanksgiving, and the Tuesday, that works for me.
10 If it doesn't work for you, let me know.

11 MR. FLYNN: What date?

12 THE COURT: November 24th.

13 MR. FLYNN: That works for me. So no response
14 will be required until that time?

15 THE COURT: I'm expecting that you're going to
16 have a response, but I am going to give counsel an
17 opportunity to examine the file before I compel him
18 to respond or direct him to file an answer to that
19 just yet. I don't know if there is objections so
20 I'm going to give him an opportunity to explore
21 that.

22 So counsel on the phone, does November 24th
23 work?

24 MR. TALARICO: Judge, yes, it does, but can I

1 have a clarification? Is November 24th the date by
2 which I must respond, or is that just a continuance
3 to give me time to dive into the waters of a
4 prolonged pending case?

5 THE COURT: Here is how I -- here is what I
6 plan. You are going to come back on November 24th,
7 and you are going to tell me either you've complied,
8 the issue is resolved, or you can explain to me why
9 you haven't complied and how much more time you
10 need.

11 MR. TALARICO: I understand, Judge.

12 THE COURT: So I'm going to put it for status of
13 compliance to November 24th at 8:45 a.m., and
14 counsel here in court will draft the order.

15 Is there anything else we need to do?

16 MR. FLYNN: No.

17 THE COURT: Okay. Then we will see you next
18 month.

19 MR. FLYNN: Thank you, your Honor.

20 MR. TALARICO: Thank you, Judge.

21 (Which were all the proceedings
22 had in the above-entitled cause
23 this date.)
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, KATHLEEN STROMBACH, an official
6 Court Reporter for the Circuit Court of McHenry
7 County, Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
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15 *Kathleen Strombach*
16 Kathleen Strombach
17 Official Court Reporter
18 License No. 084-003755
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 24th day of
16 November, 2020, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO
20 BY: MR. ALPHONSE A. TALARICO
On behalf of Plaintiff;

21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC
22 BY: MR. GEORGE K. FLYNN
On behalf of Defendants.

23

24

1 THE COURT: Dulberg vs. Mast.

2 MR. FLYNN: Good morning, Your Honor. George
3 Flynn for defendants.

4 MR. TALARICO: Good morning, Your Honor.
5 Alphonse Talarico for the plaintiff, Dulberg.

6 THE COURT: Okay. Mr. Dulberg's here in court.
7 Plaintiff's counsel -- actually, I have a
8 defendant's motion to compel.

9 Defendant's counsel, what's going on?

10 MR. FLYNN: Judge, I contacted Mr. Talarico
11 yesterday asking him his intentions. Sorry. I'm
12 hearing on echo. I'm going to turn my speaker down
13 a little bit. Hopefully that's better.

14 He indicated there was some confusion about
15 the exhibits. I think that's been clarified. I
16 don't know what else I can do. But I would just
17 like either compliance or a briefing schedule.

18 THE COURT: Okay. Briefing schedule on whether
19 or not compliance --

20 MR. FLYNN: On the motion to compel.

21 THE COURT: -- is necessary?

22 All right. Mr. Talarico, your response?

23 MR. TALARICO: Judge, I'm still -- I think, I
24 will (indiscernible) -- but I think that the motion

1 should be made more clear. There are two issues
2 that I asked about. One is the attached group
3 Exhibit F, which I don't see a reference in the body
4 of the motion to the attached exhibit.

5 The other being of -- the other is an
6 exhibit attached, which is the deposition of
7 Mr. Dulberg. But within that deposition, the
8 printout speaks of 13 exhibits, which are not
9 attached to the motion. So there's the deposition
10 without the exhibits, and the motion with Group
11 Exhibit F not referenced to the -- in the text of
12 the motion. So I'm looking for -- just
13 clarification.

14 THE COURT: Defense counsel?

15 MR. FLYNN: Judge, I -- I don't know what Group
16 Exhibit F is, if that has anything to do with this
17 case or it's just accidentally attached; but it -- it
18 can be disregarded.

19 With respect to the deposition, it's --
20 it's an extensive deposition. The exhibits that are
21 applicable are already attached separately to this
22 motion. So in my view, there's really no need to
23 attach 13 exhibits that aren't necessarily relevant
24 to this motion. I was trying to avoid a waste of

1 paper and data space, but...

2 THE COURT: Uh-huh.

3 MR. FLYNN: Again, I reread the motion last
4 night, and I think it's clear (indiscernible) they
5 are looking for.

6 THE COURT: I'm scanning the motion right now.
7 All right.

8 Mr. Talarico, do you want to file a written
9 response?

10 MR. TALARICO: Yes, Your Honor.

11 THE COURT: All right. How long do you need?

12 MR. TALARICO: With the holiday, the longest the
13 Court permits.

14 THE COURT: Okay. If I give you 28 days, that
15 takes us to December 22nd, 14 days after that is
16 January 5th. I could do the hearing January 14th.
17 That is a Thursday. Does that day work for both of
18 you?

19 MR. FLYNN: January 14 works for me.

20 THE COURT: All right. That will be at 10:00
21 o'clock.

22 Mr. Talarico?

23 MR. TALARICO: And for me, sir.

24 THE COURT: All right. Since it's a briefing

1 schedule, Mr. Talarico, it's at your request, you
2 get to send in the order. You can take a pic- --
3 here's the email address. Mr. -- you can take a
4 picture of that, send that in today, and I will sign
5 it. The hearing is January 14th at 10:00 a.m.

6 MR. TALARICO: Thank you, Your Honor.

7 THE COURT: All right.

8 MR. FLYNN: Thank you, Your Honor.

9 THE COURT: Okay. We'll see you then. Thank
10 you.

11 MR. TALARICO: Thank you, Your Honor. Thank
12 you, Mr. Flynn.

13 MR. DULBERG: Thank you, Your Honor.

14 MR. FLYNN: Thank you, Mr. Talarico.

15 (Which were all the proceedings
16 had in the above-entitled cause
17 this date.)

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, MAUREEN S. URBANSKI, an Official Court
6 Reporter for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
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15 Maureen S. Urbanski
16 Certified Shorthand Reporter
17 License No. 084-003308
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)
4
5 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
6 MCHENRY COUNTY, ILLINOIS
7
8 PAUL DULBERG,)
9)
10 Plaintiff,)
11)
12 vs.)
13) No. 17 LA 377
14 THE LAW OFFICES OF THOMAS)
15 J. POPOVICH, P.C., and)
16 HANS MAST,)
17)
18 Defendants.)
19
20 ELECTRONICALLY RECORDED Report of
21 Proceedings had in the above-entitled cause before
22 The Honorable Thomas A. Meyer, Judge of the Circuit
23 Court of McHenry County, Illinois, on the 10th day of
24 February, 2020, in the Michel J. Sullivan Judicial
Center, Woodstock, Illinois.
APPEARANCES:
LAW OFFICE OF ALPHONSE A. TALARICO, by:
MR. ALPHONSE A. TALARICO,
Appearing via videoconference,
on behalf of the Plaintiff,
KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
MR. GEORGE K. FLYNN,
Appearing via videoconference,
on behalf of the Defendants.

1 THE COURT: Do we have everybody on Dulberg?

2 A VOICE: (Inaudible), Your Honor.

3 MR. FLYNN: I think we do, Your Honor. George Flynn
4 for the defendants, moving.

5 THE COURT: Okay. And for the plaintiff?

6 MR. TALARICO: Alphonse Talarico, Your Honor. Good
7 morning. Good morning, Mr. Flynn.

8 MR. FLYNN: Good morning, counsel.

9 THE COURT: And here in court we've got --

10 MR. DULBERG: Mr. Dulberg.

11 THE COURT: Mr. Dulberg's here.

12 And we're here on defendants' motion; am I
13 correct?

14 MR. FLYNN: That's correct, Your Honor.

15 THE COURT: All right. In a nutshell, defense
16 counsel, can you explain your position.

17 MR. FLYNN: Sure. Thank you, Your Honor.

18 Mr. Dulberg has placed his communications with
19 his prior lawyer, Thomas Gooch, at issue in this case.
20 Plaintiff has admitted that it filed its complaint --
21 I'm sorry, plaintiff has filed its complaint more than
22 two years after my clients, his former lawyers, the
23 Popovich firm, withdrew or were terminated from his
24 representation. That's not at issue.

1 He has placed the discovery rule at issue in
2 his complaint and his amended complaints. However, he
3 has failed to answer initial discovery, he has failed to
4 respond -- or answer properly questions at his
5 deposition regarding discovery of his malpractice and
6 his understanding of damages related to the Popovich's
7 alleged malpractice. We served supplemental discovery,
8 which is somewhat duplicative of what was previously
9 served, and that was on July 2nd after his deposition.
10 He hasn't even answered it.

11 The response does nothing to address those
12 issues or object to the discovery that's been
13 propounded, so I would request that he be forced at a
14 minimum to answer this discovery, that any objection be
15 overruled, and essentially that the communications
16 between Dulberg and Mr. Gooch be produced in whatever
17 form. And to the extent that a subpoena to The Gooch
18 Firm would be necessary at a later date, I would rather
19 take it one step at a time and analyze whatever it is
20 that Mr. Dulberg produce. So, in a nutshell, that's the
21 motion.

22 I didn't know that we'd have to have a hearing.
23 I thought that these would be responded to or at least
24 objected to, but here we are.

1 THE COURT: Okay. Plaintiff's counsel?

2 MR. TALARICO: Let's see, Your Honor,
3 (indiscernible) to start with, I think this is a
4 two-step analysis. I hope the court sees it the same
5 way. I think it should be looked upon as a 2-619 motion
6 and at the same time a -- the question of whether there
7 was a waiver of the attorney-client privilege under Rule
8 of Evidence 502.

9 I believe that if the 2-619 is decided -- I'm
10 sorry. Yeah, the 2-619 motion is dismissed and decided
11 against the defendants, then the matter -- the second
12 step would be the waiver of attorney-client privilege
13 which I think my client did not do under either 502(a)
14 or 502(b).

15 THE COURT: When you -- are you saying that their
16 statute of limitations motion, if I deny that, only in
17 that instance do we get to the issue of the -- of the
18 letter?

19 MR. TALARICO: No. I think what we're -- what I'm
20 saying is that that clarifies part of the 502(a) section
21 of the argument, what I perceive as 502(a).

22 THE COURT: Okay. Defense counsel?

23 MR. TALARICO: If I might --

24 THE COURT: Go ahead, plaintiff.

1 MR. TALARICO: -- expound a little bit. I wasn't
2 aware that a 2-619 motion had been up. It was denied by
3 this court, but denied with the ability to get -- to
4 bring it again. All I've seen when I came into the case
5 was a decision saying, you know, denied, so at that
6 point in time I did not, let's say, approach the issues
7 of the statute of limitations or the statute of repose.
8 I think those two issues help clarify the 502 argument.

9 The 502 argument is what -- what information
10 can be gathered, and I think my responses to that would
11 simply be 502(b) and 502(a) have been complied with.

12 THE COURT: Defense counsel?

13 MR. FLYNN: I'm a little confused, Judge. There is
14 no pending 619 motion. That was ruled upon years ago.
15 This is simply a motion to compel and, you know, again,
16 looking back, I didn't attach every discovery answer
17 that Mr. Dulberg provided because there were many and
18 there were issues with signature pages throughout
19 written discovery. But here, the overarching
20 supplemental request, Exhibit E, I believe it is, that
21 was served on July 2 has not been answered. It's not
22 been objected to. It's untimely at this point, and,
23 again, it's clear that the discovery of the malpractice
24 and damages has been placed at issue. So we're entitled

1 to explore that discovery.

2 The testimony of Mr. Dulberg at his deposition
3 makes it clear that the only basis to toll any statute
4 of limitations was the December 2016 communications with
5 Tom Gooch and if he's not going to produce those, he has
6 no other basis to toll the statute and, as such, the
7 case should be dismissed. We'll bring the appropriate
8 motion. But you can't have it both ways using the
9 privilege as a sword and a shield.

10 THE COURT: Plaintiff's counsel, with respect to the
11 latter, your comment?

12 MR. TALARICO: I guess I'm not clear on what counsel
13 was saying. I respectfully say that we have complied
14 with the -- the 502(b) was inadvertent within the
15 deposition and the attorney at the time, who was -- I
16 think her name was Williams, Julia Williams, objected
17 and objected on a continuing basis for any of the
18 questions regarding that information. Counsel has not
19 brought a motion to have this court decide whether or
20 not that was appropriate, but he had answered under the
21 continuing objection by Miss Williams that this was a
22 protected attorney-client discussion.

23 As to the 502(a), the intentional disclosure,
24 that was, in my estimation -- and I hope the court

1 agrees -- that was done in the pleadings, in the
2 complaint, but it was done in the -- I wouldn't say in
3 the alternative. I would say it's additional
4 information.

5 THE COURT: What specifically are you referring to
6 when you say it's additional information? What was
7 additional information?

8 MR. TALARICO: The continued comments about when --
9 when he was aware of -- and when the statute would begin
10 to run, the two-year statute of limitations, as to the
11 filing of a complaint for malpractice. Within that
12 section, I have each one numbered, but at first the
13 comments -- the situation was when the arbitration, the
14 binding arbitration, matter was decided, and it was
15 decided in such a way that my client lost close to over
16 \$200,000 because the only other person that was in the
17 lawsuit had a maximum insurance policy of \$300,000. At
18 that point in time -- And he alleged that in the
19 complaint, in the first amended complaint, and the
20 second amended complaint, all of which I wasn't party
21 to, but the words are in there, the allegations are in
22 there. I believe that's when the statute of limitations
23 begins to run. Further --

24 THE COURT: He references -- he references in his

1 complaint -- I assume we're talking about the
2 allegations in the complaint.

3 MR. TALARICO: Yes.

4 THE COURT: And he references in the complaint
5 learning information from the expert, if I've read this
6 correctly. Is that a fair statement?

7 MR. TALARICO: That is one of the allegations, yes.

8 THE COURT: So why can't -- why isn't that report or
9 communication going to be turned over?

10 MR. DULBERG: It is. It already is.

11 MR. TALARICO: Judge, it's my position that that is
12 not relevant to the question. The question is, when did
13 -- when did he become aware, when does the statute start
14 running. And the answer I believe under Illinois law is
15 it begins running when he knows of his injury, and the
16 injury took place with the binding arbitration award;
17 not before, not after. So I'm saying --

18 THE COURT: And I guess I -- you're losing me
19 because I -- I don't understand how a binding
20 arbitration award is going to disclose to anybody
21 whether or not malpractice had been -- had taken place.

22 The -- your client -- I don't know if you can
23 see him. He keeps raising his hand. I'm ignoring him
24 because he has an attorney. I'm going to -- I'm going

1 to focus on you.

2 But whether or not there was an award for X
3 dollars or no dollars, that doesn't tell me anything
4 about whether -- whether he knew or should have known at
5 that point. That just told him what those people --

6 MR. DULBERG: May I clarify on the record.

7 THE COURT: Mr. Dulberg, you have an attorney.
8 You've elected to have your attorney speak for you.

9 MR. DULBERG: He's not not lead attorney
10 (indiscernible).

11 THE COURT: I'm going to limit it to it. I
12 recommend that you limit your conversation or comments
13 to him out of fear that you may say something that could
14 be harmful to your case.

15 MR. DULBERG: I understand.

16 THE COURT: In any event, the complaint identified
17 something the expert said as establishing knowledge on
18 behalf of Mr. Dulberg for the first time of the alleged
19 malpractice. So the complaint by its very language
20 tells me that that communication is relevant to the
21 issue of the discovery rule. I don't have a problem
22 with doing an in camera inspection of that particular
23 communication, but I don't see how we avoid it being
24 relevant.

1 MR. TALARICO: Judge, I think in all three -- the
2 original complaint, the first amended complaint and the
3 second amended complaint, all three plead the injury
4 happening with the -- I can't think of the word -- but
5 with the binding arbitration statement.

6 It thereafter talks about other matters and
7 each time the drafter of that complaint, the first --
8 I'm sorry, the original, the first and the second, adds
9 in different aspects which I believe are really
10 irrelevant. I think the focus is on when the injury
11 occurred. The injury I believe occurred when the
12 binding arbitration award was granted and I think that's
13 when the statute of limitations should run.

14 THE COURT: But he's entitled to discovery on that.
15 If you're claiming a particular communication
16 established knowledge for the first time, he gets to --
17 defense gets to see that, because you've linked it to a
18 unique event and he gets to challenge whether that's
19 plausible, so you don't get -- you don't get to make
20 that decision for him.

21 MR. DULBERG: If I may, I'm going -- I'm going to
22 clarify here.

23 THE COURT: Mr. Dulberg, you have an attorney.

24 MR. DULBERG: Yes, I do. And I'm going to clarify.

1 THE COURT: I'm not asking you to clarify.

2 MR. DULBERG: The event -- the event, okay, was a
3 series of events --

4 THE COURT: Counsel, --

5 MR. FLYNN: Judge, I'm going to object to this as
6 well.

7 MR. DULBERG: -- (continuing) prior to meeting
8 Mr. Gooch.

9 THE COURT: I'm ignoring what's being said.

10 Mr. Talarico, do you have a comment?

11 MR. TALARICO: Yes, we -- Mr. Dulberg, I believe,
12 and our position is, the statute of limitations begins
13 to run on the date of the arbitration -- the binding
14 arbitration, award.

15 THE COURT: And you could be right, but the
16 discovery rule involves facts and the issue becomes
17 whether you knew or should have known. You, by the
18 complaint you've inherited, established that knowledge
19 came as a result of a particular event and I think it --
20 by virtue of that allegation, you've made the facts
21 surrounding that event relevant to the investigation of
22 your claim of the discovery rule, its application, that
23 I can't separate that out. If you say that
24 communication gave you knowledge for the first time,

1 then the defendant gets to explore that.

2 MR. DULBERG: That's not what it said.

3 THE COURT: Your subjective interpretations aren't
4 going to be controlling.

5 MR. TALARICO: Judge, I'm not relying on that. All
6 I'm saying is that, with all due respect, that is when
7 he had the knowledge, that is when the statute of
8 limitations begins to run, and that information has been
9 part of the court file long before it became part of
10 this matter.

11 THE COURT: My reading of the complaint referenced
12 something regarding an expert report and perhaps a
13 letter from former counsel.

14 MR. FLYNN: Judge, may I clarify that.

15 THE COURT: Go ahead. Yeah.

16 MR. FLYNN: Thank you.

17 You know, the plaintiff has attempted I think
18 to use both, a report that he received from a chainsaw
19 -- so-called chainsaw expert, so a liability expert,
20 relative to the underlying case. There's been some
21 confusion with respect to his pleading and reliance on
22 that report. However, what I clarified at his
23 deposition is that he relied on a legal opinion to toll
24 the statute of limitations in this case. It's that

1 legal opinion in December of 2016 which informed him of
2 the malpractice.

3 Again, he wasn't very specific. I tried to
4 question him about each and every violation of the
5 standard of care, breach of the standard of care, and
6 when he found out about it; and you can read the whole
7 deposition, but his answers are evasive. They've been
8 evasive in his original interrogatory answers. We've
9 covered the waterfront with every possible question and
10 interrogatory and production request we could, but it's
11 clear that he is relying on a legal opinion.

12 Now, he's not very specific about what that
13 legal opinion is, and maybe there isn't anything in
14 Gooch's records or in the emails and whatnot to and from
15 Gooch and Dulberg, but, in any event, that's what he
16 testified to, and so it's our position we should be
17 entitled to those legal opinions, whatever they are.

18 THE COURT: I thought -- and obviously I didn't read
19 the entire deposition. I thought there was one letter
20 that really covered it, based on what I read. Is that a
21 fair statement?

22 MR. FLYNN: I'm not sure if that's accurate, Judge.
23 I think that -- I think he's pinpointed the time period
24 to December of 2016, but I think he also testified that

1 there was regular email communication between Dulberg
2 and Gooch, you know, --

3 THE COURT: In any event, I am going to direct
4 production of all those communications on which the
5 plaintiff is basing his claim of the applicability of
6 the discovery rule; and that's a little broader than I
7 first intended, but given the nature of this discussion,
8 it sounds like it's more than just a couple of
9 documents. It might be several of them.

10 I will also have those items produced to me for
11 an in camera inspection so that I can determine to what
12 extent that they are disclosing information relevant to
13 our investigation into the discovery rule, because while
14 I agree the defendant should be allowed to investigate
15 that issue, that doesn't mean he gets the benefit of
16 prior counsel's work product outside of the discovery
17 rule issue.

18 Does that make sense?

19 MR. FLYNN: So I do understand your ruling. I would
20 just ask that it be specified also, though, to the
21 communications with Mr. Gooch because in anticipation of
22 how this may be produced to Your Honor, if all they
23 produce is this chainsaw expert report, then we haven't
24 made any progress.

1 THE COURT: There is definitely something from
2 Mr. Gooch, and if I'm not given something from
3 Mr. Gooch, that will be a red flag.

4 MR. TALARICO: Judge, if I might.

5 THE COURT: I'm sorry?

6 MR. TALARICO: If I might speak.

7 THE COURT: Yeah.

8 MR. TALARICO: Judge, my position is that the
9 binding arbitration award document which has been part
10 of the court file, we believe long before I was in this
11 case, is the day that my client knew that he had an
12 action and, before that, it was premature by Illinois
13 law. At the time when the award was given, and the --

14 THE COURT: I'm not buying that. The arbitrator's
15 award gave you insight as to the value. Where you lose
16 me is -- Well, let me rephrase that. It gave you their
17 insight as to what they perceived the value of the case
18 to be. It did not tell you whether or not you could
19 have known that there was a viable cause of action
20 against another defendant --

21 MR. DULBERG: (Indiscernible) that.

22 THE COURT: -- because, again, it's you knew or
23 should have known whether --

24 MR. TALARICO: Of the injury, --

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THE COURT: -- there was another cause of action
against that --

MR. TALARICO: -- a financial injury.

THE COURT: And I fail to understand how an
arbitrator's award would explain that because I can't
imagine -- I certainly don't -- I'm not an arbitrator, I
don't know what they put in their decisions, but I would
be surprised if they spend a lot of time telling you
about people you could have sued but for malpractice, so
the issue for me is knew or should have known, and I am
going to direct production of those documents.

MR. TALARICO: Judge, my one comment?

THE COURT: Yeah.

MR. TALARICO: So it's Illinois law on that matter
and a very recent case talked about specifically when
the statute begins to run, but I will -- It's called
Suburban Real Estate Services, Inc., versus Barus -- I'm
sorry, and Barus versus William Carlson. The cite --

THE COURT: But that's a different argument. That's
a rule -- that's an argument related to the
applicability of -- or, in my analysis, of how the rule
applies to the circumstances that we have. It doesn't
address the issue of whether you should have known of

1 the existence of the cause of action, and the
2 information I have is that you did not and could not
3 have known about the cause of action until the
4 disclosure from the expert or from Mr. Gooch, and if
5 we're going to explore that issue, you've got to produce
6 that. You've put those items into evidence or at issue,
7 so defense has a right to see them.

8 MR. DULBERG: May I.

9 THE COURT: Anything else?

10 MR. DULBERG: Yeah, yeah. I'd like to comment.
11 You're not going to let me comment?

12 THE COURT: Mr. Dulberg is attempting to speak. I'm
13 not -- I'm neither listening nor inviting him to speak.

14 MR. DULBERG: I will speak on the record.

15 THE COURT: So I will --

16 MR. DULBERG: It's not about when we knew or should
17 have known of the cause of action.

18 THE COURT: Sir, --

19 MR. DULBERG: We certainly knew or should have
20 known --

21 THE COURT: Sir, --

22 MR. DULBERG: -- of the injury.

23 THE COURT: Mr. Dulberg, do not presume to tell me
24 what the law is. All right? You understand your place.

1 MR. DULBERG: Yes.

2 THE COURT: Do not tell me what the law is. I will
3 make that decision. I've instructed you numerous times
4 not to talk, and yet you feel the need to express
5 yourself. You have an attorney. Your attorney has ably
6 represented you, but I get to make a decision regardless
7 of what your personal thoughts are. So we will go back
8 to my discussion. Forgive the outburst, but I have
9 invited him not to speak and that wasn't acceptable to
10 him.

11 So, in any event, how long, Mr. Talarico, do
12 you need to produce this information?

13 MR. TALARICO: Judge, I'm not absolutely sure.
14 Whatever the court says I produce I'll produce within
15 28 days.

16 THE COURT: Okay. Twenty-eight days is fine with
17 me.

18 Mr. Flynn?

19 MR. FLYNN: Twenty-eight days is fine, Your Honor.
20 I would also request that, in addition to the documents
21 being produced, that the actual discovery request be
22 responded to and any interrogatories be amended --

23 THE COURT: You need a privilege log certainly as to
24 the documents, and so I'm going to direct that you be

1 given a privilege log because they are claiming
2 privilege as to these items. I assume there hasn't
3 previously been one. Is that true?

4 MR. FLYNN: That is true.

5 THE COURT: All right. So you're entitled to the
6 privilege log.

7 As far as the other interrogatories are
8 concerned, Mr. Talarico -- How many interrogatories do
9 we have outstanding?

10 MR. FLYNN: The -- I think what we have is some
11 interrogatories that weren't completely answered in the
12 first place. It's probably a handful, Judge, but then
13 there are seven or eight requests for production that
14 simply weren't responded to. Those are the subject of
15 this motion.

16 THE COURT: And are they covered by the privilege
17 log, do you think?

18 MR. FLYNN: Well, I think that first we need to know
19 whether there are responsive documents. They haven't
20 even answered that, and then if they are withholding any
21 and submitting them to the court, then the privilege log
22 comes next, I guess, would be my request.

23 THE COURT: Okay. Mr. Talarico, can you provide a
24 response in 28 days?

1 MR. TALARICO: Yes, Your Honor. I will respond.

2 THE COURT: All right. And if you don't have
3 documents, you don't have documents. Just tell him. If
4 you're claiming a privilege, identify -- provide some
5 sort of an identification of the document and the
6 privilege you're claiming.

7 With respect to the interrogatories, which
8 ones?

9 MR. FLYNN: These were the interrogatories
10 propounded by Hans Mast, my other client, and that was
11 Exhibit D, I believe, to the motion. I did not attach
12 his answers, but Hans Mast's interrogatories which were
13 propounded back on March 22 of 2019 -- one, two,
14 three -- just four interrogatories.

15 I do believe that we have a response, but it's
16 incomplete. It doesn't -- it doesn't identify these
17 communications with Mr. Gooch or the legal opinion that
18 has been alleged in the complaint and placed at issue.

19 THE COURT: Yeah, and I -- my concern is -- and the
20 answer, direct answer, to those is going to require my
21 review of the documents, so I'm going to enter and
22 continue that part of the motion until I make a decision
23 with respect to the documents.

24 Is there anything else?

1 MR. FLYNN: I think that covers it, Your Honor.

2 THE COURT: Okay. All right. So, Mr. Flynn, I'm
3 going to direct you to send me an order -- Do you have
4 our email address? You can take a picture if you like.

5 MR. FLYNN: I believe so. Okay.

6 THE COURT: Okay? And the order -- we'll pick a new
7 date in a moment. The order will provide that the
8 plaintiff will provide you with a privilege log for
9 those -- provide you answers to the production request
10 as well as a privilege log with respect to any documents
11 that are withheld, and I'm entering and continuing your
12 motion with respect to the interrogatories.

13 Plaintiff will provide me with the documents
14 withheld and identified in the privilege log within
15 28 days and then we'll come back perhaps two weeks after
16 that. Twenty-eight days is March 10th; two weeks after
17 that would be around March 24th, and I can provide you
18 with my ruling then. So how's March 24th at 1:30?

19 MR. FLYNN: Judge, I actually have a deposition at
20 1:00 o'clock that day.

21 THE COURT: How about the 25th? Thursday.

22 MR. FLYNN: 25th works. 25th at 1:00 o'clock?

23 THE COURT: Yeah.

24 Mr. Talarico?

1 MR. TALARICO: One second, Your Honor.

2 THE COURT: Okay.

3 MR. TALARICO: Fine.

4 THE COURT: Do we have agreement on the date or are
5 we waiting?

6 MR. TALARICO: I said it was fine, Your Honor.

7 THE COURT: Oh, okay. I'm sorry, I missed that. So
8 1:30. Is there anything else we need covered in the
9 order?

10 MR. FLYNN: Just may I be clear that the motion is
11 granted in part as stated on the record.

12 THE COURT: Yes.

13 MR. FLYNN: And I would like to just include
14 Mr. Gooch's name in the written order, that those be
15 included in the production if they exist.

16 THE COURT: Yeah, I don't -- I don't want -- What I
17 want to -- I guess -- And thank you for bringing that
18 up.

19 My impression from reading the motion was it
20 boiled down to -- I got the idea that it was a single
21 document or a single communication that conveyed the
22 information at issue. And you're indicating that it was
23 more, it was a number of emails. Are you able to put a
24 timeframe on it?

1 MR. FLYNN: Well, I think, again, the allegations in
2 the various complaints, complaint and amended
3 complaints, and the testimony, (indiscernible) to
4 December of 2016, so --

5 THE COURT: Yeah. Say the communications of
6 December of 2016, because I don't want it read as
7 requiring that all communications from Mr. Gooch be
8 produced.

9 MR. FLYNN: Okay.

10 THE COURT: Mr. Talarico, any questions or comments
11 about that?

12 MR. TALARICO: No, Your Honor. I'll follow the
13 court's order.

14 THE COURT: All right. Anything else then?

15 MR. FLYNN: No, Your Honor. I will send a draft of
16 that order to Mr. Talarico for his review and then we
17 will send it to your email address, Your Honor.

18 THE COURT: Okay. I'll wait to see that. I'll sign
19 it as soon as it's in. Thank you.

20 MR. FLYNN: Thank you.

21 THE COURT: See you in March.

MR. FLYNN: Thank you, counsel.

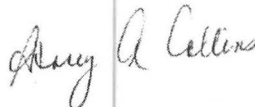
22 THE COURT: All right. Bye.

MR. TALARICO: Thank you, Judge. Thank you,
23 counsel.

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

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)
4

5 I, Stacey A. Collins, an Official Court
6 Reporter of the 22nd Judicial Circuit of Illinois, do
7 hereby certify the foregoing to be a true and accurate
8 transcription to the best of my ability and based on the
9 quality of the recording of all the proceedings heard on
10 the electronic recording system in the above-entitled
11 cause.

12 
13

14 Stacey A. Collins, CSR
15 Official Court Reporter
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1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY)

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4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

5 PAUL DULBERG,)
6)
7 Plaintiff,)
8 vs.) No. 17 LA 377
9 THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS)
10 MAST,)
11 Defendants.)

12
13 ELECTRONICALLY RECORDED Report of
14 Proceedings in the above-entitled cause before the
15 Honorable THOMAS A. MEYER, Judge of said Court of
16 McHenry County, Illinois, on the 15th day of March,
17 2021, in the McHenry County Government Center,
18 Woodstock, Illinois.

19 APPEARANCES:

20 LAW OFFICE OF ALPHONSE A. TALARICO
21 BY: MR. ALPHONSE A. TALARICO (Via Zoom)

22 On behalf of the Plaintiff;

23 KARBAL COHEN ECONOMOU SILK & DUNNE, LLC
BY: MR. GEORGE K. FLYNN (Via Zoom)

24 On behalf of the Defendants.

1 THE COURT: Okay. Morning. Waiting for
2 Mr. Flynn. Okay. Do I have both sides on Dulberg?

3 MR. FLYNN: George Flynn for --

4 MR. TALARICO: (Indiscernible) plaintiff,
5 your Honor.

6 THE COURT: Okay. Mr. Flynn, you've got
7 defendant?

8 MR. FLYNN: I do.

9 THE COURT: And Mr. Talarico?

10 MR. TALARICO: I have the plaintiff, Judge.
11 It's my motion for extension of time, which at this
12 moment, Judge, I'd like to withdraw.

13 THE COURT: How come?

14 MR. TALARICO: Because I was able to comply
15 within the time the court order originally
16 instructed me.

17 THE COURT: Well, I -- do you know about
18 this? I'll try and get that so you can see it.

19 MR. TALARICO: Yes, I know that the -- that
20 the -- that the plaintiff himself delivered the
21 privilege log to your Honor.

22 THE COURT: Well, I haven't looked at it.
23 And because it did not come from you, I felt it
24 would be inappropriate for me to look at it. I

1 just looked at the cover page and saw what he was
2 transmitting.

3 Defense counsel, I'll show you.
4 That's as much as I've seen.

5 MR. FLYNN: Thank you, your Honor.

6 THE COURT: And I did not delve further
7 because as I expressed last time to Mr. Dulberg, he
8 has an attorney and he shouldn't be communicating
9 with me directly. And I was uncomfortable because
10 I was unsure -- Mr. Flynn, did you get a copy of
11 this?

12 MR. FLYNN: Not a copy of Mr. Dulberg's
13 transmission, no.

14 THE COURT: Yeah, and that -- that -- so,
15 Mr. Talarico, I can either throw it out or return
16 it to you, but I'm not going to turn it over to the
17 defense because I haven't looked at anything other
18 than that cover page. And I don't think it should
19 have been sent to me.

20 What would you prefer?

21 MR. TALARICO: Well, Judge, I need a
22 clarification with all due respect. Mr. Flynn was
23 given a copy by me of the privilege log which is
24 what you've been served with without the

1 attachment, without the document that's claimed to
2 be privileged.

3 THE COURT: Okay. Well, how do you know what
4 he gave me because I don't know what he gave me,
5 so, I mean --

6 MR. TALARICO: Because, your Honor, it was --
7 he was instructed -- he volunteered to take it
8 personally. He was instructed to what documents
9 should be in there, and he was also instructed,
10 sadly, to put it in an envelope with my name, not
11 his name, so that's -- that's -- that was a
12 miscommunication between myself and my client.

13 THE COURT: Okay. Mr. Flynn?

14 MR. FLYNN: Judge, we were not copied on any
15 transmission to the Court. I received the
16 privilege log directly from counsel, but I was not
17 copied on any courtesy letter to the Court or any
18 other transmission to the Court.

19 THE COURT: Okay. All right. So, Mr. Flynn,
20 what are you asking?

21 MR. FLYNN: Well, I understand the motion for
22 the extension has been withdrawn. I had filed a
23 written objection after it was -- after the motion
24 was filed.

1 THE COURT: Okay. You know what, I'm going
2 to -- I'm going to change gears.

3 MR. FLYNN: Sure.

4 (WHEREUPON, the afore-captioned
5 cause was recalled.)

6 THE COURT: All right. Okay. Mr. Flynn,
7 I'm -- I mean, Mr. Talarico is telling me I was
8 sent exactly the same thing you got. I don't see a
9 problem with my disclosing it.

10 MR. FLYNN: No, I don't have an objection to
11 that. I would just inform the Court that I haven't
12 received a copy of Mr. Dulberg's transmittal
13 letter.

14 THE COURT: Do I even need a copy of this?

15 MR. FLYNN: I don't know.

16 THE COURT: I mean, shouldn't it be filed?

17 MR. TALARICO: Excuse me, Judge?

18 THE COURT: Shouldn't it just be filed in the
19 court file?

20 MR. TALARICO: The privilege log?

21 THE COURT: Yeah. I mean, if they're
22 objecting, but, I mean -- I'm now looking at it.
23 It does have some attachments. Okay. All right.
24 So what do you want me to do with the documents?

1 MR. TALARICO: Judge, from the plaintiff's
2 point of view, we withdrew our motion. We don't
3 need the additional time. We've complied with the
4 order. We -- both Mr. Flynn and your Honor have
5 received a copy of the privilege log.

6 THE COURT: All right.

7 MR. TALARICO: And you have received the one
8 document we claim is privileged, Judge.

9 THE COURT: Okay.

10 MR. TALARICO: Mr. Flynn has not.

11 THE COURT: I can do this right now.

12 Okay. Mr. Flynn, you were going to
13 say?

14 MR. FLYNN: Yeah, Judge, so at this point we
15 are scheduled to come back for a hearing I believe
16 at 1:00 or 1:30 on March 25th for further ruling
17 and status on compliance.

18 THE COURT: All right.

19 MR. FLYNN: I understand that the motion for
20 the extension has been withdrawn. I did receive
21 plaintiff's response to Popovich's supplemental
22 request for production, and, in my opinion, there
23 are improper objections and it's not answered
24 properly. And in fact there are no additional

1 documents that have been produced other than I
2 think two or three pages.

3 So there is a reference -- in
4 response to many of the requests, there is simply a
5 reference to 8,708 pages that have already been
6 produced in this case. I think the Court's ruling
7 on February 10 was very specific about what is to
8 be produced. So if there isn't anything, then they
9 should say so.

10 THE COURT: Yes.

11 MR. FLYNN: If there is anything being
12 withheld, apparently that's identified in this
13 privilege log, which was a little confusing to me
14 because it's from 2017. My suggestion would be
15 that if we hold the hearing on March 25th, that the
16 withheld documents, the privilege log, the
17 plaintiff's response to the supplemental production
18 request all be (audio distortion) to the Court in
19 preparation for that hearing.

20 THE COURT: I don't need the 8,000 pages.

21 MR. FLYNN: Understood.

22 THE COURT: All right. Mr. Talarico, you
23 were going to say?

24 MR. TALARICO: Yes, I was going to say the

1 response to the request -- or supplemental request
2 to produce, No. 3, there was eight documents
3 submitted in compliance with the court order. It
4 was the only email between The Gooch Firm and
5 Mr. Dulberg in December of 2016 pursuant to the
6 court order that was not privileged. And also in
7 that answer, in the answer to No. 3, we do
8 designate the one document that we've turned over
9 to the Court. So both documents, the one that can
10 be produced has been produced and the one that we
11 claim privileged has been noted in the response.

12 THE COURT: Okay. Mr. Flynn, could you add
13 to this?

14 MR. FLYNN: Yeah, Judge, I'm not exactly sure
15 what's been tendered to the Court because, again, I
16 wasn't copied on the transmittal. I --

17 THE COURT: I was copied on -- I mean, I'm
18 sent, separate from the cover pages, a total of
19 three pages here.

20 MR. FLYNN: And that's -- and I assume that
21 includes the privilege log and then Pages 8744
22 through 8746?

23 THE COURT: I'm sorry. I took it apart. Six
24 pages total, including the cover letter. So the

1 privilege log I could show you; there it is.

2 MR. FLYNN: Okay. I have that.

3 THE COURT: And I'm assuming you've got it,
4 yes, signed by Mr. Dulberg. And then three pages
5 which seems to represent the back and forth in
6 emails.

7 MR. FLYNN: Okay. And those, I assume based
8 on the privilege log, would be Bates labels 8744
9 through 8746?

10 THE COURT: Yes.

11 MR. FLYNN: Okay. So I don't have those
12 three pages obviously.

13 THE COURT: All right.

14 MR. FLYNN: But I do think that it would be
15 important for the Court to receive a copy of the
16 plaintiff's supplemental production response.

17 THE COURT: That's fine.

18 MR. FLYNN: Or I should say response to the
19 supplemental production request.

20 THE COURT: What -- so tell me, in a
21 nutshell, what your objection is on the -- that you
22 want me to look at.

23 MR. FLYNN: Well, the --

24 THE COURT: What is the problem? That's a

1 better way of phrasing it. What's the problem?

2 MR. FLYNN: The problem, again, is we had a
3 lengthy hearing on this, and there is a specific
4 ruling in the February 10 order relative to
5 Dulberg's understanding that he had a legal
6 malpractice case. Now it's been pinpointed to
7 December 16th of 20 -- yeah, December 16, 2016.
8 There have been no documents produced relative to
9 that date. They're simply doing a document dump or
10 referring to 8,000 pages that were previously
11 produced, so it doesn't advance the case here.

12 THE COURT: Let me respond in a general
13 sense. If you asked for a particular document to
14 be produced and they say it's in the 8,000 pages
15 previously produced, that's nonresponsive. I don't
16 know if --

17 MR. FLYNN: It is.

18 THE COURT: -- that answers your question,
19 but that seems to be the direction you're going.
20 Am I accurate?

21 MR. FLYNN: That is accurate. That was one
22 of the issues that we had, yes.

23 THE COURT: Okay. Mr. Talarico, do you have
24 something to say?

1 MR. TALARICO: Yes, please, Judge, excuse me,
2 but the two documents -- there are two documents
3 that are responsive the way I understand and
4 reviewed our court order. The --

5 THE COURT: Excuse me. Just have a seat.
6 We'll talk to you in a minute. You can sit here.
7 Sorry. We have people here in
8 court, pro se.

9 MR. TALARICO: The one has been turned over
10 to the Court, the only email in December of 2016.
11 The other one has been -- and I'm sorry -- turned
12 over to Mr. Flynn.

13 The other document that is
14 responsive is the email of November of 2016 in
15 relationship to the discovery of his -- his claim
16 against Popovich --

17 THE COURT: Yeah.

18 MR. TALARICO: -- and Mast. So those two
19 documents, I believe, respond to the court order.
20 One, he has the only email between Gooch and
21 Dulberg in 2016, and the other one is the
22 November 1, which refers -- which is we are
23 claiming privilege, which refers to his discovery
24 of his case, his claim. That's the one that the

1 Court has, which is designated in our privilege log
2 and waiting upon the judge's decision whether it
3 should be turned over or not.

4 THE COURT: Okay. Hang on.

5 MR. FLYNN: There's -- Judge, in their
6 response there is no mention of this other November
7 date.

8 THE COURT: No.

9 MR. FLYNN: It's just, again, a reference to
10 these 8700 pages.

11 MR. TALARICO: Well, actually that's not
12 true, Counsel. With all due respect, if you look
13 at the answer to No. 3, it says, Objection,
14 privilege, Bates stamped email stream 8744 to 8746.

15 MR. FLYNN: Okay. I see.

16 MR. TALARICO: That's the one that was
17 responding to his discovery of his case.

18 THE COURT: All right. I've got --

19 MR. TALARICO: Judge, those are the only
20 documents I've reviewed. The latest 700 pages that
21 were sent to me, that's the only thing. And that's
22 all -- all the emails between Dulberg and -- and
23 Gooch, and that's all we have.

24 THE COURT: All right. Here's -- and maybe

1 you can explain this. My recollection is that he
2 referenced -- Mr. Dulberg referenced a December
3 email. Is that fair? Is that accurate, Mr. Flynn?

4 MR. FLYNN: Mr. Dulberg's testimony is that
5 he learned in December of 2016 from a lawyer -- and
6 I asked him this question many different ways, of
7 how he learned of his malpractice case. He said,
8 Gooch told me I had a malpractice case. When I
9 pressed him further on it for specifics, he
10 couldn't give me any. This is in his testimony.

11 THE COURT: How do we know there was an
12 email? And forgive me. I know we addressed this.

13 MR. FLYNN: And, I'm sorry. I thought that
14 there was a written communication as well.

15 THE COURT: Okay.

16 MR. FLYNN: But they haven't responded that
17 there are no written communications. They just
18 simply reference these 8700 pages of documents
19 expecting me to go through them apparently.

20 THE COURT: No. That --

21 MR. TALARICO: With all due respect,
22 Mr. Flynn, the answer to No. 3 says that you've
23 received the Bates stamped --

24 THE COURT: You are going in a different

1 direction, and I'm going to have to see
2 your responses.

3 MR. FLYNN: And that's contrary to the
4 testimony.

5 THE COURT: I'll have to see the responses if
6 you want me to rule on it, but my -- I thought --
7 and perhaps it would be easier just for me to go to
8 the -- I thought it was the complaint that alleged
9 discovery in December of whatever year.

10 Am I correct that it was a
11 December -- an allegation of a December discovery?

12 MR. TALARICO: Yes, Judge.

13 MR. FLYNN: That's true.

14 THE COURT: Okay. Well, the problem I'm
15 having is these documents don't -- aren't December.
16 They're -- frankly, they're November 2017. So my
17 initial thought is are they responsive, because
18 they seemed to be referencing a different
19 communication.

20 MR. FLYNN: I think they would still be
21 responsive to the broad requests -- well, my
22 request for broad answers (indiscernible), but --

23 THE COURT: The basis of my ruling was --
24 and, again, I'm operating on memory -- that I

1 directed Mr. Dulberg to produce whatever documents
2 he was referring to when he said he discovered or
3 became aware of the malpractice in -- was it 2016?

4 MR. FLYNN: That's correct, and that's in
5 Line 3 of your February 10 order.

6 THE COURT: Okay. Yeah, and I --

7 MR. FLYNN: I'm sorry. February 11 order I
8 guess it was.

9 THE COURT: All right. These are
10 November 2017, the documents I have here. So they
11 are not covered by the explicit language of my
12 order unless the plaintiff then says he was
13 mistaken as to the dates, but -- let me just go
14 back to my order.

15 MR. TALARICO: Judge, my understanding was
16 the December 16 communications between Dulberg and
17 Gooch, which I submitted, the only one, and any and
18 all records between Dulberg and Gooch that refer to
19 his discovery. That's why the 2017 one is included
20 because in that communication Dulberg speaks of his
21 discovery of his case.

22 THE COURT: Okay.

23 MR. TALARICO: So in effect, Judge, with all
24 due respect, I have reviewed every email between

1 Dul- -- Gooch and Dulberg, and there has been one
2 responsive email, the one that your Honor has. And
3 as to the December communications, I only have one
4 in addition, which I have submitted because it
5 wasn't privileged, so I didn't allege privilege.

6 THE COURT: Okay. Mr. Flynn, do you have a
7 2016 email?

8 MR. FLYNN: I have a -- I do have -- and this
9 was just produced with the response last week --
10 it's a December 29, 2016 email chain. These are
11 Bates labeled 8709 and 8710, and it looks like it's
12 a communication between Dulberg and Gooch's
13 paralegal, Ms. Buckley. This doesn't seem to
14 explain anything about a malpractice case. It
15 looks like they are attaching a binding mediation
16 agreement. I don't see legal advice being provided
17 in these documents.

18 MR. TALARICO: That's not what I was
19 responding to, Mr. Flynn, with all due respect.
20 What I was responding to was any and all
21 communication, email or written communication
22 between Dulberg and Gooch in 2016. That's the only
23 one.

24 Okay. As to the discovery of his

1 injury or his case, the only one that I -- I have
2 looked at every email. I have every Bates numbered
3 document with no gaps, and the only one that's
4 responsive is the one I turned over to the Court,
5 to this Honorable Court, which is a 2017 email.
6 Those two are the only responsive. I mean, your
7 Honor, with all due respect, we could turn over
8 every email, but I tried to and I think I succeeded
9 in responding to the issues here.

10 MR. FLYNN: Judge, if I may.

11 THE COURT: Yeah.

12 MR. FLYNN: The response does not reflect
13 that there is an absence of emails. It simply says
14 see Bates -- see Bates stamped 181 through 8708.
15 So the answer, if there are no documents or no
16 additional documents, it should say that.

17 THE COURT: Yes, I agree. Even if you
18 answered it elsewhere, each question deserves a
19 direct response, and it seems to me that there is
20 at -- what production request is this, Mr. Flynn?

21 MR. FLYNN: This is Popovich's supplemental
22 production request, which was served I believe on
23 July 2 of 2020.

24 THE COURT: Okay. What -- tell me the

1 language of it. Tell me the request.

2 MR. FLYNN: Well, there are --

3 THE COURT: Numerous subparts?

4 MR. FLYNN: There are eight -- seven of them.

5 For example, Any and all documents relating to your
6 discovery of any alleged breach of the standard of
7 care or legal malpractice by Popovich or Mast and
8 which caused you damages or injury. The response
9 is, Objection, undue burden, previously submitted,
10 please see plaintiff's Bates stamped 1
11 through 8708.

12 THE COURT: Generally, that is nonresponsive,
13 but that's as far as I can go on that without
14 looking at the questions and the answers. I'm
15 hoping by saying that that gives you both some
16 guidance as to what I expect when we do sit down
17 and go through each one of these. But you can't
18 just say it's in the stuff I've already given.
19 You've got to give them an answer.

20 That being said, I'm -- I'm still
21 wrestling with the problem of in the complaint it
22 alleges a December 2016, I believe, discovery. It
23 was not until the -- Paragraph 57 -- 56, Dulberg
24 realized for the first time in December 2016, et

1 cetera, thought he was given false information.

2 And I'm -- and it was my understanding that from
3 our previous conversation, there was correspondence
4 that disclosed this in December 2016, and that's
5 why I directed it disclosed or produced.

6 MR. FLYNN: You did.

7 THE COURT: And what I've been given is not
8 December 2016. It's November 2017. And while this
9 may fall under the general requirement to produce
10 some -- some documents, it's not responsive. It
11 doesn't address December 2016, which is the
12 operative date.

13 So, Mr. Talarico, what's your point?
14 What's your -- what's your take on this?

15 MR. TALARICO: I'm sorry, Judge. The only
16 reason you haven't received that is because we
17 didn't claim a privilege. We turned it over.

18 THE COURT: But Mr. Flynn has said there is
19 nothing about discovery in there, and I'm wrestling
20 with that.

21 MR. TALARICO: But that's the -- Judge, it's
22 the only email in December 2016.

23 THE COURT: Okay.

24 MR. TALARICO: That's the only answer we

1 could submit. I had -- I had one document and I
2 gave it to Mr. Flynn.

3 THE COURT: All right. Mr. Flynn?

4 MR. FLYNN: Judge, you're right, it's not
5 responsive to I think what the Court ordered. What
6 it is --

7 THE COURT: Well --

8 MR. FLYNN: -- responsive to I think is the
9 various discovery requests that have been made in
10 this case.

11 THE COURT: He's telling me that the answer
12 to your request for anything from December 2016 is
13 none.

14 MR. FLYNN: Okay. It doesn't say that in his
15 document.

16 THE COURT: Okay. Or just that one -- to the
17 extent that you are requesting documents
18 memorializing discovery of the malpractice claim,
19 the answer is none, from December 2016 at least.

20 MR. FLYNN: Okay. And whether this sheds
21 light on the actual discovery and what is
22 discoverable, I would request that it be disclosed.

23 THE COURT: Mine or --

24 MR. FLYNN: Whatever this November of 2017

1 communication is because it may be relevant and
2 discoverable.

3 THE COURT: Okay.

4 MR. FLYNN: And responsive to the other
5 discovery requests.

6 THE COURT: I think --

7 MR. FLYNN: And whether it --

8 THE COURT: I think we need to discuss that.

9 MR. FLYNN: Whether it contradicts the other
10 testimony and discovery answers, that's another
11 inquiry I suppose, but --

12 MR. TALARICO: Judge, with all due respect, I
13 believe the 2017 email string or three-part answer
14 that's been submitted to the Court is responsive
15 and whatever -- however the judge decides, the
16 Court decides, that's the only answer I have to
17 submit is what you have.

18 THE COURT: Well, the issue I'm wrestling
19 with is it is not in the time frame that I
20 previously determined was relevant. If he
21 discovered in -- the claim is discovery of the
22 existence of the claim in 2016, not November
23 of 2017.

24 MR. TALARICO: Yes, that's correct. That's

1 correct, Judge, but --

2 THE COURT: Go ahead.

3 MR. TALARICO: In his -- in Dulberg's
4 response, he speaks to the past of the things that
5 led him -- without giving up too much information,
6 that's the only responsive document that I have
7 seen. I've seen them all. It goes -- that's the
8 one that says in the past, these things led me to
9 believe I have a case.

10 THE COURT: All right. Okay. Well, in the
11 end if it is going to be your position that the
12 reference to the discovery of his claim is
13 memorialized in this email chain of November 2017,
14 then I think I have to disclose it because that's a
15 claim made by Mr. Dulberg; he made it relevant.

16 MR. TALARICO: I understand, Judge.

17 THE COURT: The problem that I have been
18 wrestling with is it's -- it's not from
19 December 2016, so it's different. And I'm not
20 going to make a decision on this today. I want
21 to -- I want to explore it a little bit further
22 when we come back. But as it stands right now, my
23 inclination is to have it produced because it is --
24 it is the document that memorializes his discovery

1 of the existence of a claim.

2 MR. TALARICO: I understand completely what
3 the Court says, and as the Court rules, that's what
4 I will do.

5 THE COURT: Okay. Mr. Flynn, any comment?

6 MR. FLYNN: No, your Honor. I think I
7 understand where the Court is going with this. You
8 know, if it were produced, I would alternatively
9 ask that he be barred and that he not be allowed
10 to, you know, amend the complaint and try to change
11 his theory on when he discovered this, but --

12 THE COURT: That's interesting.

13 MR. FLYNN: I guess my suggestion, if the
14 Court would entertain my suggestion, is that we do
15 tender the plaintiff's response to the supplemental
16 production request. I would urge the Court, again,
17 to read the motion to compel and Dulberg's
18 testimony that's identified or cited in the
19 motion --

20 THE COURT: Yeah.

21 MR. FLYNN: -- but also attached --

22 THE COURT: All right.

23 MR. FLYNN: -- for context.

24 THE COURT: No. I will take care of that.

1 What I'm -- Mr. Talarico, what I'm -- and it seems
2 that you're declining the offer. I wanted you to
3 address the difference in the time frame, but it
4 seems to me that you're acknowledging that even
5 though the time frame isn't correct that this is
6 the document we were -- we were after.

7 MR. TALARICO: Yes, your Honor.

8 THE COURT: And if that's the case, then I'm
9 going to order it produced. I mean, then there is
10 no reason to further pursue this.

11 MR. TALARICO: Okay. I will do that, Judge.

12 THE COURT: Okay. If you want -- if you want
13 time to address the issue on the different time
14 frame, I'll give it to you, but if your position
15 is, no, this is it, then I'm going to order it
16 produced.

17 What do you want to do?

18 MR. TALARICO: Judge, again, with all due
19 respect to the Court and to Mr. Flynn, I've looked
20 at every email from -- from Gooch to Dulberg;
21 that's the only one I can produce because that's
22 the only one that talks about his discovery of his
23 case, and I will produce it.

24 THE COURT: All right. I'm going to continue

1 to think about this because the -- the information
2 exchanged in this email doesn't indicate to me a
3 discovery of -- it discusses the malpractice, but
4 there is nothing in there that's telling me it was
5 discovered in the course of this conversation. So
6 I'll -- I'll think about this further, and we'll
7 talk about it in person.

8 MR. TALARICO: I'm sorry to interrupt, but
9 the language in that email, as I recall it, was, I
10 started to learn about, I started to get the idea,
11 this document led me to this, back then I read this
12 document that told me that I had -- that I may have
13 a case. The next thing is, you know, the different
14 things saying back in the past he started learning
15 about, and I think that's responsive to knew or
16 should have known.

17 THE COURT: All right. So are you conceding
18 it's relevant based on my statements?

19 MR. TALARICO: Yes, Judge.

20 THE COURT: Okay. I'll order it produced.
21 How quickly can you get that to Mr. Flynn?

22 MR. TALARICO: I can email a copy today, your
23 Honor.

24 THE COURT: Okay. And that will be the three

1 pages Bates stamped --

2 MR. TALARICO: Right.

3 THE COURT: -- 44 through 46. All right.

4 And then we'll address the production response --
5 supplemental production response when we return on
6 the 25th.

7 Can I throw my copy out?

8 MR. TALARICO: I'm sorry, Judge, I --

9 THE COURT: Can I throw this out? Can I
10 throw out Mr. Dulberg's letter and the attachment?

11 MR. FLYNN: I have no objection to that.

12 THE COURT: Okay. All gone.

13 MR. FLYNN: So, Judge --

14 MR. TALARICO: Just so I understand, my
15 motion to -- motion for extension of time is
16 withdrawn and I am ordered to email immediately to
17 Mr. Flynn the one document that was claimed as
18 privileged that was part of the privilege log?

19 THE COURT: Yeah, Bates stamped 44 through
20 46, leaving off the first three numbers.

21 MR. TALARICO: Yes, your Honor, we'll do.

22 THE COURT: All right. Anything else we need
23 to do today?

24 MR. FLYNN: Just to clarify, Judge, for the

1 25th when we come back, shall I send a courtesy
2 copy of the plaintiff's supplemental -- I'm
3 sorry -- response? I'll send the actual discovery
4 request itself.

5 THE COURT: Yeah. Yeah.

6 MR. FLYNN: And then I believe we also have a
7 continued ruling on another discovery issue that my
8 other client Mast had served. I think that was
9 entered and continued. I'll just include that in
10 the packet.

11 THE COURT: Okay. It will take some time,
12 although this did too, but we'll just walk through
13 the questions and responses.

14 MR. FLYNN: Understood.

15 THE COURT: Okay. Mr. Flynn, can you send me
16 the order for today?

17 MR. FLYNN: I can. My secretary is with her
18 daughter.

19 THE COURT: Okay.

20 MR. FLYNN: She was admitted to the hospital
21 last week --

22 THE COURT: Oh, I'm sorry.

23 MR. FLYNN: -- and I think they have a
24 follow-up all day today, so I probably can't get it

1 until tomorrow.

2 THE COURT: Mr. Talarico, is it -- or can you
3 wait until tomorrow?

4 MR. TALARICO: I'm fine for tomorrow, Judge.

5 THE COURT: All right. Tomorrow is fine.

6 MR. FLYNN: Okay.

7 THE COURT: And then we'll see you again on
8 the 25th.

9 MR. FLYNN: Okay. Thank you, your Honor.

10 THE COURT: All right. Thank you.

11 MR. TALARICO: Thank you, Judge.

12 MR. FLYNN: Thanks, Counsel.

13 THE COURT: Thank you.

14 MR. TALARICO: Thank you, Mr. Flynn.

15 MR. FLYNN: Thank you, Counsel.

16 THE COURT: Disconnecting

17 (Which were all the proceedings
18 had in the above-entitled cause
19 this date.)
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I, KRISTINE L. FERRU, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Certified Shorthand Reporter
License No. 084-003898

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

3
4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

5 PAUL DULBERG,)

6 Plaintiff,)

7 vs.)

No. 17 LA 377

8 THE LAW OFFICES OF THOMAS J.)
9 POPOVICH, P.C., and HANS)
10 MAST,)

11 Defendants.)

12
13 ELECTRONICALLY RECORDED Report of

14 Proceedings in the above-entitled cause before the
15 Honorable THOMAS A. MEYER, Judge of said Court of
16 McHenry County, Illinois, on the 25th day of March,
17 2021, in the McHenry County Government Center,
18 Woodstock, Illinois.

19 APPEARANCES:

20 LAW OFFICE OF ALPHONSE A. TALARICO
21 BY: MR. ALPHONSE A. TALARICO (Via Zoom)

22 On behalf of the Plaintiff.
23
24

1 THE COURT: Good afternoon, Mr. Talarico.
2 Can you hear me?

3 MR. TALARICO: Yes, your Honor.

4 THE COURT: I don't have any defendants. Did
5 you guys have an agreement or --

6 MR. TALARICO: No, Judge. We communicated
7 today, but maybe I misunderstood. We were talking
8 about a 201(k) conference tomorrow. But I just got
9 back to the office, so I'm just not sure. I didn't
10 respond to the -- I initiated the conversation
11 about a 201(k) conference --

12 THE COURT: Okay.

13 MR. TALARICO: -- and Mr. Flynn responded
14 asking if I was available tomorrow, but at that
15 point I don't know if he -- if he thought that
16 would be sufficient for today's hearing.

17 THE COURT: Okay. Can you shoot them an
18 email to find out if they are coming?

19 MR. TALARICO: I will, Judge.

20 THE COURT: Thank you.

21 (Short recess.)

22 THE COURT: Well, we don't have anybody
23 showing up yet. I'm beginning to think they are
24 not coming.

1 MR. TALARICO: I have multiple emails, Judge.
2 I apologize. I'm trying to find which one I
3 received.

4 THE COURT: Oh, okay.

5 (Short recess.)

6 THE COURT: Well, Mr. Talarico, since they
7 are not here yet, I'm assuming they are not coming.
8 There is obviously a mistake on their part.

9 Do you want to reset this or do you
10 want to continue to wait?

11 MR. TALARICO: Judge, I guess reset it,
12 please.

13 THE COURT: All right. Do we have a future
14 date?

15 THE CLERK: Not on this one.

16 THE COURT: All right. Tell me, you guys
17 were going to talk tomorrow; am I correct?

18 MR. TALARICO: That is the proposal from
19 Mr. Flynn. I haven't responded yet.

20 THE COURT: Do you want to put this over
21 until Monday, and then you guys can come in via
22 Zoom and we can talk about rescheduling this
23 hearing?

24 MR. TALARICO: Sure, Judge, absolutely.

1 THE COURT: All right. Well, pick a day that
2 works for you next week. I'll accommodate your
3 schedule.

4 MR. TALARICO: If I'm in the right week, your
5 Honor, is April 1st next week?

6 THE COURT: I could do it -- yeah, I could do
7 it at 8:45 just for a status. Does that work for
8 you?

9 MR. TALARICO: Yes, Judge.

10 THE COURT: All right. I'm calling it status
11 on defendant motion, and you want it April 1st.
12 And there's the order, if you can read it, and it
13 says status on defendant motion.

14 Yeah, it's now 1:37 and you haven't
15 heard anything and nobody is trying to get in, so I
16 don't know what they are doing, but I'm figuring
17 they are not coming.

18 MR. TALARICO: Okay, Judge.

19 THE COURT: All right. So we'll see you next
20 week. If you guys don't like that date, just show
21 up together on Zoom at 8:45 any other day and we
22 can reschedule the hearing at that time.

23 MR. TALARICO: Okay. Judge, there is --
24 (indiscernible) for me. I don't have to present a

1 proposal order, correct?

2 THE COURT: Yeah, I've got it, so you are all
3 set.

4 MR. TALARICO: Thank you, Judge.

5 THE COURT: All right. Have a good day.

6 Thank you for coming.

7 MR. TALARICO: Thank you.

8 THE COURT: Okay. Bye.

9 (Which were all the proceedings
10 had in the above-entitled cause
11 this date.)
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1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) ss:
3

4 I, KRISTINE L. FERRU, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.

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-----*Kristine Ferru*-----
Certified Shorthand Reporter
License No. 084-003898

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

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
4 MCHENRY COUNTY, ILLINOIS

5 PAUL DULBERG,)
)
6 Plaintiff,)
)
7 vs.) No. 17 LA 377
)
8 THE LAW OFFICES OF THOMAS)
)
9 J. POPOVICH, P.C., and)
)
)
10 HANS MAST,)
)
)
11 Defendants.)

12 ELECTRONICALLY RECORDED Report of
13 Proceedings had in the above-entitled cause before
14 The Honorable Thomas A. Meyer, Judge of the Circuit
15 Court of McHenry County, Illinois, on the 1st day of
16 April, 2021, in the Michel J. Sullivan Judicial Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by:
20 MR. ALPHONSE A. TALARICO,
21 Appearing via videoconference,

22 on behalf of the Plaintiff,

23 KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
24 MR. GEORGE K. FLYNN,
Appearing via videoconference,

on behalf of the Defendants.

1 THE COURT: All right. For the record, this is
2 Dulberg versus Mast. And, plaintiff's counsel, if you
3 could identify yourself.

4 MR. TALARICO: Your Honor, good morning. Mr. Flynn.
5 My name is Alphonse Talarico. I represent the
6 plaintiff, Paul Dulberg.

7 THE COURT: Okay. And for the defense?

8 MR. FLYNN: Attorney George Flynn, F-l-y-n-n. And,
9 Judge, and, counsel, I would like to extend my apologies
10 for the calendaring issue last week.

11 THE COURT: It happens. But let's -- where are we?
12 Because I -- yeah, bring me up to date with where you
13 are.

14 MR. FLYNN: Generally, Judge, the -- Okay. So the
15 court ordered the plaintiff to produce certain documents
16 that were withheld. That has been done. We have I
17 think a continued issue with respect to interrogatory
18 answers from the -- Hans Mast interrogatories served in
19 July of 2019, and then the improper and vague answer,
20 responses, to the production request where the plaintiff
21 has just simply identified Bate's documents 1 through
22 8,708 relative to the discovery of the alleged
23 malpractice.

24 THE COURT: Yeah, I looked at the answers, those

1 answers, and I believe those are nonresponsive. Merely
2 identifying all the records is not a direct response to
3 your request, so I'm going to direct plaintiff to
4 provide a supplemental response to those requests.

5 Mr. Talarico, you have something to say?

6 MR. TALARICO: Yes, Judge, actually, I do. Those
7 8,707 prior documents that had been submitted, according
8 to the information I have, between Mr. Flynn and the
9 Clinton Law Firm, the previous law firm, were under the
10 initial request to produce. The answers that I have
11 from the Clinton Law Firm indicate the wording that the
12 documents will be produced and then there is no
13 objection between Flynn -- Mr. Flynn and the Clinton Law
14 Firm. There's no -- and I have no way of researching
15 how the relationship between the first set of answers
16 that covered document 1 through 8707 have been done. I
17 -- that's why I said that that will be unreasonable and
18 an expense and I have to go back to each document and
19 see how it responded.

20 Mr. Flynn, as far as I've seen, had not
21 objected to those answers, so to do that would force me
22 to review close to 9,000 documents to see which were
23 responsive -- 9,000 -- 8,707 that have already been
24 turned over and, in addition to that, on February 10th,

1 Judge, the last hearing date on this matter, you focused
2 and ordered us to focus our response to the time
3 Mr. Dulberg knew or should have known, and the only
4 documents that at that time hadn't been turned over to
5 Mr. Flynn would be six hundred something odd documents,
6 communications between the second -- the Gooch law firm
7 and Mr. Dulberg. Those I reviewed and submitted the one
8 that responded to what -- to what the court indicated
9 the communications in December of --

10 THE COURT: Before we get into that -- because I
11 think that issue's resolved. Before we get into that,
12 why are you -- I guess I'm not following. You're saying
13 that it's -- giving him specific responses to his
14 discovery requests is overly burdensome on you at this
15 point?

16 MR. TALARICO: Right, to go back and review 8,700
17 documents that had been turned over in the past --

18 THE COURT: Well, who should?

19 MR. TALARICO: Excuse me?

20 THE COURT: Well, who's burden is that to provide
21 the accurate answer?

22 MR. TALARICO: Judge, those were responded to. They
23 were supplied to Mr. Flynn in the past in response to
24 requests to produce.

1 THE COURT: He may have -- I accept he has every
2 single relevant document, but you can't just say in
3 response to a discovery request find it yourself, it's
4 in these thousands of pages of documents. You got to
5 tell him where it is. So --

6 MR. TALARICO: I understand -- I'm sorry, Judge.

7 THE COURT: The bottom line, your answer has to be
8 one that you can be pinned down on for purposes of
9 impeachment, and your answers are -- don't permit that.
10 So if you're going to respond, you've got to give him a
11 direct response to a direct question, and you didn't do
12 that. You've given him -- you said here's everything we
13 have, find it yourself. And that is nonresponsive.

14 MR. TALARICO: Judge, with all due respect, again,
15 the -- this was -- what I'm reflecting on is these are
16 the documents that were submitted to Mr. Flynn by the
17 Clinton Law Firm with no objection.

18 THE COURT: But I have a motion to compel that -- I
19 mean -- so I think --

20 MR. FLYNN: And that's not accurate, Judge. There
21 have been multiple 201(k) conferences and it was a long,
22 unusual production in response to the interrogatories in
23 the case as it was.

24 THE COURT: Regardless, I am ordering compliance and

1 you must give specific responses to each of the
2 requests, and you can't just say it's somewhere in these
3 8,000 plus pages. How long is it going to take you to
4 do that?

5 MR. TALARICO: Judge, if I could have 60 days to
6 cover 9,000 -- close to 9,000 documents.

7 THE COURT: Sure, I'll give you 60 days, because,
8 yeah, that is a lot of -- those are a lot of documents,
9 so I'll put this out 60 days.

10 Mr. Flynn, is there anything else we need to
11 address at this time?

12 MR. FLYNN: Well, the supplemental production
13 response, again, is a nonresponsive production response.
14 The question is, is there a document in that 8,000
15 pages. We don't think there is, but Dulberg testified
16 both ways essentially, whether there was a December 16,
17 2016, written communication with Tom Gooch that provided
18 him with the basis for the tolling of the statute of
19 limitations. If there is none, then the response should
20 say there is none, not see 8,000 documents and maybe
21 it's in them.

22 THE COURT: I agree.

23 Mr. Talarico, --

24 MR. FLYNN: And with respect to the --

1 THE COURT: Well, hang on.

2 Mr. Talarico, I'm not going to tell you how to
3 respond, but if there is no such document, -- I did take
4 note of the fact that I saw none in the documents I
5 reviewed -- if there is no such document, then just say
6 there is no such document.

7 MR. TALARICO: With all due respect, I think I did
8 answer that question. There was one document and I
9 turned it over to Mr. Flynn. The only document between
10 Gooch and the plaintiff in December of 2016, one
11 document turned over, without objection, without a
12 privilege log.

13 THE COURT: Mr. Flynn? You're being told that all
14 documents responsive to that request have been turned
15 over. And I agree that at least in the documents I was
16 asked to review, there was nothing that corresponded
17 with the December 2016 date that we initially were
18 discussing, but --

19 MR. FLYNN: It should be a pretty simple process
20 then and it should be in writing. Then I can attach it
21 to my summary judgment motion, which I know is not a
22 surprise to anyone. The same goes with respect to the
23 interrogatory answers. Dulberg admitted in his
24 deposition that he didn't respond completely to

1 interrogatory number one, in particular, from Hans Mast.
2 So that is also part of this motion to compel.

3 Again, that one is a little different. It says
4 identify and describe each and every way that Popovich
5 or Mast breached any duty of care to you, the date of
6 the breach and when and how you became aware of the
7 breach. He didn't answer it.

8 THE COURT: Okay. Mr. Talarico? And I'm going to
9 move on to everybody else and then come back to you --
10 in fact, I'll come back to you guys. I'll let -- let me
11 get rid of everyone else and we'll resume this in a
12 moment.

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

15 THE COURT: That brings us back to Dulberg. What
16 I'm doing right now is looking up -- I want to go to the
17 interrogatory. Mr. Flynn, while I'm looking for -- it's
18 interrogatory number one; am I correct?

19 MR. FLYNN: Correct.

20 THE COURT: All right. I'm looking in your motion
21 to compel and since nothing is marked, I've got to page
22 through these one at a time, so while I'm doing that,
23 rather than just staring at me, why don't you tell me
24 what the interrogatory says.

1 MR. FLYNN: Sure. It says identify and describe
2 each and every way that Popovich or Mast breached a duty
3 of care to you, the date of the breach, and when and how
4 you became aware of the breach.

5 THE COURT: Okay. And what was the response?

6 MR. FLYNN: Between October of 2013 and
7 January 2014, Mast told Dulberg that Illinois law does
8 not permit a recovery against the McGuires in the
9 circumstances of Dulberg's case and that he would not
10 receive any recovery from the McGuires.

11 THE COURT: Okay.

12 MR. FLYNN: Mast advised Dulberg that the judge
13 would rule in favor of the McGuires on a motion for
14 summary judgment. Mast further told Dulberg that
15 Dulberg would retain his claim against Gagnon and be
16 able to seek and receive a full recovery from Gagnon.
17 So that says nothing specifically about a breach, the
18 date of the breach or when and how he became aware of
19 it.

20 THE COURT: Well, it doesn't -- no, it doesn't tell
21 you the date.

22 Mr. Talarico, do you have a response on that?

23 MR. TALARICO: No, Your Honor, it doesn't say
24 specifically the date of the breach.

1 THE COURT: All right. And --

2 MR. FLYNN: And we were forwarded the discovery.
3 Again, this goes back to the Gooch -- whether it be a
4 verbal or written communication on December 16, 2016.

5 MR. TALARICO: Mr. Flynn, verbal -- I don't know
6 where I could get verbal responses. I've gone over
7 everything and I -- Judge, I have in total 90 emails
8 between the two, between Mr. Gooch and Mister -- and the
9 plaintiff, and I would be willing to turn over every one
10 of them. That's the written -- that's what I have.

11 MR. FLYNN: I just want to know what the basis is
12 for the discovery of the malpractice, and if there isn't
13 anything other than a verbal discussion with Tom Gooch
14 in his office, that's fine; but it just needs to specify
15 that. And I think that's been the ruling with this.

16 THE COURT: And I think --

17 MR. FLYNN: And that's what the testimony seems to
18 reflect.

19 THE COURT: I -- I think the answer -- and I
20 certainly don't know, but based upon what I understand
21 already, I think the answer points to that December 2016
22 date addressed in the production response, but I don't
23 know and I -- my concern is making sure it is clear from
24 the answer to interrogatory that is in fact what we're

1 talking about. If there's another date, fine, but it
2 has to be disclosed.

3 I don't know about -- I'm not sure how he
4 responds to the date of the breaches because I -- I do
5 think that that's an incredibly broad question because
6 it --

7 MR. FLYNN: I understand that.

8 THE COURT: -- in essence, it's every day after the
9 resolution of the initial claim, and you do have a date
10 for that, at least by way of a settlement or order.

11 So, Mr. Talarico, can you supplement that
12 answer with the date of discovery?

13 MR. TALARICO: I will do my best, Judge. I will.

14 THE COURT: Okay. Mr. Flynn, the next one?

15 MR. FLYNN: You know, generally I think that's it,
16 Judge. It's the supplemental production response and
17 then these interrogatories, so what I would ask that the
18 order reflect, that the specific answers need to be made
19 and that the objections in the supplemental production
20 response be overruled. I think the objection is undue
21 burden on each of them --

22 THE COURT: Yeah, and to the extent that there are
23 objections to the burdensome nature, those are
24 overruled. I recognize that it is a burden, but you got

1 to -- somebody's got to do it, and it is your claim, it
2 is your burden. But I will give you 60 days in which to
3 complete that.

4 Mr. Talarico, anything you want to add?

5 MR. TALARICO: No, Judge.

6 THE COURT: So why don't we -- 60 days is June 1st.
7 Let's assume -- and I'm going to -- I won't assume
8 compliance prior to June 1st, but if we come back on
9 June 14th, that's a Monday, Mr. Flynn, do you think you
10 would be able to give me your comments on compliance by
11 then?

12 MR. FLYNN: If I have a response and, say, amended
13 interrogatory answers and amended supplemental responses
14 by June 1?

15 THE COURT: Yeah.

16 MR. FLYNN: Yes, sure.

17 THE COURT: Okay. So I will direct a supplemental
18 answer to interrogatory number one. I'll direct amended
19 answers to the production request, and all due by
20 June 1st.

21 Is there anything else we need to address?

22 MR. TALARICO: No, Judge, that's my birthday --

23 THE COURT: Happy birthday.

24 MR. TALARICO: (Indiscernible).

1 MR. FLYNN: I guess the only thing going forward,
2 we've got the objections in the deposition transcript.
3 Does the court typically just rule on those when ruling
4 on a summary judgment motion?

5 THE COURT: No, I -- let me -- I have not had to
6 deal with ruling on objections in a discovery deposition
7 related to a motion for summary judgment.

8 MR. FLYNN: Okay.

9 THE COURT: So I haven't done that before, but I do
10 think that we have to address that and the only way to
11 address it is to just walk through them, so perhaps if
12 we set -- and I know this is putting it out, but I'm
13 wondering -- and you know better -- whether any of the
14 objections are going to become moot once you have
15 responses to the written discovery. Is that going to
16 fix anything?

17 MR. FLYNN: I think that a lot of them are already
18 moot. I think that some of the rulings over the last
19 month or so on these objections have probably covered
20 those that are contained in the dep transcripts;
21 however, I just want to make the summary judgment
22 process as clean as possible.

23 Maybe I can talk to Mr. Talarico and we can
24 come up with an agreement on whether some of these

1 objections in the dep are withdrawn, but, again, I just
2 -- I don't want the summary judgment motion to bog down
3 on objections in a dep transcript, so --

4 THE COURT: Okay. And I don't know.

5 MR. FLYNN: So -- Okay. I wanted to raise that
6 issue in advance so the court's aware that that might be
7 an issue.

8 THE COURT: Why don't we put the hearing at 1:30 on
9 Monday, June 14th, and if you are unable to work out the
10 issues on the discovery deposition, then we'll walk
11 through the transcript. You'll need to give me a copy.
12 And -- unless there is one in the court file already.
13 You'll need -- and we'll walk through each one and I'll
14 take argument at that time and --

15 MR. FLYNN: Okay.

16 THE COURT: -- I'll rule then. And that may get you
17 where you want to go, and if there are none, great.
18 Then we don't have to deal with it.

19 Does that --

20 MR. FLYNN: Okay.

21 THE COURT: Does that resolve your concern for today
22 at least?

23 MR. FLYNN: I think so.

24 THE COURT: All right. So, Mr. Flynn, if you could

1 draft the order.

2 Mr. Talarico, is there anything you want to
3 add?

4 MR. TALARICO: Well, I've read -- I wasn't present
5 at the deposition, so I'm just trying to get my brain
6 wrapped around it. The objections were attorney-client
7 privilege, sir, was that --

8 MR. FLYNN: Many of them, yes.

9 MR. TALARICO: Okay. That's all.

10 MR. FLYNN: And, again, it goes to the discovery of
11 the malpractice. I think that it's been placed at issue
12 by virtue of the pleadings, so -- and, again, I think
13 that there's been a ruling, at least in part, on some of
14 these issues, but, --

15 THE COURT: In the alternative --

16 MR. FLYNN: -- you know, why don't we --

17 THE COURT: -- if you agree that some of the
18 questions could have been answered, can you do this by
19 way of interrogatory rather than a supplemental
20 deposition?

21 MR. FLYNN: I think that for the most part
22 Mr. Dulberg answered over the objections.

23 THE COURT: Okay.

24 MR. FLYNN: And so the record was set there. The

1 objections were made on the record. I think that it
2 could probably be dealt with fairly swiftly.

3 THE COURT: All right. Great. Then I'll wait for
4 your order. As soon as I see it, I'll sign it. And,
5 otherwise, I'll see you June 14th.

6 MR. FLYNN: Okay. Thanks, Judge. Do you have a
7 time that you needed the order by? I would like to send
8 a draft to Mr. Talarico after my secretary prepares it.

9 THE COURT: The clerks will harass you, --

10 MR. FLYNN: Okay.

11 THE COURT: -- but if you get it in by Monday,
12 that's fine.

13 MR. FLYNN: Oh, okay. I was thinking sometime
14 today.

15 THE COURT: Today's perfect. So anytime this
16 afternoon is fine, but Monday is kind of the to-die
17 date. I got to have it by then.

18 MR. FLYNN: Fair enough.

19 THE COURT: All right.

20 MR. FLYNN: Thank you very much, Your Honor.

21 THE COURT: Thank you.

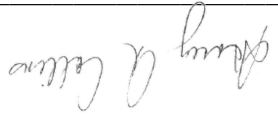
22 MR. TALARICO: Thank you, Judge. Thank you,
23 Mr. Flynn.

24 MR. FLYNN: Thanks, Counsel.
(Which was and is all of the evidence
offered at the hearing of said cause
this date.)

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STATE OF ILLINOIS)
COUNTY OF MCHENRY)
SS:)

I, Stacey A. Collins, an Official Court Reporter of the 22nd Judicial Circuit of Illinois, do hereby certify the foregoing to be a true and accurate transcription to the best of my ability and based on the quality of the recording of all the proceedings heard on the electronic recording system in the above-entitled cause.



Stacey A. Collins, CSR
Official Court Reporter

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendant.

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before

14 the Honorable THOMAS A. MEYER, Judge of said Court

15 of McHenry County, Illinois, on the 14th day of

16 June, 2021, at the McHenry County Government Center,

17 Woodstock, Illinois.

18 APPEARANCES:

19 THE LAW OFFICE OF ALPHONSE TALARICO, by

20 MR. ALPHONSE TALARICO, (Via Zoom)

21 On behalf of the Plaintiff.

22

23

24

1 THE COURT: Good afternoon. Mr. Talarico, you
2 are still on mute.

3 MR. TALARICO: Let's see. I don't do --

4 THE COURT: Okay. You are -- for the record,
5 counsel, if you could identify yourself?

6 MR. TALARICO: Your Honor, my name is Albert
7 Talarico. I'm the attorney for the plaintiff in
8 this case, Paul Dulberg.

9 THE COURT: Okay. Defendant is not here nor is
10 he on Zoom. Have you had any contact with him?

11 MR. TALARICO: No, your Honor, I have not.

12 THE COURT: Okay. Who is defense counsel?

13 MR. TALARICO: Mr. Flynn, George Flynn, I
14 believe is his name, George K. Flynn.

15 THE COURT: Okay. There doesn't seem to be
16 anybody in the building or at least on our floor
17 waiting to come in. What's going on with the case?
18 What -- we are here for discovery compliance.

19 MR. TALARICO: Yes, your Honor. Well, I believe
20 we have complied to your order completely.

21 THE COURT: Okay.

22 MR. TALARICO: We have filed and served all the
23 proper documents, searched all -- whatever, close to
24 9,500 documents and responded appropriately.

1 THE COURT: All right. Well, I'll -- assuming
2 Mr. Flynn doesn't show up, what state of the case
3 are you in? What's going on? You're still in F(1)
4 discovery.

5 MR. TALARICO: That's true, your Honor. There
6 is a couple of things on the agenda depending on
7 what happens today or what doesn't happen today.
8 There -- Mr. Flynn last time on April 1 had
9 mentioned to the Court that he would like to address
10 the issuance of the attorney-client privilege
11 objections that were in the discovery deposition of
12 Mr. Dulberg. There hasn't been any contact on that
13 matter, and when I see what my -- what prior counsel
14 did, none of my answers to the -- to the written
15 discovery waive any of that, nor am I willing to
16 waive any of it.

17 THE COURT: Okay. Well, I don't have that up
18 for hearing today, and nor do I have on the -- yeah,
19 I just had objections on written discovery. Nothing
20 on the dep. So if he doesn't anything, I won't
21 address the (indiscernible.) Is there any (f)(1)
22 discovery that needs to be taken?

23 MR. TALARICO: Yes, Judge. And I'm sorry. My
24 apology to the Court but the last 60 days based on

1 the -- what do you call it, the written discovery,
2 it put me back a little bit and it's my intention
3 (indiscernible) the one -- the request to produce
4 that Mr. Flynn had not responded to completely. So
5 I'm going to present a motion, I haven't done it
6 yet, a motion to spell. My client won't do
7 (indiscernible) the amended pleadings to match the
8 pleading facts. So there will be a motion to amend
9 the pleadings.

10 THE COURT: Okay.

11 MR. TALARICO: And depending on today, that's
12 really why everything has been, like, on hold,
13 motion to strike all the answers of the discovery
14 deposition that Mr. Flynn is claiming he would like
15 to use in his motion for summary judgment which I
16 haven't seen yet.

17 THE COURT: All right.

18 MR. TALARICO: So I don't expect to see it this
19 early.

20 THE COURT: Well, yeah, he's still not here.
21 Rarely are people late for Zoom hearings. And I
22 don't see anybody outside. And it sounds like you
23 guys are going to be coming back in the near future
24 on other matters.

1 MR. TALARICO: With all due respect, Judge, may
2 I interject? The only contact I've had with
3 Mr. Flynn in this 60 days plus, the 14, after I
4 served him with the discovery responses, the
5 amended, he sent me an email thanking me, and that's
6 all I've heard.

7 THE COURT: All right. I'm going to continue
8 the case assuming Mr. Flynn does not show up before
9 I'm done. In light of what you have planned by way
10 of discovery, I'm thinking 60 days, or do you want
11 to go to a longer date? Mid August?

12 MR. TALARICO: Yeah, Judge, mid August.

13 THE COURT: All right. I'm just going to call
14 it status (f)(1). How is August 18? That's a
15 Wednesday.

16 MR. TALARICO: One second, your Honor, please.

17 THE COURT: Yeah. Any time around there is
18 fine.

19 MR. TALARICO: Could we have the next day? Is
20 there something available on the 19th of August?

21 THE COURT: Yeah. August 19 works. I'm going
22 to wait three minutes -- two-and-a-half minutes, and
23 I'll give them until 1:40 to show up for the 1:30
24 hearing. And if he does not, I'll set -- I'll sign

1 the order putting this over to August 19.

2 MR. TALARICO: What time is that?

3 THE COURT: That will be at 8:45, and Zoom will
4 still be available as far as I know.

5 Okay. Time is up. There is the order.
6 August 19, 8:45, and we will see you then.

7 MR. TALARICO: All right. Thank you, Judge.

8 THE COURT: All right. Thank you.

9 MR. TALARICO: Thank you for the Court's time.

10 THE COURT: Have a good day.

11 (Which were all the proceedings
12 had in the above-entitled cause
13 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, JUDY CARLSON, an official Court Reporter
6 for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
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12 a true and accurate transcript of said electronic
13 recording.
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1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL DISTRICT
4 McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPOVICH, P.C. and
HANS MAST,

11 Defendants.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 19th day of July,
16 2021, in the McHenry County Government Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by
20 MR. ALPHONSE A. TALARICO (via Zoom)

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN

24 On behalf of the Defendants.

1 THE COURT: Counsel?

2 MR. FLYNN: No. 10, your Honor. I see
3 Mr. Talarico. George Flynn on behalf of
4 defendant/movant.

5 THE COURT: Dulberg versus Mast?

6 MR. FLYNN: Yes.

7 THE COURT: Okay. I saw Mr. Talarico. All
8 right. Mr. Talarico?

9 MR. TALARICO: Yes, Judge. Good morning.

10 THE COURT: All right. Counselor here in court,
11 what's going on?

12 MR. FLYNN: Good morning, your Honor. We
13 brought a motion to supplement our motion to compel.
14 The Court ruled on April 6th and granted defendant's
15 motion to compel and set a June 14 compliance date.

16 THE COURT: Okay.

17 MR. FLYNN: I'm sorry. June 1st compliance date
18 with a June 14 hearing. Somehow I don't believe we
19 got a copy of the file stamped order and it didn't
20 get diaried, so I believe the case was called on
21 June 14 --

22 THE COURT: Okay.

23 MR. FLYNN: -- and a continue date August 19th.

24 THE COURT: You got inadequate compliance, is

1 that ultimately --

2 MR. FLYNN: That's our position, yes.

3 THE COURT: All right. I'm going to pass this.
4 We'll come back to it. And let me see if I can take
5 a look at the compliance at issue.

6 Mr. Talarico, just hang in there. I'll be
7 back at the end of the call.

8 MR. FLYNN: Thank you, your Honor.

9 (Whereupon the afore-captioned
10 cause was recalled.)

11 THE COURT: Let's go to Dulberg. All right.
12 Plaintiff's counsel for the record, if you could
13 identify yourself.

14 MR. TALARICO: Good morning, your Honor. My
15 name is Alphonse Talarico. I represent Paul
16 Dulberg.

17 MR. FLYNN: And good morning again, your Honor.
18 George Flynn on behalf of Popovich and Mast.

19 THE COURT: All right. So tell me what the
20 issue is.

21 MR. FLYNN: Again, your Honor, the Court ruled
22 on April 6th that the plaintiff was directed to
23 provide the specific answers and responses to each
24 interrogatory and production request. So we did

1 receive supplemental production responses and a
2 supplemental interrogatory answer. With respect to
3 the supplemental production, there is one document
4 that I consider to be responsive and that is new.

5 THE COURT: I'm sorry?

6 MR. FLYNN: There is one document that was
7 produced and I consider it to be responsive and a
8 new production. The rest of the documents that were
9 produced, it's unusual. There are actual pleadings
10 from this case that were attached as responsive
11 documents to my discovery requests. I don't see how
12 those -- which basically just set forth the
13 plaintiff's position in this case in response to the
14 various arguments we've made in motions.

15 THE COURT: Well, what is it you're looking for?
16 What didn't you get?

17 MR. FLYNN: I'm looking to strike any of those
18 documents --

19 THE COURT: Okay.

20 MR. FLYNN: -- that are not responsive.

21 THE COURT: Is it -- I mean, really is it
22 necessary to go to the trouble of striking them if
23 they're -- I mean, ultimately they're not going to
24 be relevant as a discovery response.

1 MR. FLYNN: Only -- I just want to make sure
2 there aren't any additional documents that were --

3 THE COURT: Are there any additional documents,
4 Mr. Talarico?

5 MR. TALARICO: Judge, I have no idea if -- it's
6 our position we complied completely. We filed our
7 answers on June 1st. If the Court had -- I don't
8 know if the Court remembers, you had ordered us,
9 plaintiff and defendant, to talk up through
10 June 14th to see if there were any issues. The only
11 response I got from the defendants was an e-mail
12 with one word. As I told you on June 14th, the only
13 word was, Thank you. Now I am totally surprised,
14 73 days later, Judge, and I don't know what else --
15 I want time to respond in writing, Judge. This
16 is --

17 THE COURT: I don't -- I don't want to do that.

18 MR. TALARICO: This has been difficult.

19 THE COURT: This is --

20 MR. FLYNN: Yes, it has, Judge.

21 THE COURT: So what is it you -- what is it you
22 are looking for? Because I have a representation on
23 the record -- and I'm assuming there's an affidavit
24 of compliance.

1 MR. TALARICO: There is.

2 THE COURT: Okay. Then -- and he says, I've
3 given you everything.

4 MR. FLYNN: That's fine with respect to the
5 production response. Now there's the interrogatory
6 answer.

7 THE COURT: All right. Tell me -- we're moving
8 on to the interrogatory.

9 MR. FLYNN: And again, this goes to the statute
10 of limitations on a legal malpractice case. The
11 plaintiff is claiming that he didn't discover it
12 until after the 2 years --

13 THE COURT: Could you keep your voice up a
14 little?

15 MR. FLYNN: Sure. Plaintiff is arguing for a
16 tolling of the statute of limitations on a legal
17 malpractice case. He was asked in Interrogatory
18 No. 1, Identify and describe each and every way that
19 Popovich or Mast breached any duty of care to you,
20 the date of the breach, and when and how you became
21 aware of the breach.

22 His response -- his amended additional
23 response discusses his pecuniary injury, that only
24 addresses damages. With respect to the breach of

1 the standard of care and how he discovered it, he
2 simply says he knew that the defendants breached the
3 standard of care due him based upon a verbal
4 discussion with Attorney Tom Gooch on December 16,
5 2016.

6 THE COURT: Okay.

7 MR. FLYNN: That describes the date. It doesn't
8 describe how he became aware of it, what Gooch told
9 him. Now, again, I know your Honor is aware of the
10 deposition testimony in this case regarding that
11 December 16 time period. If the answer is that
12 Dulberg doesn't remember what Mr. Gooch told him, if
13 Gooch said simply, You have a case, that's fine.
14 That's what they should say. But I've already taken
15 his deposition. There are no specifics that explain
16 to me why Mr. Gooch crystallized this breach of the
17 standard of care on December 16. But if this is all
18 they have, then that's what he should say, is that I
19 don't remember what Mr. Gooch told me.

20 THE COURT: I mean, he's -- I think he's
21 complied. I'm not sure --

22 MR. FLYNN: What is the breach of the standard
23 of care?

24 THE COURT: I'm sorry?

1 MR. FLYNN: And what is the breach of the
2 standard of care? That's what I've asked in the
3 interrogatory. They don't say.

4 THE COURT: Well, I think that -- all right. I
5 guess that is -- my reading on it, it's implied it's
6 a statute of limitations. But --

7 MR. FLYNN: No, the statute of limitations is
8 the issue in this case.

9 THE COURT: All right. What is the --

10 MR. FLYNN: The underlying personal injury
11 case --

12 THE COURT: What is the breach? Did Mr. Gooch
13 advise him what the breach was?

14 MR. TALARICO: Judge, all that Mr. Dulberg
15 recalls was relayed in the responses. There were no
16 recordings that were going on. Nothing was done in
17 writing. I'm not sure how I can possibly respond
18 anymore, to give anymore.

19 THE COURT: I have a representation that this is
20 all there is.

21 MR. FLYNN: That's satisfactory to me. As long
22 as when I file my summary judgment motion there's
23 not some new discovery discussion as to --

24 MR. TALARICO: Judge --

1 MR. FLYNN: -- what the breach was and what --

2 MR. TALARICO: I'm sorry. I hate to interrupt.
3 Judge?

4 THE COURT: Yeah.

5 MR. TALARICO: We -- again, we were -- our
6 response, I believe is in total compliance with the
7 Court order of June 6th and your instructions on
8 that day from the court record. And I'd like to
9 respond in writing to establish that we did that.

10 THE COURT: No. No. I mean, you're -- you only
11 need to respond in writing if we're going to have a
12 hearing. If you want to file a brief that -- just
13 in the file, that's fine, but I think we have a
14 resolution today and I don't want to spend more time
15 reading briefs resolving an issue that's moot. So I
16 think this is resolved. What else is outstanding?

17 MR. FLYNN: I think that does resolve -- the
18 representation resolves both issues, so --

19 THE COURT: I have -- you have advised -- well,
20 you've advised that's all there is, so I'm finding
21 you in compliance.

22 MR. TALARICO: Thank you, your Honor.

23 THE COURT: Okay. Is there anything else we
24 need to do?

1 MR. FLYNN: I suppose with respect to the
2 summary judgment motion that I anticipate, Judge,
3 there was one document that was produced in order to
4 avoid a second deposition of Mr. Dulberg to
5 authenticate this document, which is a letter from
6 Attorney Thompson -- I'm sorry -- Attorney Ferris --
7 that goes to the issue of the statute of
8 limitations. If Mr. Talarico would stipulate to the
9 authenticity of this March 4, 2015 letter on the
10 record, I don't need to send a request to admit
11 for --

12 THE COURT: Can you hear all that?

13 MR. TALARICO: I heard it, Judge, but I'm not
14 familiar with that document. A request to admit
15 would be welcome.

16 MR. FLYNN: Fair enough.

17 MR. TALARICO: Just so I can see what it is.

18 THE COURT: That's fine. We're back again on
19 August 19th. Do you want to delay that date in
20 light of the fact you may be issuing a request to
21 admit?

22 MR. FLYNN: I think that would make sense.

23 THE COURT: All right. So let's strike
24 August 19th and tell me when it makes sense to come

1 back.

2 MR. FLYNN: I'll need at least 30 days, so --

3 THE COURT: 60 days?

4 MR. FLYNN: A 60-day date would be great.

5 THE COURT: How's September 17th? That's a
6 Friday.

7 MR. TALARICO: Fine with me, Judge.

8 MR. FLYNN: That works for me.

9 THE COURT: All right. So that will be at 8:45
10 and then we'll see what you guys want to do when you
11 come back. And are you withdrawing your motion
12 or ...

13 MR. FLYNN: I think that --

14 THE COURT: Or do you want me expressly to find
15 compliance based on representations in open court?

16 MR. FLYNN: I'm not requesting a hearing any
17 longer. I think we resolved the matter. So yeah,
18 I'll withdraw it.

19 THE COURT: All right. Motion's withdrawn. The
20 record still stands. I did find that you were in
21 compliance and we'll deal with the next step
22 whenever it comes up. But I will see you
23 September 17th and if you could draft the order.

24 MR. FLYNN: I will. Thank you, your Honor.

1 THE COURT: All right. Thank you.

2 Mr. Talarico, anything else?

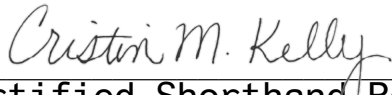
3 MR. TALARICO: No, Judge, thank you for your
4 time.

5 THE COURT: All right. Thank you.

6 (Which were all the proceedings
7 had in the above-entitled cause
8 this date.)
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1 STATE OF ILLINOIS }
2 COUNTY OF McHENRY } SS:
3

4 I, CRISTIN M. KELLY, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.
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16 Certified Shorthand Reporter
17 License No. 084-004529
18 Date: August 24, 2021
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1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL DISTRICT
4 McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPOVICH, P.C. and
HANS MAST,

11 Defendants.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 7th day of
16 September, 2021, in the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by
20 MR. ALPHONSE A. TALARICO (via Zoom)

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN (via Zoom)

24 On behalf of the Defendants.

1 THE COURT: Dulberg versus Mast?

2 MR. TALARICO: Alphonse Talarico for the
3 plaintiff, Mr. Dulberg.

4 MR. FLYNN: Good morning, your Honor. George
5 Flynn for the defendants, the movants.

6 THE COURT: All right. I have a defendant motion.

7 MR. FLYNN: Yes, we have a motion to deem facts
8 admitted as well as response filed --

9 THE COURT: Okay. I didn't see that. Do you
10 want to file a reply?

11 MR. FLYNN: I don't think it's necessary. I
12 have a comment or two I'd like to make, but I don't
13 think I need to file a reply.

14 THE COURT: If you want to wait until the end of
15 the call, I'll address it and we'll walk through it.
16 What would you like to do?

17 MR. FLYNN: That would work. The comment is
18 really just respect to the motion -- with respect --

19 THE COURT: You have to wait, so --

20 MR. FLYNN: Fair enough.

21 THE COURT: I got to take a look at it and I've
22 got a bunch of people waiting, so I will circle back
23 to you.

24 (Whereupon the afore-captioned

1 cause was recalled.)

2 THE COURT: Do we have a defense attorney on
3 Dulberg versus Mast? All right. Mr. Talarico,
4 we're missing a defense --

5 MR. TALARICO: Yes, your Honor.

6 THE COURT: Oh, we do?

7 MR. FLYNN: George Flynn for defendants.

8 THE COURT: All right. Oh, we were going to do
9 the -- I'm sorry. I skipped ahead.

10 MR. FLYNN: That's okay.

11 THE COURT: There's a lot of people here.

12 (Whereupon the afore-captioned
13 cause was recalled.)

14 THE COURT: All right. I'm going to deal with
15 Mr. Talarico.

16 MR. TALARICO: Yes, your Honor.

17 THE COURT: Okay. Going back to your case. All
18 right. Mr. Flynn, what is the basis of your motion?

19 MR. FLYNN: Good morning, your Honor. George
20 Flynn on behalf of defendant/movant. The basis is
21 it's a motion to deem facts admitted. We were
22 trying to authentic a document that was the subject
23 of some discussion the last couple of times we
24 appeared before your Honor. I filed the request to

1 admit. We received objections that we believe are
2 inappropriate and just moving for ruling on those
3 objections and some other relief. The -- the
4 response that they filed, essentially is a motion to
5 strike based on the failure to conduct a 201(k)
6 conference, which I don't think is required with
7 respect to objections and a request to admit, which
8 is a hybrid discovery and evidentiary tool.

9 So with respect to the motion itself, I
10 really have nothing to say more than what's in the
11 motion. I'd be happy if the Court wanted to take it
12 under advisement after it has an opportunity to
13 review the attachments and the motion.

14 THE COURT: No, I won't take it under
15 advisement. We'll go back to that in a minute.

16 Mr. Talarico, do you have any case law that
17 says a 201(k) conference is required before 216 --
18 or in a 216 situation?

19 MR. TALARICO: Yes, your Honor. Supreme Court
20 Rule 201(a) typically says the request to admit --

21 THE COURT: Do you have any case law?

22 MR. TALARICO: No, I have no case law, your Honor.

23 THE COURT: Okay. Because I don't think it
24 does. I think by its own -- by the language of the

1 rule, it's 28 days. And in fact, I believe the rule
2 requires that the request to admit facts explicitly
3 disclosed if you're not -- if you don't respond in
4 28 days, the answers are deemed admitted. So there
5 is no requirement to engage in a 201(k) conference
6 to resolve differences because by its own language,
7 it resolves itself.

8 So let's get into the answers. Okay.
9 Anything you want -- I see No. 1, they seem to be
10 asking you to admit or deny the genuineness of the
11 document that was attached?

12 MR. TALARICO: Correct, your Honor.

13 THE COURT: And do you have any -- anything to
14 say beyond what you've written in response?

15 MR. TALARICO: Your Honor, use of the words
16 defendant put into his motion, request to admit, are
17 subject to various interpretations. And he did not
18 include the definition of the specific words that he
19 was using, so I relied upon the Black's Law
20 Dictionary for definition. And within that, we
21 were -- we reviewed the fact of the document.

22 THE COURT: Okay.

23 MR. TALARICO: The document -- the document is
24 not accurate. It's not true. It's none of the

1 above. It has a wrong date of accident, the wrong
2 date of meeting. It has a lot of inaccuracies on
3 it, Judge.

4 THE COURT: Okay. I'm going to strike the
5 implicit objection regarding what is genuine. That
6 being said, I do have what appears to be an
7 admission. Mr. Flynn?

8 MR. FLYNN: Yeah, Judge. I mean, it's -- I
9 guess if it was an admission buried in these
10 objections. But the entire document is muddled up
11 with these various objections. I'm just asking if
12 this is a true copy of the letter that his client
13 received. I'm not asking if it's -- if information
14 contained is true and accurate. If you read it,
15 it's admit Exhibit A attached hereto is a true,
16 accurate, and genuine copy of a March 4, 2015,
17 letter drafted by Attorney Saul Ferris. He
18 concluded with the content of the letter. That's
19 not what I'm asking about.

20 MR. TALARICO: Your Honor, that is not in
21 true -- truth is not within that document. That's
22 what we're saying. Those are false statements.

23 THE COURT: And that's fine. But it is -- he
24 doesn't need to lay a foundation for the document;

1 am I correct?

2 MR. TALARICO: No. But the question -- I'm sorry.

3 THE COURT: Are you -- are you admitting -- I'm
4 assuming, Mr. Flynn, this is for purposes of a
5 foundation? You're not asking him to admit the
6 contents?

7 MR. FLYNN: That's correct. This is produced --
8 again, late produced in discovery after the
9 plaintiff's deposition. He should have produced
10 this document years ago when he's placed the
11 discovery of his malpractice at issue. So then he
12 produces this letter. I don't want to have to take
13 Saul Ferris's deposition, so I'm just asking, this
14 is the letter that Mr. Dulberg produced and that
15 it's a genuine copy of what he received in the mail?

16 THE COURT: Okay. Mr. Talarico, yes or no?

17 MR. TALARICO: Judge, that is a genuine copy.
18 We don't know -- when examined, Mr. Dulberg does not
19 recall. And in the deposition, he said he did not
20 recall when he received it or how he received it.
21 That is left open.

22 THE COURT: Mr. Talarico, I asked you a yes or
23 no question, not asking for an explanation, which is
24 consistent with what request to admit facts require.

1 So are you admitting to the foundation of this
2 document or denying --

3 MR. TALARICO: Yes, your Honor.

4 THE COURT: Okay. Then we will proceed. That's
5 deemed admitted for purposes of foundation.

6 Next one -- Mr. Flynn, the next one at issue?

7 MR. FLYNN: Judge, there was 2 and 3, and I
8 attempted to pin them down on when he received it.
9 So I asked No. 2, if Mr. Dulberg received a copy of
10 this letter within 7 days of the date dated. And
11 then, the next one, I asked if he received it within
12 30 days of the date it was dated. He doesn't answer
13 either of those.

14 THE COURT: Okay. Mr. Talarico?

15 MR. TALARICO: Judge, with all due respect,
16 Mr. Dulberg answered as best he could. This was
17 alleged to be sent by U.S. Mail. He has no idea.
18 It was many years ago. So he answered as
19 truthfully, as cooperatively as possible, that he
20 has no independent recollection of when this letter
21 was received. He did a search of his own records,
22 as presumed, at my request. He has no envelope.

23 THE COURT: If -- what it boils down to from my
24 perspective is I'm reading it as a denial. And

1 actually, that subjects you to 219(c) fees if they
2 have -- for those fees associated with the cost of
3 proving it up. But I'm reading it as a denial. Can
4 I -- do you have any problem with my reading it as a
5 denial? Am I incorrect?

6 MR. TALARICO: No, your Honor, you're not.

7 THE COURT: Okay. Mr. Flynn, anything you want
8 to add? My interpretation of all of that is a denial.

9 MR. FLYNN: If that's what the answer is, then
10 he's denied that he received this letter within
11 30 days of the date that the lawyer put the --
12 stamped it. So yeah, if I need to prove it up by
13 taking Mr. Dulberg's -- retaking Dulberg's
14 deposition and then taking Saul Ferris's deposition,
15 and as I've indicated in the motion, I'm seeking
16 fees and costs.

17 THE COURT: Yeah. I'm going to interpret 30 --
18 or I'm sorry -- 3 the same way. I interpret that as
19 a denial and you just have to prove it up.

20 Next one?

21 MR. FLYNN: The next one is just regarding the
22 meeting that is referenced in the letter. Admit
23 that you met with Saul Ferris upon or about
24 December 31, 2014, with regard to your personal

1 injury case.

2 THE COURT: Okay. I --

3 MR. FLYNN: And he's denying -- he denied the
4 date. He then says it's a later time period between
5 February 23rd and March 6th of 2015, which also
6 coincided with the drafting of that letter, by the
7 way. So he's changed the premise of No. 4, but sort
8 of provided an answer --

9 THE COURT: I think that's a denial because of
10 the way you phrase your question. Anything after
11 denies that he met Saul Ferris on or about
12 December 31, 2014, with regard to -- with regard to
13 the personal injury case, everything after that is
14 surplusage. So you have a denial. All right. Is
15 there anything else?

16 MR. FLYNN: No. The relief will be requested
17 now that these denials and improper objections were
18 raised. I'm going to have to retake Mr. Dulberg's
19 deposition at least on the subject matter of this
20 letter and I'll probably have to take Mr. Ferris's
21 deposition to prove-up the foundation for the letter
22 as well.

23 THE COURT: Certainly --

24 MR. FLYNN: So I would ask for fees and costs.

1 THE COURT: You have leave to depose Mr. Ferris.
2 I'm not sure you need Mr. Dulberg's deposition --
3 I'm willing to listen -- because your deposition of
4 Mr. Dulberg would merely result in him repeating --

5 MR. FLYNN: Raising the same denial, so --

6 THE COURT: I mean, he's on the record denied
7 any recollection. So I don't think you need the
8 deposition to get him to say that in the transcript
9 because you've got it in the request to admit. And
10 I'll hold him to that unless there's something else
11 you think you need from the deposition.

12 MR. FLYNN: No, Judge. I -- as you said, I
13 think he's going to make the same denials and in my
14 opinion play the same games he's been playing. So
15 I'll take Mr. Ferris's deposition. I'll seek -- I'm
16 requesting fees and costs in connection with the
17 deposition because it shouldn't be necessary.

18 THE COURT: Well, I think -- and unless there's
19 a different issue with respect to the cost
20 associated with that deposition, I think that's an
21 issue that I would have to address after trial
22 because my reference to 219(c) is when you have to
23 expend money to prove-up a fact that they deny, then
24 you are entitled to those fees, but -- so I couldn't

1 award them yet because you haven't --

2 MR. FLYNN: Fair enough.

3 THE COURT: -- you haven't done it. And I can
4 only do that after the fact because if you fail to
5 prove it up, you're not entitled to those fees,
6 obviously.

7 MR. FLYNN: Understood.

8 THE COURT: So is there anything else we need to
9 do today?

10 MR. FLYNN: I don't think so, Judge. If I could
11 just clarify the order that will read that No. 1 is
12 admitted, 2, 3, and 4 are denied.

13 THE COURT: Yes.

14 MR. FLYNN: That I have leave to depose
15 Mr. Ferris.

16 THE COURT: Yes.

17 MR. FLYNN: And then I assume come back for
18 status.

19 THE COURT: Yeah, we're back on September 17th.
20 That's awful soon in light of what you're now going
21 to do. I'm thinking more like 60 days unless you
22 guys have a better idea.

23 MR. FLYNN: I agree.

24 MR. TALARICO: Judge?

1 THE COURT: 60 days puts us into -- actually
2 November 8th is my default date. Any time earlier
3 is fine.

4 MR. FLYNN: That works for me.

5 MR. TALARICO: Fine, Judge.

6 THE COURT: All right. Mr. Flynn, since it's
7 going to be a more complicated order, can you send
8 it in?

9 MR. FLYNN: Yes.

10 THE COURT: Can you copy --

11 MR. FLYNN: I will.

12 THE COURT: Do you have our address?

13 MR. FLYNN: I do, I do. And I'll send a copy of
14 the draft to Mr. Talarico this morning. I'd like to
15 hear back from him by noon so there's no confusion.

16 THE COURT: Okay. I will --

17 MR. FLYNN: All right.

18 THE COURT: -- wait for the order. And then
19 otherwise -- and please strike September 17th.

20 MR. FLYNN: We will. Thank you, Judge.

21 THE COURT: Thank you.

22 (End of proceedings.)

23

24

1 STATE OF ILLINOIS }
2 COUNTY OF McHENRY } SS:
3

4 I, CRISTIN M. KELLY, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.
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16 Certified Shorthand Reporter
17 License No. 084-004529
18 Date: September 10, 2021
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendant.

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 8th day of
16 November, 2021, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 THE LAW OFFICE OF ALPHONSE TALARICO, by
20 MR. ALPHONSE TALARICO, (Via Zoom)

21 On behalf of the Plaintiff,

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE FLYNN, (Via Zoom)

24 On behalf of the Defendants.

1 THE COURT: Dulberg versus Mast.

2 MR. FLYNN: Good morning, your Honor. George
3 Flynn for defendants.

4 THE COURT: Okay.

5 MR. TALARICO: Good morning, your Honor.
6 Alphonse Talarico for the plaintiff, Paul Dulberg.

7 THE COURT: Okay. I saw attorney -- did the
8 deposition of the attorney go?

9 MR. FLYNN: It did.

10 THE COURT: Okay. And so what's going on now?

11 MR. TALARICO: Well, your Honor, we are
12 waiting -- I haven't received a transcript of a --
13 (indiscernible) that day. Additionally, I have
14 discovered that it's possible that there is some
15 outstanding discovery from the prior attorneys on
16 this case. So I think (indiscernible) Mr. Flynn is
17 probably the next step to get this thing moving.

18 THE COURT: Okay. Have you told Mr. Flynn what
19 it is you are looking for?

20 MR. TALARICO: No, I haven't. This is the
21 reason that I found this while I was going through.

22 MR. FLYNN: Is this discovery the defendants
23 propounded or the plaintiffs propounded?

24 MR. TALARICO: Plaintiff's attorneys, former

1 attorneys.

2 MR. FLYNN: Yeah, I'm not aware of anything
3 that's outstanding.

4 THE COURT: Okay. So let's assume that
5 Mr. Flynn produces whatever it is you're looking for
6 within the next two, three weeks, what do you
7 anticipate doing next on this case, Mr. Talarico?

8 MR. TALARICO: Well, Judge, proceed forward
9 towards trial. I don't know if Mr. Flynn is going
10 to be filing a motion for summary judgment. That
11 maybe the next step or --

12 THE COURT: Okay. Mr. Flynn, is a summary
13 judgment in the offing, or have you decided yet?

14 MR. FLYNN: We have certainly decided. There
15 are at least two grounds that I plan to bring at the
16 end of the fact discovery. Just because of the
17 underlying record, I have two more arguments to make
18 that may be more appropriate for later on in the
19 case.

20 THE COURT: Okay. Well, it tells me, then, we
21 have to ramp up at one before we can move onto your
22 motion. I'm going to put this out for 30 days. And
23 I'm going to order all outstanding written to be
24 completed by that date. And we will wait and see

1 what it is that is outstanding.

2 Certainly, I'll work with you if that's
3 going to be time consuming. But I'm assuming it's
4 just going to be a simple matter of turning over
5 something.

6 So I'm going to put -- tell me a day you
7 want to come back in early December. How is the
8 8th, that's 30 days?

9 MR. TALARICO: That will be fine with the
10 plaintiff, Judge.

11 MR. FLYNN: Judge, I think I may be in New York
12 that day. I would be free on Tuesday the 7th.

13 THE COURT: How is -- Mr. Talarico, how is
14 the 7th?

15 MR. FLYNN: The 7th would work, Judge.

16 THE COURT: Okay.

17 MR. FLYNN: I'll prepare the order, Judge.

18 THE COURT: Drafted the order, December 7, 8:45.

19 MR. FLYNN: Thank you.

20 MR. TALARICO: Thank you, your Honor.

21 (Which were all the proceedings
22 had in the above-entitled cause
23 this date.)
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, JUDY CARLSON, an official Court Reporter
6 for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
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AMENDED CERTIFICATION PAGE

COUNTY OF MCHENRY)
STATE OF ILLINOIS)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

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

The ELECTRONICALLY RECORDED Court Proceedings had at the hearing in the above-entitled cause in front of the HONORABLE THOMAS MEYER, held on the 7th day of December, 2021, at the Michael J. Sullivan Judicial Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICES OF ALPHONSE A. TALARICO
BY: MR. ALPHONSE TALARICO (via Zoom)
Appeared on behalf of Plaintiff

KARBAL COHEN ECONOMOU SILK DUNNE, LLC
BY: MR. GEORGE K. FLYNN (via Zoom)
Appeared on behalf of the Defendants

1 THE COURT: Okay. Do I have both sides on
2 anything or an agreed order?

3 MR. TALARICO: On Dulberg, Your Honor. I see
4 Mr. Flynn.

5 THE COURT: Mr. Flynn, are you on Dulberg?

6 MR. FLYNN: Good morning, Your Honor.

7 THE COURT: Good morning. Are you on Dulberg?

8 MR. FLYNN: Yes.

9 THE COURT: Okay. And for the record, if
10 you -- plaintiff's counsel, if you could identify
11 yourself?

12 MR. TALARICO: Your Honor, my name is Alphonse
13 Talarico. I'm here for the plaintiff,
14 Mr. Paul Dulberg.

15 And if I could take a moment of the
16 Court's time just to send warm wishes on Pearl Harbor
17 Remembrance Day to everyone and especially to the
18 Court.

19 THE COURT: Okay. Thank you.

20 Mr. Flynn, if could you identify
21 yourself.

22 MR. FLYNN: George Flynn for defendants.

23 THE COURT: All right. Plaintiff's counsel, you
24 have a motion to compel.

1 MR. TALARICO: Yes, Your Honor.

2 THE COURT: All right. Mr. Flynn, what --
3 What's your response on that?

4 MR. FLYNN: Judge, I just filed a response
5 yesterday afternoon.

6 THE COURT: Yes.

7 MR. FLYNN: There was some exhibits. I imagine
8 it will take a little time for the Court to review
9 it.

10 THE COURT: Yeah. I do see that now.

11 And what I was intending to do was just
12 to go through your answers.

13 I'd like to resolve this today if you
14 guys can -- can hang around until the end. And how
15 much time do you have?

16 MR. FLYNN: Well, Judge, I don't think that --
17 In my view, I think that if the Court were able to
18 review the response and the exhibits, that it might
19 change the game plan a little bit as far as going
20 through each of these.

21 THE COURT: Okay.

22 MR. FLYNN: I have a letter from plaintiff's
23 prior counsel, which in my view resolves all of these
24 issues.

1 THE COURT: All right. I will -- I'll --

2 MR. TALARICO: May I speak?

3 THE COURT: -- take a look at your response.

4 Mr. Talarico, do you want to file a
5 reply?

6 MR. TALARICO: Yes, I do, Judge. And --

7 THE COURT: And how long do you need to reply?

8 MR. TALARICO: -- I think it's warranted.

9 THE COURT: I'm sorry?

10 MR. TALARICO: I said, I think it's warranted,
11 Your Honor.

12 THE COURT: Okay. How long do you need?

13 MR. TALARICO: If I could have fourteen days.

14 THE COURT: Okay. Fourteen days will take us to
15 December 21. And --

16 MR. FLYNN: Judge --

17 THE COURT: Yes?

18 MR. FLYNN: The plaintiff just filed this motion
19 late last week.

20 I had my response on file yesterday
21 afternoon.

22 I think that a couple of days is really
23 all that is necessary, and we'd like to get that
24 discovery closed so we can move on.

1 THE COURT: Yeah, but --

2 MR. FLYNN: Fourteen days? I don't know --

3 THE COURT: Fourteen days, given the time of the
4 year, it doesn't make a whole lot of difference
5 because I wouldn't be able to set you for hearing
6 next week simply because of my schedule.

7 So it -- It, unfortunately, works better
8 for me to kick it over into January. I can do it
9 January 4th, Tuesday.

10 MR. FLYNN: One second.

11 MR. TALARICO: That's fine, Your Honor.

12 THE COURT: All right. Mr. Talarico, could you
13 send in the order setting it for 10:00 a.m. on
14 January 4th and giving yourself fourteen days?

15 MR. TALARICO: Judge, I have -- I have one other
16 request.

17 THE COURT: Yeah?

18 MR. TALARICO: May I -- May I file with my reply
19 discovery so that the Court can see what the
20 questions were as exhibits?

21 THE COURT: Yeah. Yeah.

22 MR. TALARICO: All right. Thank you, Your
23 Honor.

24 THE COURT: All right. I will take a look at

1 all that. We'll walk through it on the 4th at
2 10:00 a.m.

3 When I see the order, I'll sign it.

4 MR. TALARICO: Thank you, Your Honor.

5 THE COURT: All right. Take care.

6 MR. FLYNN: Thank you.

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AMENDED CERTIFICATION PAGE

COUNTY OF MCHENRY)
)
STATE OF ILLINOIS)

I, Heather Voska Hartwig, one of the Official
Court Reporters of the 22nd Judicial Circuit of
Illinois, do hereby certify that the foregoing is a
true and correct transcription to the best of my
ability of all the proceedings heard on the
electronic recording system in the above-entitled
cause.

Heather Voska Hartwig

Heather Voska Hartwig, CSR
Official Court Reporter
Illinois #084-003574

1 COUNTY OF MCHENRY)
2 STATE OF ILLINOIS)

3
4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
5 MCHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)
7 Plaintiff,)
8 vs.) NO. 17 LA 377
9 THE LAW OFFICES OF)
10 THOMAS J. POPOVICH, P.C.,)
11 and HANS MAST,)
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13 The ELECTRONICALLY RECORDED Court Proceedings had at
14 the hearing in the above-entitled cause in front of
15 the HONORABLE THOMAS MEYER, held on the 7th day of
December, 2021, at the Michael J. Sullivan Judicial
Center, Woodstock, Illinois.

16 APPEARANCES:

17
18 LAW OFFICES OF ALPHONSE A. TALARICO
19 BY: MR. ALPHONSE TALARICO (via Zoom)
Appeared on behalf of Plaintiff

20
21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC
22 BY: MR. GEORGE K. FLYNN (via Zoom)
Appeared on behalf of the Defendants

23

24

1 THE COURT: Okay. Do I have both sides on
2 anything or an agreed order?

3 MR. TALARICO: On Dulberg, Your Honor. I see
4 Mr. Flynn.

5 THE COURT: Mr. Flynn, are you on Dulberg?

6 MR. FLYNN: Good morning, Your Honor.

7 THE COURT: Good morning. Are you on Dulberg?

8 MR. FLYNN: Yes.

9 THE COURT: Okay. And for the record, if
10 you -- plaintiff's counsel, if you could identify
11 yourself?

12 MR. TALARICO: Your Honor, my name is Alphonse
13 Talarico. I'm here for the plaintiff,
14 Mr. Paul Dulberg.

15 And if I could take a moment of the
16 Court's time just to send warm wishes on Pearl Harbor
17 Remembrance Day to everyone and especially to the
18 Court.

19 THE COURT: Okay. Thank you.

20 Mr. Flynn, if could you identify
21 yourself.

22 MR. FLYNN: George Flynn for defendants.

23 THE COURT: All right. Plaintiff's counsel, you
24 have a motion to compel.

1 MR. TALARICO: Yes, Your Honor.

2 THE COURT: All right. Mr. Flynn, what --
3 What's your response on that?

4 MR. FLYNN: Judge, I just filed a response
5 yesterday afternoon.

6 THE COURT: Yes.

7 MR. FLYNN: There was some exhibits. I imagine
8 it will take a little time for the Court to review
9 it.

10 THE COURT: Yeah. I do see that now.

11 And what I was intending to do was just
12 to go through your answers.

13 I'd like to resolve this today if you
14 guys can -- can hang around until the end. And how
15 much time do you have?

16 MR. FLYNN: Well, Judge, I don't think that --
17 In my view, I think that if the Court were able to
18 review the response and the exhibits, that it might
19 change the game plan a little bit as far as going
20 through each of these.

21 THE COURT: Okay.

22 MR. FLYNN: I have a letter from plaintiff's
23 prior counsel, which in my view resolves all of these
24 issues.

1 THE COURT: All right. I will -- I'll --

2 MR. TALARICO: May I speak?

3 THE COURT: -- take a look at your response.

4 Mr. Talarico, do you want to file a
5 reply?

6 MR. TALARICO: Yes, I do, Judge. And --

7 THE COURT: And how long do you need to reply?

8 MR. TALARICO: -- I think it's warranted.

9 THE COURT: I'm sorry?

10 MR. TALARICO: I said, I think it's warranted,
11 Your Honor.

12 THE COURT: Okay. How long do you need?

13 MR. TALARICO: If I could have fourteen days.

14 THE COURT: Okay. Fourteen days will take us to
15 December 21. And --

16 MR. FLYNN: Judge --

17 THE COURT: Yes?

18 MR. FLYNN: The plaintiff just filed this motion
19 late last week.

20 I had my response on file yesterday
21 afternoon.

22 I think that a couple of days is really
23 all that is necessary, and we'd like to get that
24 discovery closed so we can move on.

1 THE COURT: Yeah, but --

2 MR. FLYNN: Fourteen days? I don't know --

3 THE COURT: Fourteen days, given the time of the
4 year, it doesn't make a whole lot of difference
5 because I wouldn't be able to set you for hearing
6 next week simply because of my schedule.

7 So it -- It, unfortunately, works better
8 for me to kick it over into January. I can do it
9 January 4th, Tuesday.

10 MR. FLYNN: One second.

11 MR. TALARICO: That's fine, Your Honor.

12 THE COURT: All right. Mr. Talarico, could you
13 send in the order setting it for 10:00 a.m. on
14 January 4th and giving yourself fourteen days?

15 MR. TALARICO: Judge, I have -- I have one other
16 request.

17 THE COURT: Yeah?

18 MR. TALARICO: May I -- May I file with my reply
19 discovery so that the Court can see what the
20 questions were as exhibits?

21 THE COURT: Yeah. Yeah.

22 MR. TALARICO: All right. Thank you, Your
23 Honor.

24 THE COURT: All right. I will take a look at

1 all that. We'll walk through it on the 4th at
2 10:00 a.m.

3 When I see the order, I'll sign it.

4 MR. TALARICO: Thank you, Your Honor.

5 THE COURT: All right. Take care.

6 MR. FLYNN: Thank you.

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1 COUNTY OF MCHENRY)
2 STATE OF ILLINOIS)

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6 I, Heather Voska Hartwig, one of the Official
7 Court Reporters of the 22nd Judicial Circuit of
8 Illinois, do hereby certify that the foregoing is a
9 true and correct transcription to the best of my
10 ability of all the proceedings heard on the
11 electronic recording system in the above-entitled
12 cause.

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

3
4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

5 PAUL DULBERG,)
6)
7 Plaintiff,)
8 vs.) No. 17 LA 377
9 THE LAW OFFICES OF THOMAS J.)
POPOVICH, P.C., and HANS)
10 MAST,)
11 Defendants.)

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 4th day of
16 January, 2022, in the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO
20 BY: MR. ALPHONSE A. TALARICO (Via Zoom)

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK & DUNNE, LLC
BY: MR. GEORGE K. FLYNN

23 On behalf of the Defendants.
24

1 THE COURT: And it appears we are all here on
2 Dulberg versus Popovich.

3 For the record, here in court we
4 have?

5 MR. FLYNN: George Flynn on behalf of
6 defendants.

7 THE COURT: Plaintiff's counsel?

8 MR. TALARICO: Good morning, Judge. My name
9 is Alphonse Talarico for Mr. Dulberg.

10 THE COURT: Okay. Where are we because I
11 know there was a dispute over whether discovery had
12 been produced, and it seems to have been -- I think
13 I directed it be produced again and just get past
14 this.

15 So what is the current status of the
16 motion? I'll ask plaintiff.

17 MR. TALARICO: At this moment, Judge, there
18 has been a motion, a response, and reply filed.
19 There has been no determination by the Court
20 whether or not plaintiff's claims are justified, so
21 at this moment that's what the motion to compel is
22 before you.

23 THE COURT: Well, the issue as I -- the core
24 issue is, as I understood it, is you alleged that

1 they had not complied with discovery and defendant
2 said otherwise saying they had previously produced
3 it. It was my recollection I directed them to send
4 it again.

5 Is that a fair assessment?

6 MR. FLYNN: Not exactly, your Honor.

7 MR. TALARICO: No, Judge.

8 MR. FLYNN: If I could explain.

9 THE COURT: Yeah, go ahead. I'll ask defense
10 counsel.

11 MR. FLYNN: Mr. Talarico is the third lawyer
12 representing Mr. Dulberg in this case. The first
13 lawyer, Tom Gooch, propounded discovery -- written
14 discovery shortly before he withdrew from the case.

15 And Julia Williams from the Clinton
16 Law Firm came into the case, propounded
17 discovery -- written discovery, a separate set, and
18 we agreed that I would not be answering the written
19 discovery that Pop- -- I'm sorry -- Gooch had
20 propounded. We answered two and a half years ago.

21 Mr. Talarico came in the case. And
22 I've laid out an outline of all the pertinent dates
23 in our response, but I did have an agreement.
24 Ms. Williams has confirmed this just back in

1 December. I think it was December 3rd. She wrote
2 to me and confirmed all of my representations that
3 she had never intended for me to answer the first
4 set of discovery. We answered the second set of
5 discovery. Moved on. We reported to the Court
6 that discovery had been answered. We moved on to
7 depositions. I deposed the plaintiff. She then
8 deposed Hans Mast, one of the defendants I'm
9 representing, and then her firm later withdrew.

10 Mr. Talarico never raised an issue
11 until over 13 months after he was in the case, so
12 we've raised the timeliness issue. Moreover, I had
13 an agreement with counsel that we would not be
14 answering the first set. And, again, it's laid out
15 in detail.

16 THE COURT: There is also -- Ultimately did
17 you produce copies of the discovery you previously
18 answered?

19 MR. FLYNN: We've -- I'm not sure what the
20 issue is there. So Ms. Williams had issues with
21 some blank pages contained in our --

22 THE COURT: But there was -- you referred to
23 the first set of discovery. I think you called it
24 the Gooch discovery.

1 MR. FLYNN: We never answered the Gooch
2 discovery --

3 THE COURT: Okay.

4 MR. FLYNN: -- because by agreement we
5 weren't --

6 THE COURT: But you answered somebody's
7 discovery. Forgive me if I misunderstood.

8 MR. FLYNN: We answered Ms. Williams'
9 discovery --

10 THE COURT: All right.

11 MR. FLYNN: -- which included interrogatories
12 to both the Popovich firm and Hans Mast, request
13 for production to both, and 213 interrogatories, so
14 I laid out all of our witnesses. Went through
15 several rounds of 201(k) discussions with Ms.
16 Williams.

17 She thought that there were some
18 blank pages contained in our large production, and
19 this production included transcripts from
20 depositions of several doctors and other witnesses
21 we obtained at our expense and then produced to
22 her. She didn't take copies of everything, but we
23 gave her the opportunity to inspect the file live.

24 I met her at my client's office.

1 She went through it. And then as we represented
2 that these blank pages were actually just page
3 dividers in the original physical file, she was
4 satisfied and we moved on.

5 THE COURT: Okay. Mr. Talarico?

6 MR. TALARICO: There was a lot there, Judge.
7 Let me think. First of all, there was no -- there
8 was no Gooch responses. There was no documentation
9 of withdrawal of Gooch's discovery. The Court had
10 not been made aware of it. The client had not been
11 made aware of it.

12 The Gooch discovery question has
13 major questions which the Clinton discovery does
14 not have. It refers as to the standard of care in
15 a legal malpractice case and as to conflicts of
16 interest. Those types of questions have
17 disappeared.

18 Now, the questions that did go from
19 the Clinton's, a lot of the responses, and I
20 outlined them specifically, was See Document 1
21 through 1,455. Nothing more specific than that.

22 So in my -- my -- what I'm trying to
23 do is get the answers to the Gooch discovery. I'm
24 trying to get the answers to the Clinton discovery.

1 I have very little -- very little documentation
2 unless I'm -- you know, I've got 1400 pages I have
3 to search through, but nothing specific. And those
4 answers were over -- probably six or seven times
5 they answered that same way.

6 As to Julia Williams, I tried to
7 contact her when Mr. Flynn said, well, Julia
8 Williams agreed to that. I sent an email to her.
9 She has not yet responded. That was before
10 Mr. Flynn even talked to her. Then Mr. Flynn
11 talked to her, and his -- his letters, which are
12 included which I attached, are don't you remember,
13 don't you agree, don't you do this, don't --
14 he's -- he's giving her the answers. He's leading
15 her. And in her answers I specify it and show it
16 in my reply that she says, um, I'm not sure. I
17 think. I believe we did that. None of this was
18 absolute.

19 So what I have and the reason why I
20 didn't see this is because I see -- according to
21 201(m), Supreme Court Rule 201(m), I see file of
22 discovery, answer of discovery. I don't -- I
23 didn't -- when the Clinton discovery was filed,
24 they did not file a 201(m). They called it the

1 first set. It wasn't. It was the second set.
2 When Mr. Flynn answered, he called it the first
3 set. It wasn't. It was the second set.

4 When I got into the case, I saw this
5 and I saw your standing order about discovery. I
6 thought everything was -- everything was answered
7 and done.

8 Now, the Clintons turned over
9 information to me piecemeal by different attorneys.
10 They had different attorneys working the file, and
11 different attorneys sent me different documents.
12 I'm still not sure I have a complete set. So they
13 are --

14 THE COURT: So what is it ultimately --
15 Ultimately what are you looking for?

16 MR. TALARICO: Answers to the discovery.
17 Answers to the Clinton discovery.

18 THE COURT: Well, are any of these -- I'm
19 assuming some of these are duplicative. I can't
20 imagine that the Gooch discovery omitted or was
21 entirely radically different from what was filed by
22 Williams.

23 MR. TALARICO: With all due respect --

24 MR. FLYNN: Judge, many of them -- I'm sorry.

1 MR. TALARICO: I'm sorry.

2 THE COURT: Go ahead. Plaintiff.

3 MR. TALARICO: With all due respect, it was
4 because it did not talk about conflicts of
5 interest, which was a question that I believe
6 Mr. Gooch was trying to get to, and also standard
7 of care questions were not asked.

8 THE COURT: In the Williams' discovery?

9 MR. TALARICO: Yes.

10 THE COURT: Okay. Defense counsel?

11 MR. FLYNN: I disagree, Judge, not pointing
12 to any specific interrogatory or production
13 request. In any event, it's late. You know, we
14 are not -- I would request that the Court not
15 reopen written discovery at this late date. We
16 answered two and a half years ago, presented a
17 lawyer for his deposition.

18 THE COURT: Here is one of the problems I
19 have with that. I think technically you have a
20 very valid point, but I suspect that if I submitted
21 this or if this was submitted to the Appellate
22 Court, they would say give him another chance. And
23 they probably wouldn't like my saying that, but
24 that is a common complaint. At this level when we

1 attempt to strictly enforce the rules as we are
2 told, the frequent result is give them one more
3 chance. So we take that into consideration. So
4 that is why I fashioned my -- or tried to make sure
5 everybody gets what they want.

6 MR. FLYNN: I understand that and I
7 appreciate it, and that's why I laid out in the
8 response to the motion the extensive history and my
9 agreements with Ms. Williams.

10 Now, I did stand up here in front of
11 your Honor as I am doing today, and I understand
12 the Appellate Court issues and that's one reason I
13 am here right now because my -- my testimony is
14 part of this motion.

15 THE COURT: And what would happen if I
16 granted leave to issue supplemental discovery?

17 MR. FLYNN: You know, Judge, the expenses
18 that my clients have incurred because of the
19 third -- the third attorney coming in --

20 THE COURT: Realistically.

21 MR. FLYNN: I have to question whether
22 Mr. Dulberg and his current attorney have even had
23 an opportunity to review the correspondence between
24 me and Ms. Williams because there have been several

1 instances where it is apparent to me that they have
2 not either willing -- they are either unwilling or
3 unable to, and I don't know what the answer is.

4 And I can give you another example
5 of that when we get to the next motion that
6 Mr. Talarico has brought relative to the
7 affirmative defenses. I have the documentation.
8 He's made accusations in the motion that
9 Ms. Williams was somehow misled because of the
10 labeling and the content of my affirmative defense;
11 but as the Court will see, that is not the case at
12 all. So I have to question whether Mr. Dulberg and
13 his lawyer even have the communication between me
14 and Ms. Williams.

15 When we first appeared here back in
16 November and Mr. Talarico indicated that he may be
17 bringing a motion to compel, he didn't even know
18 what it was going to be. I had to write to him and
19 ask him what is this outstanding discovery that is
20 purportedly missing. He then wrote back to me and
21 said, well, you didn't sign the interrogatories and
22 the discovery and only one of your clients did.

23 Well, that wasn't true either. I
24 forwarded him the transmittal emails from my

1 secretary to Ms. Williams with all the signatures
2 from all three parties involved, me and my two
3 clients.

4 So, you know, we are ready to file a
5 summary judgment motion. There isn't anything
6 relative to the standard of care in the discovery
7 and that they haven't had a chance to already
8 explore with my client. He was deposed for --

9 THE COURT: Maybe you're right.

10 MR. FLYNN: -- two or three hours. He's a
11 lawyer. They had the chance.

12 THE COURT: I am sympathetic, but in the back
13 of my head I'm -- I suspect I know what would
14 happen at the next level. If we proceeded to
15 summary judgment and I granted it, there would
16 remain that issue, well, you should have given him
17 this discovery.

18 And my policy is when a summary
19 judgment is filed, I'll ask, typically the
20 plaintiff, is there anything you need before you
21 respond and I give it to them because I don't want
22 that to come haunting -- and haunt any decision I
23 made that, oh, you should have let this -- you
24 should have let them do this one little bit of

1 discovery. I want to be a hundred percent
2 satisfied that everything is done. And I know
3 that's not fair to you under the circumstances, but
4 I think in the long run that policy serves us all
5 well even if it means we may spend time and money
6 in some cases that's not necessary.

7 MR. FLYNN: I appreciate that. That is why I
8 laid the entire history out in the response. I
9 would just implore the Court to review that before
10 final ruling on --

11 THE COURT: Your -- your -- I think -- I
12 won't say that because the record may be reviewed,
13 but I'm very cautious about barring discovery. I
14 mean, we would have to be on the eve of trial for
15 me to feel comfortable doing that based on the
16 Appellate Court decisions I've read, and generally
17 the theme is give them one more chance. And so I'm
18 going to adhere to that, which is why I am focusing
19 on what it is we are looking for.

20 And so I'm now looking at
21 Mr. Talarico. What are you looking for?

22 MR. TALARICO: Judge, I'd like to respond to
23 Mr. Flynn's allegations against me.

24 THE COURT: No, no.

1 MR. TALARICO: I just want to say one --

2 THE COURT: No, no. You guys -- you guys
3 want to argue what you want to argue about. I want
4 to -- I want to cut to the chase because if you
5 start -- if you respond, he has to respond. So
6 anything he said that might have attacked your
7 character in any way, shape, or form is not
8 relevant to me and I didn't consider it. So let's
9 move on.

10 So what is it you are looking for?

11 MR. TALARICO: Judge, I'm looking for the
12 answers to the Gooch discovery and for the Clinton
13 discovery. Nothing new. Just answered this time.

14 THE COURT: Well, I think -- I think the
15 suggestion that they've avoided answering it is
16 probably inaccurate because until this moment it
17 had not been brought to my attention, meaning with
18 respect to this motion, that it was an issue. So
19 to -- and I'll ask counsel here in court, how much
20 overlap is there between the Clinton and the Gooch
21 discovery before we get to the Williams' discovery?

22 MR. FLYNN: Ballpark, 75 percent at least.

23 THE COURT: Okay. And if your answers can
24 say see this answer to --

1 MR. FLYNN: That's the problem because what
2 he's pointing to in the motion is my -- the issues
3 that I took --

4 THE COURT: How many interrogatories are
5 there?

6 MR. FLYNN: -- with respect to Dulberg's
7 answers and what I considered to be invasive
8 written and oral discovery answers because we were
9 trying to get to a specific point and that is the
10 statute of limitations in his discovery and his
11 incurred damages.

12 On the other hand, when I'm faced
13 with a production request, for example, that says
14 produce the client file from your representation of
15 Mr. Dulberg and I say, See Pages 1 through 1400,
16 that's the client file, that's the client file.

17 THE COURT: That's adequate.

18 MR. FLYNN: That's a different inquiry. So,
19 you know, if there had been something specific they
20 were looking for, I thought it would have come out
21 by now.

22 THE COURT: And a corollary concern is how
23 many interrogatories are we talking about?

24 MR. FLYNN: And that's a good question, your

1 Honor. With respect -- I'm not sure if we've
2 reached 30 with respect to --

3 THE COURT: I can't believe we haven't.

4 MR. FLYNN: Each -- each -- well, I think
5 there were about ten or fifteen Gooch, ten or
6 fifteen from -- from Ms. Williams, and then there
7 were the -- you know, I answered the 213 witness
8 interrogatories which I consider to be a separate
9 requirement whether they are propounded on the
10 party or not, so I answered the 213(f)(1), (2), and
11 (3) discovery as if someone had propounded it on
12 me. So have we reached the 30? It's probably not
13 too much greater than 30, to be honest.

14 THE COURT: All right. So, Mr. Talarico,
15 rather than just telling me you want answers to
16 everything because I got to believe that the
17 interrogatories are duplicative and the fact that
18 you've got three sets of interrogatories filed by
19 three different sets of attorneys doesn't mean you
20 get each one of them. There are --

21 MR. TALARICO: Correction.

22 THE COURT: -- two.

23 MR. TALARICO: There's only two sets.

24 THE COURT: I'm sorry.

1 MR. TALARICO: And those are the -- those are
2 the Gooch and the Clinton. I have not filed any.
3 I'm trying to get answers to the Gooch and (audio
4 distortion).

5 THE COURT: I don't know who that is.

6 MR. FLYNN: It couldn't be me. I'm live.

7 THE COURT: Okay. So why can't you identify
8 the specific Gooch interrogatories that you need
9 answered, and we can then omit the duplicative ones
10 because I've got to believe that are duplicative
11 ones.

12 MR. TALARICO: Judge, a review doesn't
13 show -- I don't remember any duplicative ones.
14 They went in different directions completely. Like
15 I said, the Gooch stuff involves conflicts of
16 interest and standard of care. Those were, you
17 know, the major issues. That's none of that in the
18 Clinton.

19 MR. FLYNN: If he could even identify by
20 interrogatory where the standard of care was posed
21 and not answered, I would -- that would be even
22 helpful to me.

23 I think one of the other issues
24 we'll run into, Judge, is that we've spent hours

1 and hours and hours on the document production
2 portion.

3 Now, Ms. Williams may not have taken
4 everything. I don't think she asked for copies of
5 all of the documents we had. But not only did we
6 produce them and copy them for them, I drove to
7 McHenry to my client's office and met with her at
8 his office where she went through the file and
9 decided what she wanted. So for my client to have
10 to go through the cost again --

11 THE COURT: It's all you've got to do.

12 MR. FLYNN: -- is -- All the interrogatories?

13 THE COURT: No. With respect to the
14 production request, you gave her the opportunity to
15 review. She took advantage of that.

16 MR. FLYNN: She did.

17 THE COURT: And whatever she took is whatever
18 she took, so I don't know that it's your burden to
19 fill in gaps if she left something undone.

20 Mr. Talarico, tell me your position
21 on that.

22 MR. TALARICO: Judge, what -- a lot of
23 Mr. Flynn's answers are, See Document 1
24 through 1405. Those answers, I believe, are

1 nonresponsive.

2 THE COURT: Okay. That's a different issue.
3 That's a different issue than what we were just
4 talking about, so --

5 MR. TALARICO: Judge, the issue he's
6 talking -- Mr. Flynn is talking about are 106 pages
7 that were blacked out in what I received,
8 completely blacked out, although they were counted
9 in the Popovich Bates stamp. I wanted to know what
10 those 106 blacked out pages were. That's what he's
11 talking about. He's talking about the Clintons, we
12 went -- they also wanted to know. And as far as
13 Mr. Flynn has represented to the Court, the
14 Clintons were satisfied. I don't know if they
15 were. All I know there is black -- there is 106
16 black pages -- blacked out pages.

17 THE COURT: Well, the fact that the Clintons
18 didn't push the issue suggests to me that they
19 didn't see it as an issue. It's incumbent on them
20 to bring it to my attention otherwise I assume they
21 are satisfied.

22 That being said, what about the 106
23 pages?

24 MR. FLYNN: I don't know that that's the

1 exact number, but there were a significant number
2 of blank pages in the document production. The
3 record is clear and I've attached some of the
4 commentary on that between myself and Ms. Williams,
5 but in any event, she raised the issue, said why
6 are these pages redacted. I checked with my
7 client. It turns out they were not redacted pages.
8 They were actually pink. I remember the color.
9 They were pages of pink paper -- construction paper
10 or, you know, 8 and a half by 11 paper that divided
11 certain sections of the file. So in order to
12 confirm that, Ms. Williams came to Mr. Popovich's
13 office, looked at it, saw those pink pieces of
14 paper dividing the files, and was satisfied. And
15 then we moved on. We came back into court,
16 reported the --

17 THE COURT: Do I have the production response
18 attached in --

19 MR. TALARICO: You have it all, your Honor.

20 THE COURT: What's it attached to?

21 MR. TALARICO: It's attached to my reply.

22 THE COURT: All right. Let me find it.

23 MR. FLYNN: So following these 201(k)
24 conferences, phone calls, emails, and meeting, we

1 reported that the parties had answered discovery
2 and moved on to depositions.

3 Now, had there been any outstanding
4 issues, I wouldn't have proceeded. I wouldn't have
5 presented my client for deposition, and I don't
6 think Ms. Williams would have taken the deposition.
7 But I don't want to --

8 THE COURT: I accept all that. I mean, it
9 all --

10 MR. FLYNN: Makes sense.

11 THE COURT: -- logically makes sense.

12 All right. Do we still have -- No,
13 we don't. Let me -- All right. I'm looking at
14 Page 39 of the reply. Okay. With respect to
15 Request Number 1, it's my assumption, and you can
16 correct me, but the nature of the question followed
17 by the answer tells me that Page 1 through 1455 is
18 all correspondence, communications, emails, or text
19 messages, and I -- I'm not sure how I can make him
20 break it down further. I'm assuming that that's
21 exactly what's in that 1400-some-odd pages.

22 Mr. Talarico?

23 MR. TALARICO: Correct, Judge, but there are
24 multiple times that same answer is given that can

1 be specific -- specifically answered.

2 THE COURT: All right. The fact that you
3 have the same answer to Number 2 with respect to
4 pleadings tells me Number 1 includes documents that
5 are not responsive to Number 1 because Number 1
6 doesn't ask for pleadings.

7 MR. FLYNN: I suppose Number 2 is over -- or,
8 well, I'm sorry, no, I guess Number 1 would be
9 overinclusive because the 1 through 1455 is --

10 THE COURT: There is overlap.

11 MR. FLYNN: -- was everything that we had.
12 That included pleadings.

13 THE COURT: So your response is, here is the
14 entire file.

15 MR. FLYNN: Right, these were not specific.
16 If they had been more specific, I would have broken
17 down Bates ranges for particular things, but I
18 think it's kind of silly. And 1400 pages is really
19 not that much in the grand scheme of things.

20 THE COURT: As a rule, I don't like it
21 when -- these are a little broader than I was
22 expecting, but if somebody says produce all letters
23 written on this date and you say look at --

24 MR. FLYNN: And I wouldn't have done that.

1 THE COURT: -- 1500 pages, that's
2 nonresponsive, and I see it quite a bit.

3 MR. FLYNN: I agree.

4 THE COURT: I think the solution -- Well,
5 Mr. Talarico, have you been given an opportunity to
6 review the file?

7 MR. TALARICO: No.

8 THE COURT: Okay. Can you make that
9 available for him?

10 MR. FLYNN: To review which file?

11 THE COURT: Your -- your client's file, the
12 file that Ms. Williams previously reviewed.

13 MR. FLYNN: He's never asked for it. Should
14 we be required to go through that again?

15 THE COURT: Well, yeah, I recognize the
16 operative word here is again, but the -- I don't
17 think it's reasonable to make you do again what
18 you've done if there have been no objections over
19 the past however long.

20 MR. FLYNN: I don't -- Yes, I don't think
21 there has ever been a request by Mr. Talarico to
22 review the file.

23 THE COURT: No.

24 MR. FLYNN: He should have the 1400 pages

1 which were transmitted and anything over and above
2 that --

3 THE COURT: You've produced all 1400 pages?

4 MR. FLYNN: Yes, I believe -- I can't recall
5 if it was a thumb drive or some other electronic
6 transmittal, but they have those pages. Now, if he
7 didn't receive them from prior counsel, again,
8 that's an issue between --

9 THE COURT: Have you, Mr. Talarico? I'm
10 sorry.

11 MR. TALARICO: I'm sorry, Judge?

12 THE COURT: Do you have them? Do you have
13 the pages, all 1400 pages?

14 MR. TALARICO: I believe I do in one of the
15 Julia Clinton files.

16 I would like to make a statement
17 about that type of response. When Mr. Flynn was
18 searching for information and I responded the same
19 as he's saying now, okay, I told this Court, the
20 Honorable Court that I believe Ms. Clinton --
21 Ms. Williams and Mr. Flynn reached an agreement.
22 They just had switched documents. She gave him
23 many thousands of documents. He gave her many --
24 or 1500 documents. When that was presented to the

1 judge, to yourself, you said that's not a good
2 answer.

3 THE COURT: No.

4 MR. TALARICO: In other words, I said the
5 same thing, Look at page something through
6 something. You said, no, you need a specific
7 answer, and you made me give specific answers to
8 those questions rather than the range of documents.

9 THE COURT: There is a little bit -- there is
10 one significant difference in here, at least as far
11 as I understand, and that's the fact that he's
12 previously answered these, and you are raising
13 objections to discovery that was submitted and
14 implicitly accepted by prior counsel. Now you are
15 trying to revisit the issue. Fine. I'm supportive
16 of getting you what you want, but I'm -- I'm
17 reluctant to dump on counsel to do again what
18 prior -- your prior plaintiff's attorney accepted.

19 So the end result is I want to get
20 you everything you think you need, and I also don't
21 want to unfairly burden one or the other of you.

22 MR. FLYNN: Judge, what I think he's saying
23 is what's good for the goose is good for the
24 gander. This is not a situation -- it's not

1 oranges and oranges here.

2 So when I sought -- when I
3 propounded discovery seeking production of
4 documents that supported Dulberg's claim that he
5 did not discover the malpractice and incur damages
6 until December of 2016, a very specific inquiry,
7 and they gave us very general answers. That was
8 when I brought the motion to compel. And I had
9 also taken his deposition and asked it about ten
10 different ways in cross-examination, and that was
11 when I brought the motion to compel. So to try to
12 compare that situation to these general answers to
13 general production requests is inaccurate.

14 THE COURT: So, Mr. Talarico, what is it
15 specifically you want because I want to get you
16 that, but I need to know what it is you are
17 wanting?

18 MR. TALARICO: Excuse me for
19 me (indiscernible). Judge, I would like answers to
20 the Gooch discovery and answers to the Clinton
21 discovery so I can pin someone down as to a
22 document or a response or a position. I just have
23 general statements.

24 THE COURT: Well, you have the production of

1 the client file effectively serving as the answer.
2 Now we are switching back to interrogatories, I'm
3 assuming. I'm talking about the production
4 request.

5 So are you switching to the
6 interrogatories now?

7 MR. TALARICO: I'm switching to discovery as
8 a whole because the answers go back and forth.
9 But, yes, the interrogatories are the same thing.

10 THE COURT: What page -- Well, I'll just
11 assume they are not responded to. So I can't
12 compel defendant to answer discovery that prior
13 counsel waived. And I can't resolve, short of a
14 deposition of Ms. Williams, I can't resolve whether
15 or not she waived the requirement for that
16 discovery.

17 So I think the solution here is that
18 I'm going to give you leave to issue ten
19 supplemental interrogatories, and we'll just move
20 forward from that because of all the problems
21 associated with what prior counsel may have agreed
22 to or may not have. And I think we can spend a lot
23 of time to figure that out to no avail, so it's not
24 going to advance the case at all. So I'm just

1 going to give you ten supplemental interrogatories.
2 You can ask whatever you like.

3 And with respect to the production
4 request, I -- the nature of your questions are
5 fairly broad, but I agree with you on some level
6 that the answers to your production request should
7 have been a little more detailed as to what pages
8 that's on.

9 So as far as production request is
10 concerned, what do you want to do?

11 MR. TALARICO: Judge, because it's so
12 encompassing, okay, again, I'd like to have
13 answers. I'd like to have any and all of those
14 that I noted in my -- in my -- in my motion what I
15 considered nonresponsive in my initial motion and
16 the reason why I considered it nonresponsive. I'd
17 like responses.

18 THE COURT: But this is on potentially waived
19 discovery, so, again, we are just going to start
20 fresh. I'll give you ten supplemental production
21 requests. You can ask what you want, the way you
22 want, and you'll get specific answers. And we
23 don't have to rely on other attorneys to tell us
24 what they did or did not agree on.

1 How quickly can you get those
2 issued?

3 MR. TALARICO: Judge, I'm going to be -- I'm
4 having a medical problem. I think the Court has
5 been made aware and Mr. Flynn has too. I'm facing
6 vision surgery for a detached retina, so I could
7 use a little time. I've been trying to get this
8 done.

9 THE COURT: Okay.

10 MR. TALARICO: With the COVID-19 situation
11 and the courts, the hospitals are backed up. I was
12 scheduled on 11/11 and they canceled. I was
13 scheduled on December, I think it was, 20 --
14 December 21st. I was scheduled for January 7th.
15 I've just been canceled again.

16 THE COURT: Yeah, the --

17 MR. TALARICO: My vision is -- is slacking.
18 I have to at least have cataract surgery, and the
19 ophthalmologist said it looks like you have a
20 detached retina. And my vision is becoming very
21 bad very quickly. This is not a secret. I let
22 Mr. Flynn know that.

23 THE COURT: And I suspect, based on what I'm
24 reading, that would be considered elective surgery

1 and you've got to wait. Is that a fair --

2 MR. TALARICO: That's what I'm guessing
3 although the thought of being nearly blind or blind
4 doesn't fit with elective surgery.

5 THE COURT: Oh, I agree, but from the medical
6 perspective, they might call it -- you might fall
7 into elective, so --

8 MR. TALARICO: They just canceled me again
9 before this court date. They just called.

10 THE COURT: All right.

11 MR. TALARICO: Can I have 60 days? I don't
12 know when I'm going to -- I've got to move fast.
13 If they open -- if something opens up, I have to
14 start calling more hospitals.

15 THE COURT: Okay. I'm going to enter and --
16 I'm going to give you 28 days. We are going to
17 enter and continue this 28 days to give you status.
18 And if you issued it, fine, then we've got a
19 schedule. If not, I'll give you more time. But
20 you are kind of in limbo right now, so I think a
21 shorter date makes sense.

22 MR. TALARICO: Thank you, Judge.

23 THE COURT: Formally I'm denying your motion
24 to compel, and the reason for that is because of

1 the questions of dealing with prior counsel's
2 representations and the fact that the objections to
3 the answers that have been filed are somewhat late
4 to put it mildly, but I'm going to still try and
5 address the issue. I'm giving you leave to issue
6 ten supplemental interrogatories and ten production
7 requests with the expectation they be issued in the
8 next 28 days, but we'll see about your medical
9 condition in 28 days.

10 If for some reason you are unable to
11 appear in 28 days, please notify Mr. Flynn and I'm
12 sure he'll be happy to tell me, and I'll give you
13 more time. But that -- I'm not granting leave for
14 depositions. I'm not granting leave for anything
15 else, just those specific discovery requests.

16 Is there anything else we need to
17 do?

18 MR. TALARICO: Yes, Judge, I have a second --

19 MR. FLYNN: Judge, I would just ask to --

20 MR. TALARICO: -- motion --

21 MR. FLYNN: -- before we get to the motion --

22 MR. TALARICO: Oh, I'm sorry. Excuse me.

23 MR. FLYNN: Sorry. To the extent that these
24 supplemental interrogatories and production

1 requests are being allowed, I would just request,
2 because I have to ask, that the cost and expenses
3 be borne by the plaintiff because of the
4 duplicative nature and the late nature of these
5 requests. We've been through all of this. My
6 client has incurred thousands and thousands of
7 dollars in responding to this discovery, so I
8 understand that the Court is giving latitude to the
9 plaintiff, but I would also ask that the cost be
10 borne by the plaintiff. It's not my client's fault
11 that they are on their third lawyer, and it's not
12 Mr. Talarico's fault either. But this is a problem
13 for Mr. Dulberg.

14 THE COURT: I suspect, and here's my -- my
15 logic is I suspect we save money by just reissuing
16 the discovery and my granting leave to do it than
17 we go through the process of deposing Ms. Williams
18 and have further hearings on this, so it is an
19 effort on my part to forestall further expense.
20 Whether or not it actually saves you anything, I
21 don't know, but it is my -- and I'm also saving
22 arguably a wasted appeal, so I'm -- I'm trying to
23 bear in mind your client's expenses and keep them
24 to a minimum, and I'm not going to grant your

1 request.

2 MR. FLYNN: Understood.

3 THE COURT: It's an unfortunate -- it's
4 unfortunate, but I don't think I could come up with
5 a better solution at this stage.

6 So that being said, the affirmative
7 defense issue?

8 MR. TALARICO: Yes, your Honor, as part of
9 the review of the discovery, I found, I noticed
10 that the Clintons did not respond to Mr. Flynn's
11 fourth affirmative defense which was filed and
12 served separately much later.

13 When the complaint was filed,
14 Mr. Flynn filed an answer and three affirmative
15 defenses. I think, and I don't have it in front of
16 me, quite a while later he filed a fourth
17 affirmative defense. The Clintons were still, you
18 know, in the case. The affirmative -- the fourth
19 affirmative defense was titled the judge -- the
20 attorney judgmental rule, but in reality, the first
21 two paragraphs were a restatement of the first
22 affirmative defense. So they are talking about I
23 think it was contributory negligence under the
24 guise of judge -- attorney judgmental rule. The

1 final one, Paragraph 3, dealt with what the
2 affirmative defense was titled.

3 Now, the Clintons didn't respond.
4 My only guess because she will not -- well, at this
5 time she hasn't had the opportunity to communicate,
6 although I've reached out --

7 THE COURT: Okay.

8 MR. TALARICO: -- is that when she read the
9 fourth affirmative defense, she just thought it was
10 a continuation or a restatement of the first one.
11 She never responded. I've attached the response
12 denying the first -- stating that the first two are
13 the exact same as the first one and then making a
14 statement as to the attorney judgmental rule.

15 THE COURT: So you are asking leave to
16 file -- late file a response to the fourth
17 affirmative defense?

18 MR. TALARICO: That is correct, your Honor.

19 THE COURT: Response?

20 MR. FLYNN: It's really the background that I
21 need to respond to, Judge. If you may allow me to
22 briefly. Again, this is a problem that would have
23 been solved had the plaintiff reviewed the
24 correspondence between me and Ms. Williams and the

1 court file.

2 So I have an email chain between me
3 and Ms. Williams, and, again, I have to ask whether
4 they even have access to it because this will --

5 THE COURT: Let's say everything you say is
6 right, what prevents me from granting leave to make
7 their late filing to the amended affirmative
8 defense?

9 MR. FLYNN: I'm actually not objecting to it,
10 Judge.

11 THE COURT: Okay. Then problem solved.

12 MR. FLYNN: If I could still talk for a
13 minute.

14 THE COURT: Okay. I'll let --

15 MR. FLYNN: And I just want to point out
16 because --

17 THE COURT: I cut him. I've got to cut you
18 off because it sounds like you are going into a
19 statement regarding opposing counsel. The only
20 thing that --

21 MR. FLYNN: I'm not. I'm not. But the
22 representation was made that somehow I misled
23 Ms. Williams and that's why she didn't answer it.
24 And I --

1 THE COURT: She's not here, and I don't
2 believe that. So it's not relevant to anything I'm
3 doing. So I'm going to grant leave to file the
4 answer to the amended affirmative defense, and I'll
5 give you seven days to do it. I know it's already
6 prepared, but I'll make it formal and you have
7 seven days.

8 MR. FLYNN: And just so we are clear, that
9 it's the fourth affirmative defense. So I filed a
10 motion, which is in the court file, seeking leave
11 to file an amended affirmative defense.
12 Ms. Williams told me in this email from
13 October 30th that she's not objecting and that she
14 was going to appear by CourtCall on Monday. That's
15 in an October 30 email. Then we got a November 4th
16 order, which I drafted, stated in Paragraph 1,
17 Popovich is granted leave to file an amended
18 affirmative defense. So what we did is we added
19 one to the first three.

20 THE COURT: Yeah, you have leave.

21 MR. FLYNN: And there is nothing confusing
22 about it.

23 THE COURT: If there is any question, you
24 have leave to --

1 MR. FLYNN: So they are answering Number 4?

2 THE COURT: You are answering Number 4,
3 Mr. Talarico?

4 MR. TALARICO: I am.

5 THE COURT: Okay. And I'll give you seven
6 days. Is there anything else that we need to do?

7 MR. FLYNN: And I wouldn't have objected to
8 that. It was not a request, by the way.

9 THE COURT: I'm sorry?

10 MR. FLYNN: I would not have objected to that
11 request. I was never asked.

12 THE COURT: Thank you.

13 MR. TALARICO: Judge, finally, the reply I
14 filed on -- which was filed timely because of the
15 problems that were going on, and I --

16 MR. FLYNN: No objection.

17 MR. TALARICO: -- again, I'm losing documents
18 from E-File Illinois about their failure. I filed
19 it on the proper date, 21st. They made me refile
20 it on the 22nd, and they gave me the date of the
21 22nd, therefore, I am technically one day late.

22 THE COURT: All right. I'll grant you leave.
23 I'll extend.

24 MR. TALARICO: Thank you.

1 THE COURT: Who is going to draft the order
2 for me?

3 MR. FLYNN: I'm here. I'll take a stab at
4 it.

5 THE COURT: Okay. Mr. Flynn says he'll do
6 it, so -- and we don't have a future date, so let's
7 come back in 30 days. 30 days is Thursday,
8 February 3rd.

9 Does that day work for both of you?

10 MR. FLYNN: I believe so.

11 MR. TALARICO: This will take a few seconds,
12 Judge. The ISBA has not issued their calendars for
13 this year, so I'm sorry, but they claim there is a
14 shortage of cardboard, so -- and I ordered my
15 calendar in the fall.

16 Okay. That's fine with me, Judge.

17 THE COURT: All right. February 3rd, 8:45
18 status of -- status of discovery. And if by some
19 miracle we are all done, I guess we'll move to your
20 summary judgment, but that's -- I'm assuming that's
21 what you're waiting for, and we'll get to that
22 eventually.

23 MR. FLYNN: Yes.

24 THE COURT: Anything else?

1 MR. FLYNN: No.

2 MR. TALARICO: No, Judge.

3 THE COURT: Okay. Mr. Flynn will draft the
4 order, and I'll sign it when I see it.

5 MR. TALARICO: Okay. Thank you, Judge, for
6 your time.

7 Thank you, Mr. Flynn, for your time.

8 THE COURT: Okay. Thank you.

9 MR. FLYNN: Thank you, Mr. Talarico.

10 Thanks, Judge.

11 (Which were all the proceedings
12 had in the above-entitled cause
13 this date.)
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1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) ss:
3

4 I, KRISTINE L. FERRU, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.

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-----*Kristine Ferru*-----
Certified Shorthand Reporter
License No. 084-003898

1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL DISTRICT
4 McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPVICH, P.C. and HANS
MAST,

11 Defendants.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 3rd day of
16 February, 2022, in the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 MR. ALPHONSE TALARICO (via Zoom)
20 ATTORNEY AT LAW

21 On behalf of the Plaintiff;

22 MR. GEORGE K. FLYNN (via Zoom)
23 ATTORNEY AT LAW

24 On behalf of the Defendants.

1 THE COURT: Dulberg versus Mast?

2 MR. TALARICO: Your Honor, Alphonse Talarico for
3 the plaintiff.

4 THE COURT: Okay.

5 MR. TALARICO: Good morning, Mr. Flynn.

6 MR. FLYNN: Good morning, your Honor. Good
7 morning, Mr. Talarico. George Flynn, F-L-Y-N-N, for
8 defendants.

9 THE COURT: Okay. What's going on? Plaintiff
10 was going to issue supplemental, as I recall. So
11 what's going on?

12 MR. TALARICO: Your Honor, (indiscernible), we
13 issued them, we served them, and now with the 28-day
14 period requesting responses.

15 THE COURT: Okay. Mr. Flynn?

16 MR. TALARICO: That's correct. They were served
17 on February 1, so we'll answer those. As expected,
18 many of the requests are duplicative of discovery
19 that's already been done in this case and I'll just
20 answer it accordingly.

21 THE COURT: Okay. That's fine. Why don't we go
22 45 days, which should give you more than enough time
23 then to answer. And 45 days is going to put us to
24 March 21st and a Monday. Does that day work for

1 both of you?

2 MR. FLYNN: I may be downtown --

3 THE COURT: Tell me a date that works better.

4 MR. FLYNN: As of now, I'm scheduled as of
5 next -- after April 1st, actually.

6 THE COURT: Okay. How about --

7 MR. FLYNN: You know, Judge, I can have someone
8 else handle it, because I'd like to move it along.

9 THE COURT: It's going to be two weeks, tops.

10 How's April 5th?

11 MR. FLYNN: That works.

12 THE COURT: Default 60-day date.

13 MR. TALARICO: April 5th is fine with me, your
14 Honor.

15 THE COURT: All right. I'm just going to --
16 I'll do the order because I'm just going to continue
17 it for status on (f)(1). There's the order and my
18 scribble that says, Status (f)(1).

19 MR. FLYNN: Thank you, your Honor.

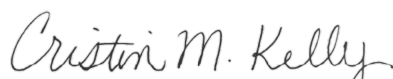
20 THE COURT: All right. We'll see you then.

21 MR. TALARICO: Thank you.

22 (Which were all the proceedings
23 had in the above-entitled cause
24 this date.)

1 STATE OF ILLINOIS }
2 COUNTY OF McHENRY } SS:
3

4 I, CRISTIN M. KELLY, an official Court
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 5th day of April,
16 2022, at the McHenry County Government Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 THE LAW OFFICE OF ALPHONSE TALARICO, by
20 MR. ALPHONSE TALARICO, (Via Zoom)

21 On behalf of the Plaintiff,

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN, (Via Zoom)

24 On behalf of the Defendants.

1 THE COURT: Are we ready to proceed on Dulberg
2 right now? Dulberg versus Mast.

3 MR. FLYNN: Mast and Popovich.

4 THE COURT: Okay. Plaintiff's counsel, if you
5 can identify yourself?

6 MR. TALARICO: Yes. My name is Alphonse
7 Talarico for the plaintiff, Paul Dulberg.

8 THE COURT: Okay.

9 MR. FLYNN: George Flynn on behalf of the
10 defendants, Hans Mast and the Popovich Law Offices.

11 THE COURT: All right. Plaintiff's counsel,
12 what's going on?

13 MR. TALARICO: Judge, the last time we were
14 here -- actually in January, you allowed plaintiff
15 ten additional interrogatories and ten additional
16 requests to produce and you had stated reasons which
17 I won't go through right now. But we served the ten
18 additional interrogatories, ten additional requests
19 to produce. The defendants have answered that, and
20 at this moment, we are -- we are still talking.
21 201(K) conversations are going on.

22 THE COURT: What's the -- if he's answered,
23 what's the 201(k) conference?

24 MR. TALARICO: Basically, how best can I say it,

1 nonresponse to a lot of answers.

2 THE COURT: All right. So Mr. Flynn, you're
3 aware of their objections?

4 MR. FLYNN: Yes, Judge. We painstakingly
5 responded to discovery. Much of it was duplicative.
6 I had a paralegal go through all the prior discovery
7 including deposition testimony and pinpointed
8 citations where the discovery was duplicative.
9 There was other discovery that was irrelevant,
10 though we answered it best we could. But for
11 example, going on conflict of interest, the
12 conflicts checks that were prevented (indiscernible)
13 the case. There has never been an allegation in
14 five years that there was an issue of conflict.

15 THE COURT: All right.

16 MR. FLYNN: Nevertheless --

17 THE COURT: Hang on. Hang on. I'm going to
18 hold you guys to the end, and I'm going to try and
19 work our way through this as best we can. I see
20 that we have an April 13 -- I think it's April 13
21 motion to compel. I assume that's plaintiff's
22 motion, am I correct?

23 MR. TALARICO: That's correct, your Honor. But
24 I have not filed a motion because of we are still in

1 201(k). I set the date when I first got a response.

2 THE COURT: Okay. Let me --

3 MR. FLYNN: I have not seen -- I have not seen
4 that motion --

5 THE COURT: There is not a motion in the file.
6 There is just a date reserved. So I'm going to pass
7 this. I'll come back to you guys, and we will try
8 and work this out without further motions.

9 (Whereupon the afore-captioned
10 cause was recalled.)

11 THE COURT: All right. Go back to Dulberg.
12 Sorry about the lengthy wait. All right. Dulberg,
13 do I -- and maybe I can't address your issue. But
14 most of these are a -- more easily resolved than
15 writing motions.

16 So Mr. Talarico, if you could tell me what
17 the issue is with their response specifically.

18 MR. TALARICO: Judge, well, specifically, I
19 submitted a six-page letter with numerous issues to
20 Mr. Flynn for us to talk about pursuant to Supreme
21 Court Rule 201. I can name a few. But it's a
22 six-page document.

23 THE COURT: Yeah. That -- yeah, you are right.
24 I was overly ambitious. So Mr. Flynn, you made

1 reference, and I'm hoping to provide some guidance
2 so we waste as little time as possible. That's not
3 directed at either one of you.

4 You made reference to duplicative, is that
5 correct?

6 MR. FLYNN: Yes, I did.

7 THE COURT: All right. And I limited them, and
8 I'm thinking out loud. I certainly am not looking
9 at the interrogatories or your answers or the basis
10 of your objection, but is -- the failed to have may
11 be duplicative tells me you can just refer to the
12 prior answers. Or did you do that?

13 MR. FLYNN: Judge, I have actually done that.

14 THE COURT: Okay.

15 MR. FLYNN: In fact, I've referenced even
16 specific deposition pages.

17 THE COURT: All right. But where -- the fact
18 that it shows up in the deposition, in my opinion,
19 doesn't make it duplicative, doesn't prohibit them
20 from asking in writing effectively the same
21 question. I mean -- and I'm just trying to be
22 clear.

23 So in your answer relative to the
24 deposition, you said, see answer on Page 45,

1 Lines 10 through 12 or something like that.

2 MR. FLYNN: Some cases, yes.

3 THE COURT: Then I guess I will have to -- I --
4 what I was afraid of you're saying is see
5 deposition, and you didn't do that so that's --

6 MR. FLYNN: I just put specific page numbers of
7 the deposition testimony. If you think it's
8 (indiscernible.)

9 THE COURT: Okay.

10 MR. FLYNN: It was after -- after the discovery
11 was already done.

12 THE COURT: All right.

13 MR. FLYNN: Those --

14 THE COURT: Have you seen his letter?

15 MR. FLYNN: I have, Judge. To be honest, I got
16 it yesterday. I received it yesterday.

17 THE COURT: All right.

18 MR. FLYNN: By the way, I never did receive
19 whatever was noticed from the 13th. But the letter
20 is --

21 THE COURT: Yes, there isn't a notice. So --

22 MR. FLYNN: It's hard for me to follow the
23 letter, to be honest. I don't really
24 (indiscernible) 201(k) discussions or letters back

1 and forth (indiscernible) to advance the case. But
2 on the other hand, I don't see how the Court can
3 make rulings without copies of the discovery
4 responses and the (indiscernible) pages that I have
5 referenced.

6 THE COURT: All right.

7 MR. FLYNN: And other --

8 THE COURT: I was kind of hoping I would find
9 them in the court file. That was dumb on my part,
10 and I feel bad for making you wait because this
11 was --

12 MR. FLYNN: No. No. That's okay.

13 THE COURT: So what I would -- what I don't want
14 to do is have you brief it. What I -- what I prefer
15 to do, and I don't know if we have done it
16 previously in this case, is just walk through them
17 and I'll make my rulings. You can tell me orally
18 what your -- your objections are and why you think
19 it's inappropriate. And hopefully we will save some
20 time, effort and money by doing it that way unless
21 you have a specific issue with it. Mr. Talarico?

22 MR. TALARICO: Judge, I'm willing to any way
23 that we can resolve this.

24 THE COURT: Six pages sounds like it's going to

1 take some time. How about the week of April 25? I
2 can do -- I can give you a 10:00 o'clock on the 27th
3 or 28th, and we will take as long as we need.

4 MR. FLYNN: The 27th would be better for me.

5 MR. TALARICO: That's fine.

6 THE COURT: All right. I'm going to draft the
7 order. Hang on a second. If you guys are able to
8 resolve any of these disputes in the interim, please
9 feel free to do so. And --

10 MR. FLYNN: This will be April 27 at what time,
11 Judge?

12 THE COURT: I'm sorry?

13 MR. FLYNN: April 27 at what time?

14 THE COURT: 10:00 o'clock.

15 MR. FLYNN: 10:00 o'clock.

16 THE CLERK: Are we keeping the April 13?

17 THE COURT: Is it --

18 THE CLERK: Motion to compel.

19 THE COURT: I'm going to strike April 13 even
20 though it wasn't formally noticed.

21 MR. FLYNN: I have a deposition at 1:00.

22 THE COURT: Okay. What I --

23 MR. FLYNN: Judge.

24 THE COURT: Yeah.

1 MR. FLYNN: As far as courtesy copies of the
2 documents we submit to you -- as far as the
3 documents themselves should be (indiscernible) to
4 the Court.

5 THE COURT: Yeah.

6 MR. FLYNN: For instance, deposition --

7 THE COURT: You are cutting in and out. But
8 what I -- I agree. I'm going to need copies of the
9 interrogatories, production requests that are at
10 issue. Probably it wouldn't hurt to have your --
11 the plaintiff's letter documenting what he finds
12 objectionable. So that will give you some guidance
13 in preparation. And what I anticipate doing then is
14 asking your response and explaining your answers.
15 And I'll make a ruling on the fly whether or not
16 that's responsive to the interrogatory of production
17 request.

18 Okay. Any questions? All right. I have
19 drafted the order. It just says hearing on
20 discovery objections. I will await your courtesy
21 copies. I guess you can file them at the proposed
22 orders email address and then get to me. You don't
23 need to physically file them. So that would be
24 helpful. All right anything else?

1 MR. TALARICO: No, Judge.

2 THE COURT: All right. We will see you then on
3 April 27. Thank you.

4 MR. TALARICO: Thank you, counsel. Thank you,
5 Judge.

6 THE COURT: All right.

7 (Which were all the proceedings
8 had in the above-entitled cause
9 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, JUDY CARLSON, an official Court Reporter
6 for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
14

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16 _____
17 Certified Shorthand Reporter
18 License No. 084-003347
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21
22
23
24

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

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
4 MCHENRY COUNTY, ILLINOIS

5 PAUL DULBERG,)

6 Plaintiff,)

7 vs.)

No. 17 LA 377

8 THE LAW OFFICES OF THOMAS J.)

9 POPOVICH, P.C., and HANS)

10 MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED Report of
13 Proceedings had in the above-entitled cause before
14 The Honorable Thomas A. Meyer, Judge of the Circuit
15 Court of McHenry County, Illinois, on the 27th day of
16 April, 2022, in the Michael J. Sullivan Judicial Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by:
20 MR. ALPHONSE A. TALARICO,
21 Appearing via videoconference,

22 on behalf of the Plaintiff,

23 KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
24 MR. GEORGE K. FLYNN,
Appearing via videoconference,

on behalf of the Defendants.

1 THE COURT: Good morning. If everybody can hear me,
2 this is on Dulberg versus Mast. If plaintiff counsel
3 can identify himself.

4 MR. TALARICO: Good morning, Judge. My name is
5 Alphonse Talarico and I represent the plaintiff, Paul
6 Dulberg.

7 THE COURT: And defendant?

8 MR. FLYNN: Good morning, Your Honor. George Flynn
9 on behalf of defendants Mast and Popovich firm.

10 THE COURT: Okay. And for the record I also note
11 that Mr. Dulberg is attending via Zoom.

12 So what do you guys want to do today? What do
13 you intend to do?

14 MR. TALARICO: Judge, I think both of us -- and I
15 won't speak for Mr. Flynn, but it appears that Mr. Flynn
16 has objections to my questions, and I have objections to
17 his answers --

18 THE COURT: Well, I thought this was on
19 interrogatories and a production request. Am I correct?

20 MR. TALARICO: That is correct.

21 THE COURT: I didn't get copies.

22 MR. TALARICO: Oh.

23 THE COURT: I got sent copies of exhibits from the
24 deposition.

1 MR. FLYNN: Judge, my office actually sent copies of
2 the discovery documents very early on, maybe even the
3 day that we last appeared.

4 THE COURT: Hard copies?

5 MR. FLYNN: By email. Linda Walters, my secretary,
6 sent those.

7 THE COURT: Do you know about when?

8 MR. FLYNN: I want to say -- I think I can pull it
9 up here, actually.

10 THE COURT: I do have it.

11 MR. FLYNN: It was the afternoon after we appeared
12 last.

13 THE COURT: Yeah, okay. I think I've got it.

14 MR. FLYNN: So, you know, I don't know that we
15 actually have a motion pending, although I know the
16 court would like to resolve these discovery differences.

17 THE COURT: We don't really have a motion pending.
18 The way I interpret what's happened is plaintiff brought
19 to my attention your objections, which I think satisfies
20 his burden to resolve them, but it -- I hate to have
21 people draft motions on these things because I end up
22 doing the hearing this way anyway. So is there an
23 objection to proceeding?

24 MR. TALARICO: Judge, since you haven't read --

1 THE COURT: Well, I have it --

2 MR. TALARICO: -- (indiscernible).

3 THE COURT: I have it now.

4 MR. TALARICO: I'm sorry.

5 THE COURT: It's okay.

6 MR. TALARICO: My understanding --

7 THE COURT: But I have what you sent me, which is
8 deposition exhibits, and have not seen what the
9 defendant had sent me.

10 MR. TALARICO: That's -- I'm just being -- I'm just
11 being civil towards Mr. Flynn, my own office, and saying
12 we should put this off for 30 days, give you a chance to
13 read what he's filed.

14 THE COURT: Well, he just filed the interrogatories.
15 I mean, I'm looking at this -- I don't see this -- I see
16 this as time-consuming, but I don't see it as
17 complicated.

18 MR. TALARICO: Well, -- excuse me, Your Honor. I'm
19 sorry.

20 THE COURT: Go ahead.

21 MR. TALARICO: Well, one of the things I believe
22 Mr. Flynn's office filed was my letter, my 201(k)
23 letter, explaining why these questions -- why I'm saying
24 they're nonresponsive. I'm pretty sure that was of part

1 of -- in fact, I am sure, it was part of what Mr. Flynn
2 -- Mr. Flynn's office sent.

3 MR. FLYNN: I sent it; I did not file it. It was
4 part of a courtesy copy package.

5 MR. TALARICO: I'm sorry, please repeat.

6 MR. FLYNN: I -- I included the -- what I guess
7 could be described as a 201(k) letter from plaintiff to
8 me in the package. I did not file what I sent. I
9 provided it as a courtesy copy.

10 MR. TALARICO: All right. I stand corrected. He
11 said, Judge, Mr. Flynn's office sent to you a six-page
12 draft that I made that explained all of my -- my
13 allegations of non- -- of Mr. Flynn's office being
14 nonresponsive in the request to produce for both
15 defendants and the interrogatories for both defendants.

16 MR. FLYNN: Well, these are my clients' answers and
17 production responses, but I signed (indiscernible) for
18 purposes of the objections.

19 THE COURT: Okay. So let's attempt to go through
20 these. I'm not finding the letter, but --

21 MR. FLYNN: The letter is not on a letterhead,
22 Judge. I think it might have been a Word document and
23 that -- that was the manner in which I received it.

24 THE COURT: Your volume dropped.

1 Okay. I have Hans Mast's response to Dulberg,
2 defendants' nonresponsive answers -- These are how they
3 are titled -- Hans Mast's dep miniscript, letter to
4 judge -- Let me just check -- No, that's Mr. Flynn's
5 letter. But in the list of attachments, I'm not seeing
6 that's readily identifiable as plaintiff's letter.

7 MR. FLYNN: I think it was described in the PDFs as
8 a 201(k) letter perhaps.

9 THE COURT: Here's what I -- Well, let me just -- I
10 didn't pull this up.

11 All right. Here's the list of items: Notice
12 of service, Law Office Popovich answers, Law Office
13 Popovich response, Hans Mast answer additional, Hans
14 Mast response to Dulberg court-ordered -- I'm just
15 reading the titles -- defendants' nonresponsive answers,
16 PDF --

17 MR. FLYNN: That's probably it.

18 THE COURT: All right. Let me pull that up.

19 MR. TALARICO: Additionally, Your Honor, there was a
20 deposition that Mr. Flynn's office sent that -- that
21 corresponds to my adding the exhibits to that
22 deposition.

23 THE COURT: All right.

24 MR. TALARICO: So --

1 THE COURT: Yeah, this isn't the --

2 MR. TALARICO: -- I do --

3 THE COURT: -- letter, what I am looking at. It
4 appears to be -- the document that you said might be the
5 letter does not have a cover page. It starts with
6 Defendants' answers to Plaintiff's court-allowed
7 additional -- ten additional interrogatories and ten
8 additional Request to Produce are nonresponsive as
9 follows. Looks like page two of a -- perhaps a letter.
10 Could that be --

11 MR. FLYNN: It does, but --

12 MR. TALARICO: If I might, Judge. Initially, in the
13 spirit of cooperation, I sent a 201(k) letter to
14 Mr. Flynn saying, you know, I have a problem, this is a
15 201(k) letter. I think your -- I think your answers are
16 nonresponsive. He said, okay, send me -- you know, send
17 me your documents, send me something to show me why
18 they're not.

19 That's what I did. I just -- That was an
20 attachment. That wasn't meant to be the letter by its
21 independent self. It was a six-page attachment.

22 THE COURT: All right. In any event, guide me
23 through the interrogatories. Which one do you want to
24 start with? And I'll find it.

1 MR. TALARICO: I'm sorry, Judge. I didn't hear you.

2 THE COURT: Which set of interrogatory or production
3 requests do you want to start it off?

4 MR. TALARICO: Okay. I guess, Judge, the simplest
5 one would be the response of Mr. Thomas J. Popovich to
6 the court-ordered interrogatories.

7 THE COURT: All right. I'm looking at a document
8 entitled The Law Office of Thomas J. Popovich PC Answers
9 to Dulberg's Court-Ordered Additional Interrogatories.
10 Is that the document you mean?

11 MR. TALARICO: Yes, Your Honor.

12 THE COURT: Okay. Tell me the first one that's at
13 issue.

14 MR. TALARICO: Number one I say is nonresponsive.

15 THE COURT: Okay. I've seen -- read the
16 interrogatory: Please identify with specificity any and
17 all conflicts of interests checks performed pursuant,
18 et cetera; an objection, irrelevant, not reasonably
19 calculated, et cetera, that no allegation of a conflict
20 of interest has ever been raised or alleged.

21 All right. Mr. Flynn, you want to add
22 anything?

23 MR. FLYNN: I don't think I have anything to add.

24 THE COURT: Okay. Mr. Talarico, I'm reading this

1 interrogatory. It was my recollection as well that
2 conflicts of interests was not an issue in this case.

3 MR. TALARICO: At this point it wasn't, Judge, by
4 the -- by the pleadings that were filed by the Gooch
5 office and the Clinton office, but, Judge, I would like
6 an answer to that question because I can still amend the
7 pleadings. It's relevant to whether or not there was
8 legal malpractice or settlement malpractice.

9 THE COURT: Okay. But you have an answer.

10 MR. TALARICO: Judge, the answer is objection.
11 There's an objection that needs to be ruled on.

12 THE COURT: He says Tom Popovich conducted a
13 conflicts check by personal recollection as sole
14 shareholder in the firm and -- I mean, do you have a
15 problem with the information contained in that answer?

16 MR. TALARICO: All right. Judge, then -- then if
17 that stands as the answer, then the objection is waived
18 by Mr. Flynn?

19 THE COURT: The objection remains. It doesn't need
20 to be ruled on because he's answered it, but it's not
21 presently relevant, as near as I can tell, but he
22 answered it. So I don't -- I don't see it as an issue.
23 It's effectively waived.

24 MR. TALARICO: With all due respect, the question is

1 lead to -- evidence or lead to relevant also. Not just
2 relevant, but could lead to.

3 THE COURT: It could, but it's not -- it's not an
4 issue at this point because he answered the question.
5 If he said I'm not answering, then I think you would
6 have a point, but he did give an answer.

7 MR. FLYNN: After nearly five years of litigation in
8 this case, there's never been an allegation of a
9 conflict of interest (Zoom audio feed fading)
10 (indiscernible) --

11 THE COURT: That's my recollection too, but --

12 MR. FLYNN: It seems -- I mean, it's almost the
13 definition of a fishing expedition.

14 MR. TALARICO: Judge, the (indiscernible) -- I'm
15 sorry.

16 THE COURT: We're beyond that. We have an answer.
17 So, I mean, you made the objection. You objected on
18 relevance. It's noted for the record. But you provided
19 an answer. So is there a problem with the answer on the
20 last line of -- in the last line of that statement?

21 MR. TALARICO: Sorry, Judge, are you addressing me?

22 THE COURT: I'm addressing you, Mr. Talarico.

23 MR. TALARICO: No, Judge.

24 THE COURT: Okay. Then I will -- I -- there is

1 nothing -- I will find that defendant's answer to
2 additional interrogatory number one is responsive.

3 Next one?

4 MR. TALARICO: All right. My response is that that
5 answer is nonresponsive.

6 THE COURT: Which one, number two?

7 MR. TALARICO: Number two, Judge, yes.

8 THE COURT: All right. My reading of number two, it
9 says Popovich was the supervising partner in the firm
10 and implicitly, as I'm reading this, that Mr. Popovich
11 performed the supervisory role.

12 Is that a fair assessment, Mr. Flynn?

13 MR. FLYNN: That's to the extent necessary. The way
14 that the interrogatory was phrased (indiscernible)
15 leading to a legal conclusion.

16 THE COURT: Okay. You're breaking up a little, but
17 go on.

18 MR. FLYNN: The way that the interrogatory reads, it
19 finishes with a legal conclusion that there is a
20 requirement under the rule of professional conduct 5.1
21 that there is a necessity of supervision. In any event,
22 Popovich is the owner of the firm. Hans Mast is someone
23 that has practiced as a lawyer since 1991. Mast
24 testified --

1 THE COURT: Your volume's going --

2 MR. FLYNN: That's strange. It's a brand new
3 computer, brand new (indiscernible) camera.
4 (Indiscernible).

5 THE COURT: Much better. Much better. I guess
6 (indiscernible).

7 MR. FLYNN: (Zoom audio feed distortion) if I sit
8 back.

9 I mean, Mast testified that he was responsible
10 for the case, that he had been practicing for
11 twenty-five -- seven years. I'm not sure what else we
12 can say.

13 THE COURT: And am I correct in reading this that
14 you're disclosing Tom Popovich was responsible as the --
15 was the supervisor of Mr. Mast to the extent that there
16 was any?

17 MR. FLYNN: For the factual standpoint in time
18 Popovich owns the firm and Hans Mast was an associate.

19 THE COURT: Yeah.

20 MR. FLYNN: I think that we're getting into expert
21 testimony if we go any further.

22 THE COURT: If -- Here's my take on this: Unless
23 Mr. Mast is an independent contractor and not an
24 employee or agent of the law firm, in some way, shape or

1 form his superior is a supervisor, technically, at least
2 as far as the hierarchy of the firm is concerned.

3 What's involved in that I think is a separate issue,
4 but, I mean, somebody's got to be responsible. So --

5 MR. FLYNN: Yes, again, Popovich owns the firm; Mast
6 was an associate. I don't think there's any dispute
7 about that.

8 THE COURT: Okay. Mr. Talarico?

9 MR. TALARICO: Judge, first of all, the answer of
10 "Popovich" doesn't -- is non- -- I'm sorry,
11 nonresponsive because under -- there was more than one
12 Popovich attorneys, or more than one Popovich working at
13 the firm at the time, and there were more than one
14 Popovich licensed to practice law in the United States.
15 I need a definite answer. I don't just need Popovich.

16 THE COURT: Okay.

17 MR. TALARICO: Also, --

18 THE COURT: I think that's reasonable. And I don't
19 know the timeframe as to whether Kim Popovich was still
20 working there, but, Mr. Flynn, could you clarify that.

21 MR. FLYNN: This was Tom Popovich --

22 THE COURT: Yeah.

23 MR. FLYNN: Tom Popovich.

24 THE COURT: I think it needs to be in writing, but I

1 think that -- yeah, just for clarification, if you could
2 put it in writing. So if you could amend that to
3 reflect that Tom Popovich was the supervising partner, I
4 think that's adequately responsive.

5 Unless I'm missing something, Mr. Talarico.

6 MR. TALARICO: There's an additional answer there,
7 Judge. It says see generally Hans Mast's deposition
8 testimony, it being instructions. I believe that's the
9 answer.

10 THE COURT: I'm sorry.

11 MR. TALARICO: If I'm misreading it, please correct
12 me. It says see generally Hans (indiscernible) -- Hans'
13 deposition testimony. My instruction says that when the
14 response is to a document already submitted, a specific
15 area or label or place should be noted. That's not
16 responsive. It just says see generally. I don't know
17 what he wants me to go look -- or not Mr. Flynn. I'm
18 sorry. I don't mean Mr. Flynn. I mean the office that
19 is representing --

20 THE COURT: Okay. Mr. Flynn, do you have any more
21 specific answer as to where -- what you're referring to?

22 MR. FLYNN: I do not with respect to this particular
23 interrogatory. I mean, --

24 THE COURT: I'm sorry?

1 MR. FLYNN: Not with respect to this particular
2 interrogatory.

3 THE COURT: Can you identify where in Mr. Mast's
4 deposition he discusses his -- how he's supervised, if
5 anywhere?

6 MR. FLYNN: (Indiscernible) sure I can, Your Honor,
7 but the answer is that it's Tom Popovich that owns the
8 firm and who is responsible. (Indiscernible) if I need
9 to amend the answer to include "Tom," I think that's the
10 more efficient way to do this.

11 THE COURT: All right. I mean, you've answered, but
12 you really do answer adequately by -- if you say Tom
13 Popovich was the supervisor. I don't know that you need
14 to identify it elsewhere, so -- All right.

15 Mr. Talarico, anything else on that?

16 MR. TALARICO: Well, I am unclear as to the --
17 identifying where in the Mast deposition. Is Mr. Flynn
18 or Mr. Flynn's office responsible for identifying where
19 he is specifying the response to this question is within
20 the deposition?

21 MR. FLYNN: I'm going to object to that. I'm going
22 to answer the interrogatory -- the supplement, and
23 anything else is duplicative. I was trying to be
24 helpful, but I'm not going to go through this exercise

1 and waste time unnecessarily.

2 THE COURT: You don't have to. You don't have to.
3 You've asked for -- Your question is, who is the
4 supervisor, and he's answered it.

5 MR. TALARICO: Is the instruction to see the
6 deposition stricken?

7 THE COURT: That -- I think he -- I assume that's
8 what he was saying he was going to do and if he strikes
9 that, then there is no need to identify where in the
10 deposition it says it because he's answered it.

11 MR. TALARICO: That's fine. If he strikes that in
12 his answer and if he gives me the correct Popovich, then
13 that answer is acceptable and it is responsive.

14 THE COURT: Okay.

15 All right. Next one?

16 MR. TALARICO: Okay. Number three: It's objection,
17 interrogatory three calls for a response which would be
18 violative of the attorney-client privilege. I don't
19 know what attorney-client privilege he's referring to.
20 I don't have -- he hasn't included the privilege log or
21 whatever information. I don't know if he's talking
22 about a relationship between Mast and Popovich and
23 Dulberg or is there another relationship? I don't know.
24 What attorney-client privilege?

1 THE COURT: I think that's reasonable.

2 Mr. Flynn?

3 MR. FLYNN: The attorney-client privilege between my
4 office and --

5 THE COURT: Okay.

6 MR. FLYNN: -- my clients. The majority of the work
7 (indiscernible) done here.

8 THE COURT: Could you identify that. Could you
9 specify that is the privilege you're referring to.

10 MR. FLYNN: Yes.

11 THE COURT: Anything else on number three?

12 MR. TALARICO: That's all that's in that group, Your
13 Honor.

14 THE COURT: All right. The next one -- Let me just
15 close this out.

16 MR. TALARICO: The next one would be the -- excuse
17 me, Judge, -- the interrogatory answers by Hans Mast.

18 THE COURT: All right. Hang on. Interrogatory
19 answers?

20 MR. TALARICO: Yes, Judge.

21 THE COURT: I have a document entitled Defendant
22 Hans Mast's Answer to Plaintiff's Court-Ordered
23 Additional Interrogatories to Hans Mast. Is that the
24 one?

1 MR. TALARICO: It is, Judge.

2 THE COURT: All right. Tell me the first one that's
3 at issue.

4 MR. TALARICO: Well, let me go down the line, Judge.
5 I'm saying that all seven are nonresponsive.

6 The first one is please identify the nonparty
7 witness or potential nonparty witness in the underlying
8 matter that you or someone under your control and
9 direction interviewed or attempted to interview.

10 THE COURT: Okay. So what -- where is it deficient?
11 Tell me what's missing.

12 MR. TALARICO: I will, Judge. My note's saying what
13 specific deposition, Judge. There is no related --
14 there is nothing there that says as -- in the second
15 sentence, it says see also Mast's response to
16 supplemental request to produce number two relative to
17 discovery which was conducted in the underlying case
18 including the depositions of various treating
19 physicians.

20 I need something more specific. I have to know
21 what he's referring me to.

22 THE COURT: He's told you what he's referring to in
23 the supplemental request number two, so he's directed
24 you and he's stuck with that, whatever the answer is.

1 There is no question about that.

2 With respect to various treating physicians,
3 what -- what is -- were there any doctor deps?

4 MR. FLYNN: Yes, Judge, there was a handful of
5 doctors' deps. I think four or five are identified in
6 response to (Zoom audio feed fading).

7 MR. TALARICO: Judge, those depositions --
8 (Cross talking.)

9 THE COURT: Hang on. Mr. Flynn, you cut off again.

10 MR. FLYNN: Well, those discovery depositions were
11 identified in the supplemental production response. I
12 consider the discovery deposition to be an interview. I
13 think that is responsive to this (Zoom audio feed
14 fading).

15 THE COURT: Yeah, I would agree with that.

16 Mr. Talarico?

17 MR. TALARICO: Just please keep in mind, Your Honor,
18 that those discovery responses were not included in the
19 1455 documents that were -- that later on in a response
20 that those were all included and that's all the
21 documents. All of the depositions of the doctors were
22 not included.

23 THE COURT: They don't have to. They don't have to
24 give you all those deps. You asked for the names.

1 MR. TALARICO: Judge, -- Okay. If I might, Judge,
2 just to make it as simple as possible, there have been
3 questions before by the Clinton firm give me all your
4 documents, give me all your documents. Answer's here
5 are all my documents.

6 The last time we were up before Your Honor,
7 Mr. Flynn indicated that Julia Williams also agreed to
8 not take settlement documents, so that the answer give
9 me all your documents, here are all my documents, that's
10 -- it's not correct. It has to be another agreement
11 between Mr. Flynn's office and the Clinton office.

12 THE COURT: That's a different issue.

13 Mr. Flynn, do you have a response?

14 MR. FLYNN: I don't understand the point, but if
15 there's a question about whether Popovich ordered the
16 transcripts of the doctors, I don't think that they did.
17 And, matter of fact, when I got this case years ago, I
18 went out and ordered the transcripts of the fact
19 witnesses which were not contained in the file and we
20 paid for them, so, you know, the plaintiff is welcome to
21 contact court reporters for depositions that have not
22 been written. It's not our job to do that work for
23 them.

24 THE COURT: Okay. Well, that's a different issue.

1 I'm not going down that road yet.

2 MR. FLYNN: I think that's what the point is that's
3 being made.

4 THE COURT: I'm sorry?

5 MR. FLYNN: I think that's the point. I think that
6 he believes that there are transcripts that are not in
7 our possession that were not produced and we don't have
8 them.

9 THE COURT: Well, I mean, I'm looking at the
10 interrogatory and it just says give me the names.

11 MR. FLYNN: Right.

12 THE COURT: And whether or not you produced
13 documents isn't, I don't think, relevant to this
14 interrogatory, so maybe it will come up later. But I
15 think if your request -- your response to supplemental
16 request to produce number two identifies all these
17 individuals, that's responsive.

18 Is there an issue I'm missing?

19 MR. FLYNN: I don't think so. Judge, just for the
20 record, page four is where we begin to identify all the
21 discovery subpoenas, depositions that were taken. The
22 entire list is right here.

23 THE COURT: And that's attached to your response?

24 MR. FLYNN: That is the Defendant Hans Mast's

1 Response to Plaintiff's Court-Ordered Additional Request
2 for Production to Defendant Hans Mast.

3 MR. TALARICO: And so they're not including
4 depositions, just notices of depositions.

5 MR. FLYNN: Again, depositions were taken, were not
6 necessarily ordered. So you asked what discovery was
7 done. We listed it.

8 THE COURT: And that -- if there's a demand for a
9 production of the transcripts, I haven't seen it yet.
10 And we'll cross that bridge when we get to it and I'll
11 address the interrogatory as far as costs are concerned,
12 but this interrogatory number one has been answered, and
13 I find the -- it -- the answer is responsive.

14 Is there anything else?

15 MR. TALARICO: Judge, just to clarify, and forgive
16 me, but I'm trying to make it -- I need the court's help
17 to get information, I need to explain why I'm trying to
18 get this help from the court.

19 In the Clinton discovery, they asked for all
20 documents --

21 THE COURT: That's a different issue.

22 MR. TALARICO: -- in the file.

23 THE COURT: Let's not conflate issues. Number one
24 asked for the identity of witnesses. Number one is

1 responsive.

2 I'll deal with these based on the language of
3 the individual requests, not the other problem about
4 whether or not there was full compliance with Clinton.
5 I mean, we can come back to that. So can we move on to
6 number two. Number one is responsive.

7 MR. TALARICO: Judge, -- Oh, there is two things in
8 here. The statement of -- the defendants -- respondent
9 is deciding that the lawsuit is in violation of the
10 statute of limitations and also the word -- the use of
11 the word "likely." Likely is a nonresponsive answer.
12 Likely is a range, a percentage --

13 THE COURT: Speculation.

14 MR. TALARICO: -- (indiscernible).

15 THE COURT: He's speculating. He doesn't know. I
16 mean, that's how I read it. He doesn't know and he's
17 stuck with that. I mean, I interpret this answer as
18 saying I don't remember or I don't know. And if there's
19 -- if there's an issue -- I agree, "likely" doesn't tell
20 me he did anything; it's just speculation.

21 MR. TALARICO: Judge, likely he can come back later
22 and say, well, now in October it was likely and here's
23 more information. If that's stricken, okay.

24 THE COURT: It's -- it is stricken to the extent

1 that it doesn't tell me anything. It's -- I interpret
2 this answer as saying one of two different things:
3 Either I don't know or I don't remember. And,
4 unfortunately, as we all know, people remember things
5 they forget at their convenience. No offense to
6 Mr. Popovich or anybody else. It's just, we've all
7 experienced it, convenient memories.

8 So, I mean, if suddenly there's a detailed
9 recollection as to what was reviewed, you can attempt to
10 impeach; but that -- that's the answer. I interpret
11 this as I don't recall or I don't know.

12 Mr. Flynn, can you weigh in.

13 MR. FLYNN: I believe line two actually even says,
14 quote, it is difficult to recall each and every --

15 MR. TALARICO: (Indiscernible).

16 MR. FLYNN: I don't see any need to strike the
17 answer. The answer is what it is.

18 MR. TALARICO: Judge, if I might explain and I'll
19 move on -- move on after this, but "likely" is a
20 nonresponsive answer. You can take judicial notice of
21 that fact. He's already said it is -- it is not an
22 answer. If it's stricken, I have no problem.

23 THE COURT: See, it's kind of an answer because I
24 suspect that this is giving you a heads-up that he's

1 going to tell you what his custom and practice is, but
2 he has no specific recollection of what he did here, and
3 I think that is responsive. I think that is -- if he
4 has no records, as I am interpreting this -- and I would
5 hold them to that -- if he has no records, then he can't
6 suddenly produce them and say, oh, here's the list of
7 all the cases I reviewed, so he's stuck with his memory.
8 I don't -- I don't recall. And he's told you his custom
9 and practice. I -- where we go with that, I don't know,
10 but I don't think I have to strike it.

11 To the extent that you want an order, my
12 interpretation -- or a finding, my interpretation of
13 number two is that the deponent is saying I don't
14 recall, and then we have to deal with that at some later
15 date.

16 MR. TALARICO: Yes, Your Honor.

17 THE COURT: If anybody has case law on all of the
18 problems raised with "I don't recall," I'm happy to look
19 at it, but it's always been a problem, probably always
20 will be.

21 MR. FLYNN: Goes to the weight of the evidence,
22 doesn't it, Judge?

23 MR. TALARICO: Your Honor, I do have case law on the
24 "likely" issue, or at least the common -- the court's

1 ability to take judicial notice of common terms and what
2 they mean, but if that's not what you're aiming at, then
3 let's just move on.

4 THE COURT: He's saying "my custom and practice is,"
5 that's how I interpret that, and there may have been a
6 -- it may be worded differently, but that's how I
7 interpret this. My custom and practice is X, but I
8 don't recall.

9 MR. TALARICO: Thank you.

10 THE COURT: All right. Next one?

11 MR. TALARICO: First is an objection as to
12 duplicative -- of previous discovery, Judge. That's in
13 opposition to exactly what you said, we're starting
14 fresh, I can ask what I want. I've cited the place in
15 the last transcript of report of proceedings that you --
16 that you made that clear because in lieu of -- in lieu
17 of deposing Julia Williams, you were giving me ten
18 interrogatories and ten requests to produce, but you
19 specifically said that we're starting fresh.

20 MR. FLYNN: I don't recall that being the language.
21 I thought that the court admonished the plaintiff not to
22 be duplicative.

23 MR. TALARICO: Actually, I can cite it in the record
24 if you want to wait a second.

1 THE COURT: Well, here's my interpretation. I don't
2 think -- I think what I might have been concerned about
3 is duplicating a prior interrogatory, but your response
4 tells me that this information is contained in
5 depositions or in a production response. Is that fair?
6 Because it just says see POP 192, 93, and I don't know
7 what that is.

8 MR. FLYNN: That's correct. That's correct, Judge.
9 And 201(a) prohibits duplicative discovery or at least
10 it (Zoom audio feed fading).

11 THE COURT: Is --

12 MR. FLYNN: (Indiscernible).

13 THE COURT: Well, generally I agree, but --

14 MR. TALARICO: Judge, --

15 THE COURT: Well, hang on. Let me find out a little
16 bit more.

17 So what is this duplicating? How did they get
18 this information previously? Because you don't tell me.

19 MR. FLYNN: Through document production and
20 testimony, so if they're asking for a third -- if
21 they're asking for a third sworn interrogatory, I don't
22 think we should be required to do that. It's going to
23 be used for impeachment.

24 THE COURT: Well, yeah.

1 MR. FLYNN: If there's a comma (indiscernible) -- if
2 there's a comma that's different or a word that's
3 different, I can see that this will be used for
4 impeachment, so --

5 THE COURT: I need to see the other -- the other
6 request in order to determine this is duplicative and
7 your response is not telling me it's duplicative. It's
8 just saying we've addressed this elsewhere. And if it's
9 duplicative, then it's got to be pretty much exactly the
10 same, from my perspective, and I -- if you're producing
11 documents, that tell -- that tells me it's a little bit
12 different, so I'm not quite sure and since I'm not
13 looking at the documents, I can't resolve that.

14 MR. FLYNN: The documents are several correspondence
15 regarding offers and settlement demands that were
16 contained in the document production.

17 THE COURT: Is that each and every settlement demand
18 slash offer?

19 MR. FLYNN: Those were all the settlement demands in
20 writing that we were able to locate.

21 THE COURT: Okay. Mr. Talarico?

22 MR. TALARICO: First of all, Judge, the rule that
23 Mr. Flynn quoted, that's fine. This honorable court has
24 plenty of leeway to pursue this -- to pursue discovery

1 and help my client get answers to his questions.

2 THE COURT: I'm not sustaining the objection, so I
3 want to get to the end here and get you your answers.
4 And so my question for Mr. Flynn is, are the five
5 documents identified in your response to interrogatory
6 number three representative of all written settlement
7 demands and offers as requested in the interrogatory?

8 MR. FLYNN: I believe so, Your Honor.

9 THE COURT: All right. And --

10 MR. FLYNN: There's extensive testimony regarding
11 the settlement offers --

12 THE COURT: Yeah, and I -- and --

13 All right. Mr. Talarico, what about oral --

14 MR. TALARICO: That's not specific enough. I need
15 to know is this his answer or is this part of an answer,
16 is there more answer?

17 MR. FLYNN: Judge, there's a 79-page deposition
18 transcript of Hans Mast that was taken in this case.
19 You know, first (Zoom audio feed fading).

20 THE COURT: You're cutting in and out. It's kind of
21 weird; but I'm having that problem with a number of
22 people, so it could be on this end.

23 MR. FLYNN: Okay. It's a 79-page deposition
24 transcript that the plaintiff is (indiscernible) to read

1 it just as much (Zoom audio feed distortion) --

2 THE COURT: My -- my general rule is that if you're
3 going to refer to a cache of documents, you've got to
4 identify where those documents are. You can't say see
5 the deposition of so-and-so; you've got to say see page
6 20 of the deposition of so-and-so, and then that's --
7 that's adequate. So -- and given the nature of this
8 case, I imagine you're going to say something like see
9 pages 10 through 30, or something else, of the
10 deposition, but you've got to direct him of where to
11 find it.

12 MR. FLYNN: There are a number of -- as you said,
13 there are a number of pages where settlement demands and
14 offers are discussed.

15 THE COURT: Yeah.

16 MR. FLYNN: I believe -- I believe it's actually
17 covered in some of these other discovery responses. We
18 had talked about this.

19 THE COURT: We'll come back to it if it is.

20 Mr. Talarico, comment?

21 MR. TALARICO: No, Judge, you're ruling that they're
22 going to direct -- they're going to give me direction in
23 that answer --

24 THE COURT: Yeah, they're going to give you two

1 things: They're going to make it clear that the five
2 documents identified are all the written documents, and
3 if they're going to rely on a discovery deposition,
4 they've got to tell you whose dep and what pages.

5 MR. TALARICO: All right. Thank you, Judge.

6 THE COURT: All right. Next one?

7 MR. TALARICO: Again, Judge, --

8 THE COURT: Hang on a second. I'm waiting for a
9 call from the state and this may be it. I'll be right
10 back.

11 (A recess was had.)

12 THE COURT: Surprise, surprise. It was my warranty
13 on my car.

14 MR. TALARICO: Uh-oh.

15 THE COURT: Yeah, I've been waiting for the state to
16 call me back for two days, and when they call, you
17 better take it or you'll never get back online.

18 Let's go back. We're on number four, I assume?

19 MR. TALARICO: Yes, Judge.

20 THE COURT: All right.

21 MR. TALARICO: The same -- it's basically the same,
22 duplicative, previous discovery, Hans Mast deposition,
23 and, by the way, I object to the use of Hans Mast's
24 deposition because there's exhibits missing. But as it

1 stands right now, as the answer stands, that doesn't
2 tell me this is his answer, whether or not (Zoom audio
3 feed distortion).

4 THE COURT: I see that -- I mean, he's told you
5 exact -- I assume "Popovich documents" refers to a cache
6 of documents that you both -- that has meaning to both
7 of you. I -- it doesn't -- I don't know exactly what it
8 is. And he tells you where to find it and he also
9 directs you to the pages of Hans Mast's deposition.

10 MR. TALARICO: Yes, Judge, but -- I'm sorry.
11 Forgive me.

12 But within that range, 205 to 304, are some --
13 are 23 blacked-out pages. I don't know what that is.

14 THE COURT: And I sure don't.

15 Mr. Flynn?

16 MR. FLYNN: I don't know. In this case, there was
17 an issue with respect to dividers -- well, --

18 MR. TALARICO: Then, Judge, how can that be
19 responsive? Giving me --

20 MR. FLYNN: I'm looking at -- I'm looking at the
21 testimony and the question in the deposition, pages 50
22 to 52, Julia Williams produced a document, presented it
23 to the witness, they discussed case law. You know, page
24 51, Miss Williams: Were there any pinnacle cases that

1 stuck out to you one way or the other as to whether the
2 McGuires could be liable? Was there any specific cases
3 that made you think the McGuires may not be liable given
4 the facts in Paul's case?

5 And then Hans' response: I mean, we deal with
6 this issue a lot. I can't think of one particular name
7 of a case, that these cases all go along the same lines,
8 so there are a lot of cases on this one particular
9 issue. It wasn't a complicated issue.

10 They go on (indiscernible) an independent
11 contractor, so there's several pages of testimony about
12 this issue. I don't know what else we can do to respond
13 to this.

14 THE COURT: Well, what are -- I mean, you're
15 referring to Popovich documents 205 to 304. What are
16 those?

17 MR. FLYNN: Offhand, I'm not sure. The testimony,
18 just so you have a reference, is also identified in the
19 answer here pages 50, 51 and 52.

20 THE COURT: That's fine. But if you are identifying
21 documents and the plaintiff is telling me he can't see
22 them, then I -- I have an issue.

23 So, Mr. Talarico, you've got 23 blank pages
24 that are at issue?

1 MR. TALARICO: Blacked-out pages. I submitted them
2 to the court.

3 THE COURT: Yeah, I -- well, I, you know -- I -- in
4 any event, when you say blacked out, redacted?

5 MR. TALARICO: I don't know. Mr. Flynn calls them
6 blank. At times they're called black. They appear to
7 be black. I don't know what they are, Judge. But they
8 are not -- they can't be responsive to -- 23 black,
9 blanked-out dividers, I don't know, how can they be
10 responsive --

11 THE COURT: Mr. Flynn, can you -- can you tell us
12 what those are?

13 MR. FLYNN: I'm -- Judge, I'm not sure as I sit
14 here, but I'm reading the testimony. It looks to me
15 like -- at least on the question from
16 Miss Williams, she had these pages and does not complain
17 about them being blacked out, so I don't know if this is
18 an issue of copies on the plaintiff's end now.

19 THE COURT: All right.

20 MR. FLYNN: She questioned Hans about some case law,
21 so I can check and see what those pages in our
22 production look like.

23 THE COURT: Okay.

24 MR. FLYNN: She's actually referring to her own

1 production here, --

2 THE COURT: Yeah.

3 MR. FLYNN: -- Dulberg 304, that's not on me.

4 THE COURT: Okay. But you're referring to them as
5 Popovich documents, so I'm -- I'm a little confused.

6 MR. FLYNN: 205 through 304, okay. I'll have to
7 track those down.

8 THE COURT: Is Williams Mr. Dulberg's prior
9 attorney?

10 MR. FLYNN: Correct.

11 THE COURT: Okay.

12 All right. Mr. Talarico, if they track that
13 down, I don't know what the end result is, but does that
14 satisfy you for now?

15 MR. TALARICO: For now, Judge, yes.

16 THE COURT: Okay.

17 MR. FLYNN: But just for the record, Judge, I think
18 there may have been a typo in the response because
19 Miss Williams is discussing Dulberg pages 205 -- or 204
20 through 304.

21 THE COURT: All right.

22 MR. FLYNN: She goes back and forth with the
23 numbers. This is at page 50 of (Zoom audio feed
24 fading).

1 THE COURT: Okay. Well, I'm going to strike the
2 answer to number four and let you file an amended
3 response.

4 MR. FLYNN: Okay. Thank you, Your Honor.

5 THE COURT: All right. Next one?

6 MR. TALARICO: Again, Judge, an objection, it's
7 duplicative of previously discovered -- I'm sorry,
8 previous discovery.

9 THE COURT: Well, I struck it, so he has to file a
10 new response.

11 MR. TALARICO: No, I'm talking about number five,
12 Judge. I'm sorry. I thought you moved on.

13 THE COURT: Okay. I did. I didn't know you were
14 talking about number five.

15 All right. So they -- they object, but then
16 they answer and he identifies the pages in the
17 deposition as well as documents. So tell me what's
18 nonresponsive.

19 MR. TALARICO: Well, Judge, I raised this before
20 verbally and what I'm trying to inform the court is that
21 the deposition is missing an exhibit. There is no
22 record of a -- there's a record of an exhibit, but it's
23 not attached to defendants' responses, and within the
24 mini index, it designates or shows that the exhibit is

1 missing --

2 THE COURT: Which exhibit?

3 MR. TALARICO: Exhibit No. 12.

4 THE COURT: Okay. Mr. Flynn, -- And that's
5 referenced in those deposition pages?

6 MR. FLYNN: It is.

7 THE COURT: All right. So, Mr. Flynn, do you have
8 number 12?

9 MR. FLYNN: I don't know. Judge, we -- the court
10 invited the parties to submit documents for purposes of
11 this hearing. I submitted certain documents, including
12 the mini-script, and I (indiscernible) include
13 deposition exhibits because I didn't know that the court
14 wanted to see everything.

15 THE COURT: Okay. And I --

16 MR. FLYNN: And Mr. Talarico had the opportunity to
17 (indiscernible) through additional documents, and he
18 said what he chose to say.

19 THE COURT: All true, perhaps, but do you have
20 number 12?

21 MR. FLYNN: I may. I don't know. I haven't looked
22 for it.

23 THE COURT: Can you produce number 12 if it's in
24 your possession? Which I hope it is.

1 MR. FLYNN: If it is.

2 THE COURT: Is it part of the deposition transcript?

3 MR. FLYNN: It is. It's (indiscernible) -- this is
4 plaintiff's deposition. They took my client and it was
5 a Zoom deposition early on in the pandemic.

6 THE COURT: All right.

7 MR. FLYNN: So they have as much access to it as I
8 do. I may have that. (Indiscernible).

9 THE COURT: If -- and I'm trying to --

10 MR. FLYNN: The court reporter's name is on the
11 front of the transcript and (indiscernible) page two.

12 MR. TALARICO: Judge, in the mini index it indicates
13 in the transcript that Exhibit 12 is missing.

14 THE COURT: All right. Who took the dep?

15 MR. FLYNN: Miss Williams.

16 THE COURT: All right. And whose exhibit was it?

17 MR. FLYNN: Plaintiff's exhibit.

18 THE COURT: All right. So how do I penalize or
19 sanction defendant for the failure to produce a document
20 that constructively is yours? Unless you can show me
21 that they removed it.

22 MR. TALARICO: I have no idea, Judge. I just saw
23 now that 12 was missing when Mr. Flynn's office
24 submitted the deposition without exhibits to you.

1 THE COURT: Mr. Flynn, can you address that. If you
2 have number 12, please produce it, and if you do not,
3 please explicitly say so, that you don't have it, and
4 I'll -- we'll just have to go from there.

5 MR. FLYNN: Okay.

6 MR. TALARICO: Judge, just again remind you that my
7 experience with the prior counsel, she's been
8 nonresponsive to me. I can't (indiscernible) -- she did
9 not respond to the -- We did this before with the
10 blacked-out pages, that Mr. Flynn (indiscernible)
11 reached an agreement. I tried to reach that person and
12 they won't respond. And we made that -- we made that
13 clear in court and effectively said in lieu of this,
14 you'll get the ten and ten rather than bring her in for
15 a deposition.

16 THE COURT: Okay. The issue that I'm dealing with
17 right now is their production of what ultimately was
18 your Exhibit No. 12, and I'm asking Mr. Flynn to produce
19 it if he has it; if he doesn't have it, to tell you.
20 And if nobody has it, then we're going to have to figure
21 out how to find it.

22 MR. TALARICO: Yes, Judge.

23 THE COURT: But I can't make him produce it if he's
24 telling me he doesn't have it. That's not an end,

1 that's just -- particularly under these circumstances, I
2 can't determine that he's constructively in possession
3 of something your predecessor had, presumably.

4 Next one?

5 MR. TALARICO: Okay, Judge, that's basically the
6 same answer. It objects as to duplicative and also
7 makes reference to the Hans Mast deposition.

8 THE COURT: Okay. But I -- and I -- but he
9 identifies the pages of Hans Mast.

10 MR. TALARICO: Uh-hum (indicating an affirmative
11 response).

12 THE COURT: And I think that's adequate.

13 MR. TALARICO: Okay then.

14 THE COURT: The fact that he objects for the record
15 doesn't make it nonresponsive.

16 Next one?

17 MR. TALARICO: Number seven I ask for facts. Their
18 response is improperly calls for a legal conclusion. I
19 didn't ask for a legal conclusion. I asked for facts.
20 And then later in the answer it says that -- it talks
21 about, again, what the defendants' going to do in the
22 future. Will be argued, which will form generally, I
23 mean, I've got to have answers to deal with -- that's
24 not an answer to the discovery. This was going to

1 happen in the future.

2 THE COURT: Okay. Mr. Flynn, did you provide all
3 facts on which your client relied in determining that
4 Mr. Dulberg gave his consent?

5 MR. FLYNN: Judge, the way I read this, this is an
6 improper interrogatory seeking a legal conclusion
7 regarding the -- whether the consent was --

8 THE COURT: Well, you're --

9 MR. TALARICO: As I read it --

10 MR. FLYNN: -- informed consent.

11 THE COURT: Okay.

12 MR. TALARICO: Judge, I read this as, the answers to
13 the question is going to be given in the future
14 sometime. They may be. Because the words are will be
15 argued, will form the basis for supporting facts
16 establishing -- again, they have facts, but they're
17 going to give them to me in the future.

18 THE COURT: You're -- Mr. Flynn, you're relying on a
19 deposition and -- and that's fine --

20 MR. FLYNN: Judge, they want what my argument is
21 going to be on the summary judgment. That's what this
22 is.

23 THE COURT: Yeah, but I'm assuming that it's more --
24 there's more than just what Mr. Dulberg said, so I --

1 and forgive me and maybe I'm wrong, but is that -- is
2 Mr. Dulberg the sole repository of the facts that
3 support this? That --

4 MR. FLYNN: The informed consent? No, Judge. I
5 mean, I can summarize how this went down and we already
6 discussed some of the paperwork relative to the
7 settlement demand. Dulberg was provided with an offer
8 of \$5,000 in early December or even November. Then came
9 in with his friend to see Hans Mast, discussed the
10 \$5,000 offer --

11 THE COURT: Okay.

12 MR. FLYNN: -- (indiscernible), and this is -- this
13 is over several, several pages of deposition.

14 THE COURT: Well, do you have -- are there any
15 written documents? And forgive me for challenging you,
16 but I --

17 MR. FLYNN: There are --

18 THE COURT: -- I mean, --

19 MR. FLYNN: There are transmittal letters relative
20 to the demand when he came in for a face-to-face
21 meeting, and all of this is going to be argued in a
22 summary judgment motion. They are very well aware of
23 it. Why we have to regurgitate it here -- and, again,
24 this is our theory of the case and our -- our motion for

1 summary judgment. Now they're asking, informed consent,
2 well, that's their -- that's where we --

3 THE COURT: They're asking facts. They're asking
4 for all the facts that you relied on in determining he
5 gave his consent, and if all those facts are contained
6 in his deposition and in the attachments to your -- or
7 otherwise identified in your summary judgment, I think
8 it's adequate to identify where in the summary judgment
9 that can be found as an easy -- as an easy way to
10 respond to this, but I think you need the answer. I
11 think you need to answer this a little better.

12 MR. FLYNN: Again, these are (Zoom audio feed
13 fading).

14 THE COURT: Yes, you're right. But I did allow
15 these interrogatories with the expectation there would
16 be overlap. And my goal is to get to the end rather
17 than to quibble about whether it is 100 percent
18 duplicative.

19 Yeah, I'm sure this issue's been raised, but
20 maybe not exactly in this manner, so my preference is to
21 get an answer to it and move on.

22 MR. FLYNN: My point I was making, though, is this:
23 So this testimony is from Mast. It's also from Dulberg
24 and --

1 THE COURT: Okay. Just identify it. And I'm not --
2 I mean, you're referencing your summary judgment, but
3 you're not telling me what it is in the summary judgment
4 is responsive.

5 MR. FLYNN: Well, I haven't filed it yet, so that's
6 the thing. You're asking for what our theory's going to
7 be.

8 THE COURT: Of course they are. But the issue of
9 consent is not limited to the summary judgment and I
10 think it is in effect a contention interrogatory. We
11 contend he gave his consent. Please state all those
12 facts on which you rely on the determination or the
13 allegation that he gave his consent. I --

14 MR. FLYNN: That's a great point, Judge. We haven't
15 even made that contention yet. I haven't filed the
16 summary judgment motion. They're assuming that we're
17 making the contention that he did give informed consent.
18 Haven't made that argument.

19 THE COURT: Informed -- informed -- I think when you
20 say informed consent, I think more -- that's more of a
21 legal issue, but consent is -- is factual and I --

22 MR. FLYNN: But informed consent is the way the
23 interrogatory is worded. They even cite to the rule of
24 professional conduct.

1 MR. TALARICO: And I ask for a fact --

2 THE COURT: Yeah, it was -- You're right, "or was
3 informed consent." You can't -- you can't answer that.
4 I'm sorry. And I'm focusing on the first part of your
5 question. Can you identify the facts that established
6 that plaintiff gave consent. So --

7 MR. FLYNN: I can and -- but they're well aware of
8 it, Judge. This is all scattered all throughout the
9 depositions.

10 THE COURT: They -- I agree they probably are well
11 aware of it, but they still are entitled to an
12 answer and -- just to make sure that you don't have any
13 extra facts, and I -- so this is to pin you down and
14 they have a right to do that. So --

15 MR. FLYNN: Okay. But, again, if I include 19 pages
16 of testimony, and there happen to be 20 or 21
17 (indiscernible), should we be limited to that? I mean,
18 this is a --

19 THE COURT: I'm sorry.

20 MR. FLYNN: If I cite to, say, 19 pages of testimony
21 and on this one because there happens to be about 20 or
22 22 pages, I just don't think we should be limited. I
23 mean, this is an over-arching theme. They are well
24 aware of facts --

1 MR. TALARICO: I object to him asking for a ruling
2 before it's been done. He wants to know what you're
3 going to rule if he does something.

4 THE COURT: To -- Mr. Talarico has a point, and --
5 but if you leave stuff out, then we got to fix it; and
6 if there's an objection as to compliance, then we go
7 through the hearing and I ask you where else it is, you
8 tell me and then I say you produce it.

9 So I would prefer to avoid having to come back
10 and have this argument, so answer -- answer as best you
11 can.

12 MR. FLYNN: Okay. Thank you.

13 THE COURT: Sorry for the punt -- punting on that,
14 but I think that's the only answer I can give.

15 MR. FLYNN: Okay.

16 THE COURT: All right. I'm going to close this
17 particular discovery request.

18 What's the next one?

19 MR. TALARICO: I believe, Judge, we're done with the
20 interrogatories. I believe we're -- I think there were
21 three in the first one, seven in the second, so that's
22 all ten. I think we should be moving on to the request
23 for production.

24 THE COURT: Okay. To who? Because I've lost track.

1 Did we do Popovich?

2 MR. TALARICO: Request for production would be
3 (indiscernible). I mean, with Popovich. We'll start
4 with Popovich.

5 THE COURT: All right. I'm looking at -- And the
6 reason I said that is because I'm looking at Defendant
7 Law Office of Popovich Response to Plaintiff's
8 Court-Ordered Additional Request for Production. Is
9 that the one?

10 MR. TALARICO: That's it, Judge.

11 THE COURT: All right. Tell me the first one.

12 MR. TALARICO: Number three is the first and one I
13 say is nonresponsive.

14 THE COURT: I thought I saw this check.

15 MR. TALARICO: Excuse me?

16 THE COURT: I thought I saw this check.

17 MR. TALARICO: I sent that to you, Judge.

18 THE COURT: Okay. So did they -- did they provide
19 it to you or did you have it on your own?

20 MR. TALARICO: What they provided -- what they
21 provided is not the front and back. I asked for it
22 twice now. It's been asked for twice. They show a
23 front and they don't show the back.

24 THE COURT: Mr. Flynn, do you have the back of the

1 check?

2 MR. FLYNN: I don't believe so.

3 THE COURT: All right. Then I -- you've got to say
4 so. Although you say "see front and back of settlement
5 check contained in documents previously produced, POP
6 658," so did that have the front and the back?

7 MR. FLYNN: I think there was some question on 658.

8 MR. TALARICO: Judge, you can take judicial notice
9 that that's not the back of the check.

10 THE COURT: Well, I don't know if that's -- if
11 that's what he's produced, and if it's -- if he's got
12 the front and back, problem solved. I don't need to do
13 anything.

14 MR. FLYNN: I'm not -- We've got the front. What is
15 (indiscernible) on the back of the check, I don't know,
16 but --

17 THE COURT: I'm sorry?

18 MR. FLYNN: I don't understand what the relevance of
19 the back of the check is in this case --

20 THE COURT: Maybe it's not, but he has a right to
21 ask. So do you have a copy of the back of the check?

22 MR. FLYNN: I don't believe so, but I will
23 double-check.

24 THE COURT: All right. And if you don't, then

1 please explicitly say so. So I'm going to direct you to
2 supplement your answer to number three.

3 Mr. Talarico, anything else on that one?

4 MR. TALARICO: Not on number three, Judge.

5 THE COURT: All right. Next one?

6 MR. TALARICO: That's the duplicative -- that's the
7 -- that's the one that I'll say we had permission.

8 THE COURT: Well, you're talking about request
9 number four.

10 MR. TALARICO: Yes, I am.

11 THE COURT: All right. And he objects saying it's
12 duplicative, but then -- Okay.

13 MR. TALARICO: Judge, Popovich 1 through 1455 is not
14 all inclusive of what the documents that the -- that the
15 plaintiff -- I mean, sorry, that defendant has that were
16 revealed in the transcript, in the last report of
17 proceedings, the last time we were before the court.

18 THE COURT: Mr. Flynn?

19 MR. FLYNN: I'm sorry, I don't understand the --

20 THE COURT: Your volume is a little off.

21 MR. FLYNN: I don't understand --

22 THE COURT: Huge difference when you do that.

23 In fact, Mr. Talarico, is his volume cutting in
24 and out for you?

1 MR. TALARICO: Yes, Judge.

2 THE COURT: All right. At least it's not just me.

3 Mr. Flynn, it seems that when you lean forward
4 something -- it cuts off somehow, or it's like there's
5 an obstruction. Don't ask me to figure it out. That's
6 what I've noticed.

7 MR. FLYNN: (Indiscernible).

8 THE COURT: The -- so tell me what documents
9 1 through 1455 are. Is that everything?

10 MR. FLYNN: I believe that's everything that
11 Williams passed and we produced, and that includes -- As
12 we get to the next document (Zoom audio feed distortion)
13 discovery that was done, it includes deposition
14 transcripts that I obtained after (Zoom audio feed
15 distortion).

16 THE COURT: Mr. Talarico, what are you looking for?
17 Because it sounds like you're just saying give me
18 everything all over again.

19 MR. TALARICO: Well, that was -- that was what was
20 alleged to be done, that everything was given. Judge,
21 everything was not given. There were depositions of at
22 least five physicians that were not turned over --

23 THE COURT: So you're asking for the deposition
24 transcript.

1 Mr. Flynn, -- and I don't recall -- do you have
2 those transcripts?

3 MR. FLYNN: We do not have the depositions of the
4 doctors.

5 THE COURT: Okay. So let -- rather than say give me
6 everything in your file, if you're looking for something
7 specific, tell us what that is and then we can address
8 it. Because I don't like the way this request is
9 phrased, but you're looking for something, so let's find
10 out what that is.

11 MR. TALARICO: Okay. Judge, with all -- I'm sorry.

12 THE COURT: Go ahead.

13 MR. TALARICO: With all due respect, the indication
14 that page 1 through 1455 is the entire file that they
15 have is inaccurate. Am I going, you know, --

16 THE COURT: Maybe it is, but I don't like your
17 request. I think it's just -- I don't think it's
18 appropriate to say give me everything you got. And --
19 because that doesn't -- that really doesn't narrow
20 anything down, doesn't tell me if it's relevant, doesn't
21 tell me anything, and there is no way they can comply
22 with that.

23 So is what you're looking for deposition
24 transcripts?

1 MR. TALARICO: Yes.

2 THE COURT: All right. Is that the -- is there
3 anything else --

4 MR. TALARICO: Yes, Mr. Flynn indicated there were
5 witness trans- -- witness depositions.

6 THE COURT: Okay.

7 MR. FLYNN: So they were included.

8 THE COURT: Anything other than witness -- anything
9 other than deposition transcripts?

10 MR. TALARICO: If there were other than the three
11 witnesses that they gave -- that they included, there
12 were three -- I think the name was Michael Atore
13 (phonetic) I think. And forgive me if I'm saying it
14 wrong. And then two defendants. The defendants were
15 named McGuire, Carolyn and William McGuire.

16 If there are other depositions taken, other
17 witnesses, or other people they've inquired of --

18 THE COURT: So if he identifies all depositions that
19 were taken, all transcripts in his possession and as
20 well as all witness statements that were obtained, is
21 that what you're looking for in number four?

22 MR. TALARICO: Yes, Judge.

23 THE COURT: All right. Mr. Flynn, I know you had an
24 attachment.

1 MR. FLYNN: I did.

2 THE COURT: Does that -- does that provide the
3 information I just mentioned?

4 MR. FLYNN: Yes. I'd like to direct the court's
5 attention to the response to request for production
6 number two from Hans Mast.

7 THE COURT: Okay. I deleted it -- or not deleted
8 it, but I closed it, so I -- and I'd have to look
9 through all of them again. So tell me what it --

10 MR. FLYNN: (Indiscernible) part of this
11 page-and-a-half long recitation of the discovery that is
12 contained in our document production are six deposition
13 transcripts that are contained in that document
14 production. They're identified by date range. First
15 one being POP 1210 to 1244, that is the Carolyn McGuire
16 deposition transcript; followed by David Gagnon
17 deposition transcript; Paul Dulberg deposition
18 transcript; plaintiff's answers to interrogatories; then
19 the Michael McArtor deposition transcript. That's at
20 page 1416 through 1436. Popovich 1437 through 1455 is
21 the William McGuire deposition transcript.

22 This is in our answer. All you have to do is
23 read it. I don't understand --

24 THE COURT: See, I don't know in looking at this

1 that documents 1 through 1455 incorporates all
2 deposition transcripts in your possession. Does it?

3 MR. FLYNN: No, no, I've identified the actual page
4 ranges here, Judge.

5 THE COURT: All right. Okay. But that -- all those
6 depositions are included in what you call documents 1
7 through 1455?

8 MR. FLYNN: All these depositions are included, yes.

9 THE COURT: All right.

10 Mr. Talarico, --

11 MR. TALARICO: But he's not -- I'm not arguing those
12 depositions. I'm arguing others, witness depositions,
13 witness interrogatories -- not interrogatories. I'm
14 sorry. Interviews --

15 THE COURT: Okay. Do you have any other documents,
16 Mr. Flynn?

17 MR. FLYNN: No.

18 THE COURT: All right. Then --

19 MR. FLYNN: We didn't order the doctors' deposition
20 transcripts. I don't know how many times --

21 THE COURT: He doesn't have to produce them if he
22 doesn't have them, and he gave a list of who he has
23 deposed, which I think gives you more information than
24 you asked.

1 What else do you need in answer to number four?

2 MR. TALARICO: For now that's all I need.

3 THE COURT: Okay. And -- Well, you've got a list of
4 the dep transcripts that were not ordered or the witness
5 -- or the deposition -- depositions, and I'll let you
6 pursue that on your own.

7 Is there anything else -- can I close this
8 particular request?

9 MR. TALARICO: Yes, Judge.

10 THE COURT: That's closed.

11 The next one I have open is Defendant Hans
12 Mast's Response to Plaintiff's Court-Ordered Additional
13 Request for Production. Is that -- did we do this one
14 or --

15 MR. TALARICO: What we had to -- what's left to do,
16 Judge, is Defendant Hans Mast's Response for Request to
17 Produce one through six I believe.

18 THE COURT: I think I'm looking at this -- the
19 correct one.

20 MR. TALARICO: (Indiscernible), Judge?

21 THE COURT: Yeah, okay. Yeah, that's it. That's --
22 and I am now seeing the list directly Mr. Flynn just
23 showed me.

24 In any event, tell me which is the first one at

1 issue.

2 MR. TALARICO: Number two, Judge. I asked for all
3 discovery served upon defendant by you on behalf of Paul
4 Dulberg in the underlying matter, and I also asked for
5 -- but the response I get is served by any party. That
6 response is not the same as the question.

7 THE COURT: Okay. Well, discovery served by -- All
8 right. That seems like everything. That sounds like
9 more than you asked. You wanted served by them, but
10 they've given you everything.

11 Mr. Flynn, does this include everything you've
12 served?

13 MR. FLYNN: I'm sorry, Judge, would you say that
14 again.

15 THE COURT: Let me -- Yeah, it was a bad question.

16 Does the response to number two include
17 everything the Popovich office served, all the discovery
18 served by the Popovich office, in the underlying matter?

19 MR. FLYNN: Yes, Judge, this is everything. It
20 includes, the other documents, the other discovery, that
21 the other parties did too. If we had it in the file, I
22 cited (indiscernible) it here.

23 THE COURT: Okay. So I'm -- Mr. Talarico, what are
24 you missing?

1 MR. TALARICO: I need an answer. Judge, what I
2 repeated -- what I think I -- what I'm presenting to the
3 court is that I only want the answer of the discovery
4 served by defendants. I don't want all the rest of
5 this.

6 THE COURT: Okay. But it certainly is responsive.
7 If they give you more than you ask, I'm not going to
8 strike the question. Is it -- I'm assuming you've got
9 the documents at issue that they're referencing here.

10 MR. TALARICO: As long as they're within the 1455
11 pages, yes. Anything outside of that is
12 (indiscernible).

13 THE COURT: It appears they are, and I think this is
14 responsive, so I will sustain -- I don't know that I'm
15 really sustaining. There isn't an objection. I'm
16 overruling your objection to his response.

17 So, next one, number three or is it a different
18 one?

19 MR. TALARICO: Again, it's the same thing. I'm
20 asking for defendants' discovery served upon -- upon
21 defendants by co-defendants and that's not the answer.

22 THE COURT: And he gives you everything.

23 Mr. Flynn?

24 MR. FLYNN: This -- this is everything, Judge. This

1 is everything.

2 THE COURT: Okay. Mr. Talarico, other than the
3 objection that they failed to differentiate between
4 their stuff and the stuff served by the co-defendant, do
5 you have any objection?

6 MR. TALARICO: No, Judge.

7 THE COURT: All right. Because I think each
8 document is self-explanatory, and they've identified it.
9 I'm going to overrule your objection to number three
10 unless you are somehow prejudiced because the documents
11 speak for themselves as to who served them, and perhaps
12 they could have presented it in a less -- I won't say
13 less -- ah, less confusing manner, they still responded.

14 So next one?

15 MR. TALARICO: I believe the response in number five
16 -- number four is clearly nonresponsive.

17 THE COURT: All right. Number four regarding
18 assets?

19 MR. TALARICO: Yes, Judge.

20 THE COURT: All right. And they say all three
21 defendants were deposed in the underlying case. I read
22 that as saying the same thing as nothing other than
23 their deposition testimony.

24 And, Mr. Flynn, is there any objection to my

1 interpretation?

2 MR. FLYNN: No.

3 THE COURT: Okay. I mean, they're stuck with that.
4 That's an answer.

5 MR. TALARICO: Your Honor, the instruction again --
6 I'm sorry.

7 THE COURT: Go ahead.

8 MR. TALARICO: The instruction to the request
9 (indiscernible), if there's a document tell me where, if
10 it's a document already produced.

11 THE COURT: Okay. And I'm assuming that the
12 deposition transcripts are identified in number three.
13 Is that fair?

14 MR. FLYNN: Well, two and three.

15 THE COURT: I'm sorry?

16 MR. FLYNN: Number two and three.

17 THE COURT: All right. Can you identify the
18 deposition -- technically, you gotta. Can you identify
19 the depositions of the defendants and the page numbers?

20 MR. FLYNN: With respect to --

21 THE COURT: Number four.

22 MR. TALARICO: Judge, with respect to assets and net
23 worth, I don't know where in those depositions he's
24 referring me to.

1 THE COURT: That's it. He's telling you. The
2 deposition. And if there are no questions, I mean, -- I
3 don't know how he can pin it down further. You said all
4 investigation or analysis done. The depositions. I
5 think that's responsive.

6 Next one?

7 MR. TALARICO: And, then, Judge, I'm asking for
8 specifics and the responses seem like basically see my
9 deposition.

10 THE COURT: He says there's none. You're talking
11 about number five.

12 MR. TALARICO: Yes.

13 THE COURT: And he says no litigation risk analysis
14 in written form exists. And then he references his
15 deposition, but the answer is none.

16 Did I pretry this, the underlying matter? I
17 seem to think I did.

18 MR. TALARICO: You did.

19 MR. FLYNN: I think so, Judge. You did disclose
20 that to the parties at least one time.

21 THE COURT: All right. Well, this is -- I keep
22 thinking the answers to some of these would incorporate
23 pretrial discussions with me, even though I don't have a
24 recollection of what I would have said, but I'm sure

1 that we discussed these things; and I don't know if
2 that's makes any difference, but I think that is part of
3 the answers, if we had these kind of discussions. I'll
4 defer to Mister --

5 MR. FLYNN: Well, this is a production -- this is a
6 production request. He's asking for documents that
7 exist.

8 THE COURT: Okay. But what about the
9 interrogatories? Didn't they get into that?

10 MR. FLYNN: I'm --

11 THE COURT: All right. Well, it's --

12 MR. FLYNN: (Indiscernible) litigation risk
13 analysis.

14 THE COURT: I thought there was an interrogatory
15 that would have somehow incorporated the pretrials and
16 -- at least in my opinion. I'll leave that to you guys
17 to figure it out and in case there's any question, I
18 have no notes or records and barely any recollection of
19 what transpired at any pretrial. I tend to forget that
20 quickly, and that's kind of the plan. The -- but I --
21 did this involve -- Forgive me again. This involved a
22 chainsaw or trees?

23 MR. FLYNN: Yes.

24 MR. TALARICO: Chainsaw, Judge.

1 THE COURT: All right. Yeah. I -- I remember
2 aspects of it, but I don't remember too much beyond
3 that. So I'll share that with you and I'll share it
4 with you probably a few more times.

5 In any event, I'll let you guys deal with that
6 as you wish. Is there anything else that we haven't
7 dealt with?

8 MR. TALARICO: No, Judge.

9 THE COURT: Okay. Mr. Flynn, how long do you need
10 to file this supplemental answer?

11 MR. FLYNN: Twenty-one days, Judge.

12 THE COURT: All right. I'll give you 21 days. Do
13 you want to come back in about five or six weeks for
14 status of compliance?

15 MR. FLYNN: That's fine, Judge. And then we've been
16 asking for months for fact discovery to be closed so we
17 can move on to the summary judgment motion.

18 THE COURT: Yeah.

19 MR. FLYNN: (Zoom audio feed distortion) issued --
20 issued a handful of fact (Zoom audio feed fading).

21 THE COURT: You're -- you're -- I don't know what
22 the problem is.

23 MR. FLYNN: -- number of them -- Plaintiff has just
24 issued a number of subpoenas that may cause this to drag

1 on even longer. Just want the court to be aware that
2 the subpoenas were issued --

3 THE COURT: Well, the subpoenas should be answered
4 by the time we return in June based on my time schedule,
5 at least I'm hoping.

6 Comments?

7 MR. TALARICO: Judge, the subpoenas are not at
8 issue. Have been answered. I've indicated that.

9 THE COURT: All right. Well, --

10 MR. FLYNN: I have not seen any answers to the
11 subpoenas, so I think those would be responsive --

12 MR. TALARICO: Judge, I need -- I need to address
13 one of them before I respond. I need to address this to
14 the court. One of the responses, -- what I have, Judge,
15 is a question about forged signatures on depositions by
16 the court reporters -- or the certified court reporters.

17 THE COURT: Okay.

18 MR. TALARICO: There are questions about that. I
19 have done -- subpoenaed some of them, got their
20 documents. Judge, some of those documents contain a lot
21 of personal information. If I turn that over -- I'm
22 leery of that. I noted it's a subpoena and response,
23 but I didn't turn over the documents themselves
24 (indiscernible) this moment. I'm a little leery of

1 doing that because it has a lot of personal information.

2 THE COURT: Turn over to Mr. Flynn?

3 MR. TALARICO: Yes, to Mr. Flynn or to file it with
4 the court.

5 THE COURT: All right. Well, I don't know what you
6 mean by personal information, and you don't have to turn
7 it over to me, unless it's an exhibit in something, so
8 what -- what ultimately is your concern?

9 MR. TALARICO: Again, Judge, that I am in possession
10 of a respondent's very personal information. They gave
11 me all their mortgage documents, et cetera, signatures,
12 addresses, Social Security number.

13 THE COURT: From whom -- I'm sorry, from whom?

14 MR. TALARICO: One of the court reporters, one of
15 the certified court reporters.

16 THE COURT: Why did the court reporter give you
17 mortgage documents? I'm not looking at the subpoena,
18 but --

19 MR. TALARICO: I really can't answer that, but that
20 was what they gave me.

21 THE COURT: All right. Mr. Flynn, comment?

22 MR. FLYNN: I would just make a general comment that
23 the subpoenas were issued. I have not seen any response
24 to any of them. To the extent that my -- our -- the

1 defendants' prior discovery requests call for
2 supplementation and that these subpoena responses are
3 responsive to prior discovery requests, they should be
4 produced. I haven't made a specific request for copies
5 of any subpoena response, but I wasn't aware that they
6 had been made.

7 THE COURT: All right. With respect to the
8 seemingly nonresponsive and personal information,
9 private information, produced by the deponents, I think
10 you got to disclose that to Mr. Flynn and then agree to
11 destroy them, but he at least gets to see them so he can
12 determine that they're -- they should be destroyed.

13 MR. TALARICO: Absolutely.

14 THE COURT: So don't file them with the court. I
15 don't want them. And if you both agree that there's --
16 they're not relevant and they should be destroyed, then
17 let the deponent know and/or destroy them or return
18 them. I'll let you choose your path.

19 All right. What other issues are out there?
20 Okay.

21 MR. TALARICO: I have none at the moment.

22 THE COURT: Here's my plan. Let's assume that the
23 answers are -- that the supplemental answers are
24 responsive. Then it is my intent to close discovery

1 when we return and if plaintiff is going to argue he
2 needs more discovery, he can argue it; but I'm going to
3 need to understand what more you need and why that
4 should delay things and I may just proceed with the
5 summary judgment if I don't think that the discovery --
6 the discovery should hold it up. So I'll cross that
7 bridge when I come to it.

8 MR. TALARICO: With all due respect, Judge, there is
9 no summary judgment pending.

10 THE COURT: Yeah, but he keeps saying he's going to
11 file it.

12 MR. TALARICO: I know.

13 THE COURT: So if he files it, when we come back and
14 I close discovery and he files the motion, then we'll
15 proceed with a briefing schedule. So I'm just trying to
16 map out where we're going to go from here.

17 So let me just pick a date. How is June 8th?
18 That's a --

19 MR. TALARICO: I think that is not good for me,
20 Judge.

21 THE COURT: I can do the 7th, 8th or 9th -- or the
22 10th, really, all at 9:45.

23 MR. TALARICO: Could we have -- Mr. Flynn,
24 June 10th?

1 MR. FLYNN: Any of those dates are fine.

2 THE COURT: All right. I'm going to say 9:45. I'm
3 going to need you guys to submit the order because it
4 isn't -- it's something a little bit beyond just a
5 continuance. I'm giving you a 9:45 time because I
6 anticipate we're going to have some discussion beyond
7 merely status of discovery, so we'll have more time, a
8 little more time.

9 Is there anything else we need to do today?
10 I'm going to figure out who's going to send me the
11 order.

12 MR. TALARICO: With all due respect, I don't have
13 all the notes clearly to be able to draft it.

14 THE COURT: Okay.

15 MR. TALARICO: I could order the transcript and go
16 from there.

17 THE COURT: You guys order the transcript anyway,
18 so, I mean, it's going to be there.

19 MR. TALARICO: Yeah, I mean, but that will take a
20 few days.

21 THE COURT: Yeah, it will take a few days.

22 Mr. Flynn, comment?

23 MR. FLYNN: I have notes, Judge. I think I could
24 put it together, but I would just request -- I have a

1 brief that's due by the end of the day, and I have
2 several hours of work to put in on it.

3 THE COURT: Okay.

4 MR. FLYNN: So could we get you the order tomorrow?

5 THE COURT: Yeah, yeah. That's fine.

6 I mean, if you'd get it -- we have a little bit
7 of time. We know our timeframe. Please include the
8 date -- today's date on the order, though, because,
9 otherwise, I got to plug in my own and then that screws
10 things up. And, yeah, I'll sign it when I see it.
11 What's today? Wednesday? If you get it to me by
12 Friday, that's fine.

13 MR. FLYNN: Okay. Thank you, Your Honor.

14 THE COURT: Okay?

15 MR. TALARICO: Judge, thank you for your time.

16 Mr. Flynn, thank you for your time and good luck on your
17 brief.

18 THE COURT: Okay. June 10th at 9:45.

19 MR. FLYNN: Thank you.

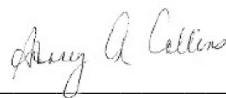
20 MR. TALARICO: Thank you, Judge.

21 THE COURT: Okay. Thank you. Disconnecting.

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

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)
4

5 I, Stacey A. Collins, an Official Court
6 Reporter of the 22nd Judicial Circuit of Illinois, do
7 hereby certify the foregoing to be a true and accurate
8 transcription to the best of my ability and based on the
9 quality of the recording of all the proceedings heard on
10 the electronic recording system in the above-entitled
11 cause.

12
13 

14 Stacey A. Collins, CSR
15 Official Court Reporter
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24

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before

14 The Honorable Thomas A. Meyer, Judge of said Court

15 of McHenry County, Illinois, on the 10th day of

16 June, 2022, at the McHenry County Government Center,

17 Woodstock, Illinois.

18

19 APPEARANCES:

20 (No appearances given.)

21

22

23

24

1 THE COURT: And on the Dulberg matter, we're
2 still waiting for Mr. Talarico, unless there's an
3 agreed order.

4 A VOICE: (Indiscernible.)

5 THE COURT: Okay.

6 (Whereupon the afore-captioned
7 cause was recalled.)

8 THE COURT: Dulberg. Have we heard anything
9 from Mr. Talarico?

10 A VOICE: Judge, not yet. I did send him an
11 e-mail at 9:54, so...

12 THE COURT: All right. We'll wait a couple of
13 minutes.

14 A VOICE: All right.

15 (Whereupon the afore-captioned
16 cause was recalled.)

17 A VOICE: Judge, there was an e-mail from
18 Mr. Dulberg. I don't know if you see that.

19 THE COURT: A chatmail? No.

20 A VOICE: Chatmail, yes.

21 THE COURT: No, I -- I don't show it, so it must
22 have gone just direct to you.

23 Is there an issue?

24 A VOICE: Yeah. He says Mr. Talarico sends his

1 apologies for not being here. I received a message
2 at 5:30 a.m. saying he was in a lot of pain and
3 seeking medical attention.

4 THE COURT: Okay. Well, I guess that -- All
5 right. Hopefully everything's okay. I'll continue
6 the case.

7 What -- I was curious -- You have a pending
8 motion, am I correct, or you just haven't filed it?

9 A VOICE: No, I don't think there were any
10 motions pending. I was waiting for fact discovery
11 to be closed. (Indiscernible) the issues on the
12 discovery. There was a follow up. The Court
13 ordered an extensive order on May 2.

14 I can tell your Honor that Mr. Talarico had
15 an issue with stipulations being contained in the
16 order. I don't see there's a problem. The Court
17 executed the order. So that was really the last I
18 heard from him a few weeks ago.

19 THE COURT: All right.

20 A VOICE: He hasn't filed any motions, and there
21 have been no depositions noticed up. So, again, I
22 would request that fact discovery be closed and then
23 I plan to file summary judgment motion
24 (indiscernible) within 45 days thereafter.

1 THE COURT: Okay. I have...

2 A VOICE: Just one other thing to report. The
3 plaintiff had issued, months ago, several subpoenas
4 directed at court reporters who, I believe, were
5 involved in the underlying case.

6 THE COURT: All right.

7 THE VOICE: I'm not sure what they are
8 attempting to find. (Indiscernible) several -- a
9 few of the court reporters responded with
10 signatures, handwritten signatures. I don't know if
11 there was some issue there. I haven't been aware of
12 it until now in this case.

13 THE COURT: All right.

14 A VOICE: I don't see how it would affect
15 arguments on the settlement (indiscernible).

16 That's sort of all that's been going on.

17 THE COURT: Okay. All right. I'm going to
18 take the case into July, and I can -- We can do it
19 July 8th, Friday, or the 7th, Thursday, at 8:45.
20 9:45 is possible, too. What's your preference?

21 A VOICE: Just checking. I'm actually on
22 vacation just that Thursday and Friday, so I'm going
23 to be gone.

24 THE COURT: Why don't we do it Monday? Can you

1 show up --

2 A VOICE: (Indiscernible.)

3 THE COURT: Yeah. Mr. Dulberg's saying -- Let's
4 keep it at 9:45. You like July 11th?

5 A VOICE: July 11th works, 9:45.

6 I've requested (indiscernible) facts to be
7 closed, Judge. Is that under consideration?

8 THE COURT: Yeah. I've called it Status on
9 Defendant Motion to Close F(1).

10 A VOICE: Okay.

11 THE COURT: All right. I'm going to call
12 that -- put it at 9:45.

13 Mr. Dulberg's indicated his approval of the
14 July 11th, 9:45 date.

15 There's the order. Okay. We will see you
16 on July 11th.

17 A VOICE: Thank you, your Honor.

18 THE COURT: All right. Thank you.

19 (Which were all the proceedings
20 had in the above-entitled cause
21 this date.)
22
23
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, KATHLEEN STROMBACH, an official
6 Court Reporter for the Circuit Court of McHenry
7 County, Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
14

15 Kathleen Strombach
16 Kathleen Strombach
17 Official Court Reporter
18 License No. 084-003755
19
20
21
22
23
24

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before

14 the Honorable THOMAS A. MEYER, Judge of said Court

15 of McHenry County, Illinois, on the 11th day of

16 July, 2022, at the McHenry County Government Center,

17 Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by

20 MR. ALPHONSE A. TALARICO, (Via Zoom)

21 On behalf of the Plaintiff,

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by

23 MR. GEORGE K. FLYNN, (Via Zoom)

24 On behalf of the Defendant.

1 THE COURT: Any other agreed uncontested or both
2 sides?

3 MR. FLYNN: Judge, I think both sides will be on
4 the Dulberg matter.

5 THE COURT: Dulberg. Okay. Just looking for
6 it.

7 MR. FLYNN: 17 LA 377.

8 THE COURT: No. 24. You got it. All right.

9 Plaintiff's counsel, if you can identify
10 yourself?

11 MR. TALARICO: Good morning, your Honor. My
12 name is Alphonse Talarico for the plaintiff. And
13 before we go any further, I would like to apologize
14 for missing court last time.

15 THE COURT: Okay.

16 MR. TALARICO: It was a medical and non-medical
17 matter which I -- I'm under certain care.

18 THE COURT: Okay.

19 MR. TALARICO: So I apologize.

20 THE COURT: Defense counsel, if you could
21 identify yourself?

22 MR. FLYNN: George Flynn for defendants.

23 THE COURT: All right. I was going to close
24 (f)(1). What's going on, plaintiff?

1 MR. TALARICO: Judge, I don't think closing
2 (f)(1)s is going to be appropriate at this moment.
3 And some things have evolved. Some things have
4 happened. I don't know how this electronic Zoom
5 system works, but is there a way of speaking in
6 camera?

7 THE COURT: Yeah. I mean, I will pass you guys,
8 and I will come back to you shortly. So let me get
9 rid of all the many other people on my call right
10 now, and then I'll deal with you at the end. And
11 it's 8:44.

12 (Whereupon the afore-captioned
13 cause was recalled.)

14 THE COURT: Mr. Flynn, on Dulberg, do you have
15 any objection to Mr. Talarico having a confidential
16 discussion with me regarding whatever issue this is?

17 MR. FLYNN: Ex parte?

18 THE COURT: Yeah.

19 MR. FLYNN: We have an objection.

20 THE COURT: All right. Then, are you able to do
21 a conference call?

22 MR. FLYNN: A conference call?

23 THE COURT: Yeah.

24 MR. FLYNN: Sure.

1 THE COURT: All right. Who is going to initiate
2 the call?

3 MR. TALARICO: Judge, are you -- with your Honor
4 and with Mr. Flynn, is that the --

5 THE COURT: Yeah. He's objecting. I can't just
6 go off the record and have a conversation with you
7 unless I formally set it as a pretrial. And I don't
8 have this as a pretrial. And I'm reluctant to have
9 a confidential discussion over objection at this
10 point.

11 So what would you like to do? I can set it
12 over for pretrial, but I don't know what you want to
13 do.

14 MR. TALARICO: My entire goal is to limit the
15 amount of ears to what I have to say, and --

16 THE COURT: Well, why don't you -- can you talk
17 to Mr. Flynn while I'm wrapping up these other
18 things?

19 MR. TALARICO: Yeah, I guess we could.

20 THE COURT: Okay. Remember to mute your
21 computer. Give him a call, and you guys can discuss
22 what the issue is.

23 MR. FLYNN: Judge, can I just interject one
24 thing? I thought that Mr. Talarico initially asked

1 for an in camera hearing. It wasn't necessarily ex
2 parte. I thought he just didn't want to necessarily
3 do it in front of the other attorneys in the room.
4 Is that correct?

5 MR. TALARICO: That's correct. I'm here --

6 THE COURT: Okay. Then I'm going to -- I'm
7 going to make you guys wait. I'm going to leave the
8 courtroom for five minutes and keep everybody else
9 on the line, and we will have it answered for you
10 soon.

11 MR. FLYNN: Thank you, your Honor.

12 MR. TALARICO: Thank you.

13 (Whereupon the afore-captioned
14 cause was recalled.)

15 THE COURT: Back on the record on the Dulberg
16 matter.

17 Plaintiff's counsel, if you can identify
18 yourself?

19 MR. TALARICO: Judge, my name is Alphonse
20 Talarico for Mr. Dulberg.

21 MR. FLYNN: George Flynn for the defendants.

22 THE COURT: Okay. And you indicated in camera
23 which I interrupted to mean confidential and not on
24 the record. Everything we are saying, even if the

1 other attorneys are out, is going to be on the
2 record because the recording system is going to pick
3 it up.

4 That being said, Mr. Talarico, what do you
5 want to do?

6 MR. TALARICO: Um.

7 MR. FLYNN: Judge, can I just address that
8 because I'm -- I do have an objection to this
9 discussion not being on the record.

10 THE COURT: Okay.

11 MR. FLYNN: There's never been a motion filed.
12 I'm not even sure what this is about. There have
13 been some notices relative to court reporting in the
14 case and in the underlying case. Some subpoenas
15 issued to court reporters and for the circuit clerk
16 here, but I really don't know what this is about.
17 And since no motion has ever been filed on this
18 issue, I would object to this hearing not being
19 recorded.

20 THE COURT: No. I'm not really -- I'm not sure
21 that I am conducting a hearing, but I -- but I'm now
22 curious. But you are right, I don't have anything
23 pending in front of me. So what do you guys want to
24 do?

1 MR. TALARICO: Okay. Judge, I think that if you
2 are simply okay with it being on the record, then,
3 I'm okay with it too.

4 Your Honor, the sensitivity of the matter
5 is such that I thought it would be better for fewer
6 ears, but that's okay. I don't have a problem with
7 that.

8 What I -- what this is all about, and I
9 think Mr. Flynn has an indication at least of it is
10 the Exhibit 12 to Mr. Hans Mast's deposition. If
11 you remember this case, this Exhibit 12 issue has
12 been ongoing. I think the last time we spoke of
13 it -- we spoke to it, you said -- you told us that
14 when -- either produce it or saying you don't have
15 it.

16 What I have gotten in return is what I
17 believe, I hate to use this word, but a forgery, a
18 false document, a document that is not part of the
19 record was created recently.

20 THE COURT: Okay.

21 MR. TALARICO: Now, how do I know this? I -- I
22 did a records only subpoena to the court reporter.
23 She answered, which her answers were sent to
24 Mr. Flynn. Thereafter, she sent me a flash drive

1 with -- because -- because she said all her notes
2 were not -- were too large to send by the proper
3 response. The flash drive was also sent to
4 Mr. Flynn.

5 What she said -- what is there is that
6 there was no Exhibit 12. She never produced
7 Exhibit 12. The issue -- the mini and the total
8 original had no Exhibit 12, but somehow I have
9 received a copy of Exhibit 12.

10 I also sent Exhibit 12 to a document
11 examination, a professional. I got his report this
12 morning -- I'm sorry, last night at 11:15 p.m., and
13 the indication what was sent is -- does not match
14 the other sections, the other labels -- the other 14
15 exhibits. Someone, it appears, has created
16 something new and sent it to me saying this is
17 Exhibit 12. So I -- I think that I should be --

18 THE COURT: What's Exhibit 12? What is that?
19 What is it?

20 MR. TALARICO: I'm sorry. What is Exhibit 12?

21 THE COURT: What is Exhibit 12? What is the
22 document?

23 MR. TALARICO: It is a list of cases that
24 Mr. Hans Mast had talked to Mr. Dulberg about in

1 the -- in the period of time of convincing him to
2 settle the case for \$5,000 --

3 THE COURT: Identified a number of -- he
4 allegedly identified a number of similar cases?

5 MR. TALARICO: Judge, even that is an issue
6 because there was some problem on the Internet
7 between Mr. Flynn's office, Ms. Clinton's office and
8 the recordings for the Zoom deposition.

9 My whole thing is, Judge, I have a 50-page
10 order -- 50-page report saying -- well, just, for
11 example, you can take judicial notice, the label
12 is -- the label that was sent to me in April of this
13 year misspelled the defendant's name.

14 THE COURT: Okay. Well, that's a different
15 issue. That's on the merits of your anticipated
16 motion with -- whatever it may be with respect to
17 what you've told me is Exhibit 12. Exhibit 12 is an
18 attachment to a deposition as opposed to something
19 that took place in court, is that true?

20 MR. TALARICO: That is correct.

21 THE COURT: All right.

22 MR. TALARICO: There was a deposition.

23 THE COURT: And what -- let's assume --

24 Mr. Flynn, no offense. But let's assume 100 percent

1 of what you're saying is true that it's a forged
2 document, how does that impact what we're doing
3 right now?

4 MR. TALARICO: How it impacts us is because I
5 would like to have the opportunity to present a
6 motion to exclude Mr. Hans Mast's deposition. This
7 is just one of the issues that -- that are centered
8 on that deposition. The Internet -- the Internet
9 not working properly during it, the Exhibit 12 that
10 was never produced by the reporter, the cases that
11 came in this April filing does not include one of
12 the major cases that was part of that, it was called
13 (indiscernible) versus Spangler, and that's not in
14 there.

15 So there are so many issues that are
16 centered on that deposition that I would like some
17 time to file a motion to exclude that and then
18 (indiscernible) over.

19 THE COURT: Mr. Flynn, and please ignoring the
20 implied accusations because that's not relevant to
21 what I'm interested in, what is your original
22 motion? Forgive my lack of memory.

23 MR. FLYNN: The original motion that we are here
24 for today was just simply a motion to finally close

1 (f)(1) discovery. There was an oral motion only
2 because this has been an ongoing issue. If we could
3 just (indiscernible) the case. Counsel came into
4 the case I think a year and three quarters ago and
5 hasn't noticed up a certain deposition. The case
6 just needs to move along. I -- I haven't really had
7 a need for a summary judgment motion --

8 THE COURT: That's what I was thinking. Okay.
9 I was thinking you had filed your summary judgment.

10 MR. FLYNN: We had not. Waiting for fact
11 discovery to be closed. I was present for Hans
12 Mast's deposition back in I think it was the spring
13 of 2020 at the onset of the pandemic. It was done
14 by Zoom. I was in his -- Hans Mast's office, at the
15 time our office, and plaintiff was represented by
16 Julia Williams from the Clinton Law Firm. It was
17 her deposition, her exhibits, and I haven't read any
18 (indiscernible) because there has been no motion. I
19 didn't realize there was this issue, but I can't see
20 how any of the exhibits from that deposition being
21 forged.

22 From what I recall of Exhibit 12, I believe
23 it was some photocopies of case law from an -- it
24 looked like it had been copied from a -- one of the

1 old law books. I think --

2 THE COURT: Okay.

3 MR. FLYNN: -- the Court, if I remember
4 correctly. And asked Mast about those documents at
5 his deposition, not in great detail, by the way, but
6 I believe he was asked about his depositions -- I'm
7 sorry, those cases.

8 So I don't understand what the issue is. I
9 don't see how having a hearing on the summary
10 judgment of this case moving along. There have been
11 a number of conspiracy theories put forth that have
12 never -- never been filed in court. And I would
13 just request strenuously that the (f)(1) discovery
14 be closed, and we move along so that motions could
15 be addressed.

16 THE COURT: Okay. Mr. Talarico, I don't have a
17 motion, and --

18 MR. TALARICO: That is correct. What I'm asking
19 for right now, by the same token there is no --
20 there is only an oral motion, while I wasn't here
21 last time because of my own illness, I was
22 hospitalized, et cetera. So the (f)(1)s, I believe,
23 should not be closed because if I -- if my motion is
24 granted and Mr. Mast's deposition is stricken,

1 that -- that may lead to other people I have to -- I
2 have to list as (f)(1)s, and it may also impact
3 Mr. Flynn's motion -- motion for summary judgment.

4 But this entire thing, the deposition
5 itself should be stricken. That's why I may not
6 have time to file a motion for. I have a court -- I
7 have a court reporter saying on her -- sending it in
8 responses to my records only subpoena, that she --
9 every time they tried -- whoever tried to keep
10 sending her that exhibit, the first 22 pages were
11 blank. She's written it over and over and over
12 again in her response which I sent to Mr. Flynn.

13 How can they now come up with 25 or 27
14 pages to put in a full -- with a label that
15 misspelled the defendant's name and with a label
16 that is not --

17 THE COURT: You are arguing the merits. You are
18 arguing the merits.

19 MR. TALARICO: May I please file that motion?

20 THE COURT: You can file your motion. But I
21 don't know that -- how that the anticipated motion
22 prevents me from otherwise closing discovery. You
23 can file your motion. You can ask to have it
24 reopened to address issues. But that's still going

1 to be your burden because you haven't otherwise
2 identified discovery you want to take other than
3 related to this deposition issue.

4 And have you -- forgive me for fishing a
5 little bit, but have you talked to Ms. Clinton, I
6 guess that was the name of the attorney, Mr. Flynn?

7 MR. FLYNN: Ms. Williams.

8 THE COURT: Ms. William. I'm sorry. The
9 Clinton Law Firm. Is that what you told me? All
10 right. Have you contacted them for whatever
11 Exhibit 12 is?

12 MR. TALARICO: No, Judge. If you remember when
13 we talked about the pink pages, the black -- the
14 blank pages, she would not respond to me back on
15 that issue.

16 THE COURT: All right. I think I do recall
17 that. All right. And have you issued a subpoena
18 for Exhibit 12? Because I can't see how an
19 attorney-client privilege would attach to a document
20 that was used as an exhibit in the course of a
21 discovery deposition.

22 MR. TALARICO: Judge, if -- maybe I'm
23 misunderstanding. There is no Exhibit 12. That --
24 I can't subpoena what doesn't exist.

1 THE COURT: Well, we don't have a formal
2 response from her one way or another, do we?

3 MR. TALARICO: No, we don't. But we have a
4 forged Exhibit 12, and we have the reporter saying
5 there is no Exhibit 12.

6 THE COURT: She says she doesn't have it. She
7 didn't say there was no such thing.

8 MR. TALARICO: No, excuse me, Judge. In her
9 handwriting, the discussion about asking the Clinton
10 firm for Exhibit 12 over and over and over again and
11 getting no response.

12 THE COURT: That -- that doesn't look good, but
13 it doesn't resolve the issue because I'm imagining,
14 correct me if I'm wrong, that the record reflects a
15 discussion of Exhibit 12.

16 MR. FLYNN: And I believe that being the case,
17 Judge. I don't -- I can pull the transcript. I
18 have it here within a few feet of my desk. But I
19 recall Mr. Mast being questioned about Exhibit 12.
20 Now --

21 THE COURT: I think that's obvious simply
22 because there was no discussion of it, we
23 wouldn't -- their wouldn't be -- if there was no
24 testimony regarding the existence of Exhibit 12, we

1 wouldn't be having this discussion.

2 And I think that in the end, I'm going to
3 ask you to get a formal response out of that law
4 firm or that attorney as to whether or not
5 Exhibit 12 exists. And if they are going to claim
6 attorney-client privilege, I don't see how. But I
7 mean, I'll look at whatever their responses are.
8 But if they have got it, they should produce it.
9 Mr. Talarico?

10 MR. TALARICO: Judge, whatever way you want to
11 go, I will do.

12 THE COURT: Okay. I have not -- and I'll show
13 my hand a little bit, if everything you're saying is
14 true with respect to the court reporter not having
15 Exhibit 12, that's not going to be enough for me to
16 strike the deposition and/or bar the use of
17 Exhibit 12. It's going to create some issues, but
18 given the fact that it was not an in-person
19 deposition, her testimony does not -- her
20 anticipated testimony doesn't establish for me that
21 Exhibit 12 does not exist or that Exhibit 12, as
22 produced in discovery in this case, is a forgery. I
23 don't know.

24 MR. TALARICO: But Judge, if you -- may I speak?

1 THE COURT: Yeah.

2 MR. TALARICO: If you recall, this all started
3 when we -- with the deposition was about -- was
4 going to be used, the deposition of Hans Mast. And
5 in the deposition as it was produced, there was no
6 Exhibit 12. It says Exhibits 1 to 11, 13 through
7 15. That's when I brought it to your Honor's
8 attention. When it was produced, there was no
9 Exhibit 12. As of April of this year, there is
10 Exhibit 12.

11 THE COURT: But there is testimony regarding
12 Exhibit 12.

13 MR. TALARICO: There is.

14 THE COURT: And if -- if we have -- if the
15 attorney who presented Exhibit 12 isn't responsive,
16 then -- then, I think we have to address the issue.
17 But I need to know what she says. If she says I
18 don't have it, it never existed, yeah, there is a
19 problem. But if she produces an Exhibit 12, then we
20 have to discuss that.

21 MR. FLYNN: Judge, just my recollection of the
22 transmittal of this deposition once it was written
23 up is there was -- it was done electronically. I
24 could be wrong again. I didn't realize -- I wasn't

1 aware of what the issue was here. But my
2 recollection was that the court reporter sent us the
3 transcripts and sent the exhibits electronically.
4 So perhaps I'm wrong, you know. It was a couple
5 years ago, but that was my understanding.

6 THE COURT: Yeah, I want to know what the
7 attorney says. I mean, that's really the bottom
8 line.

9 MR. TALARICO: Judge, are you suggesting a
10 deposition of Ms. Williams to get that?

11 THE COURT: I don't know that that's necessary.
12 I mean, a subpoena -- if you issue a subpoena and
13 she produces one -- produces Exhibit 12, we will
14 talk about whether or not a deposition is necessary.

15 MR. TALARICO: Okay.

16 THE COURT: And -- or -- I mean, I can see
17 laying a foundation, but if she -- for it, or if we
18 want to take her deposition, yeah, I'd probably be
19 open to letting you do that. But I do agree with
20 Mr. Flynn, it's time to get moving on this.

21 And Mr. Flynn, without showing me your
22 hand, can I ask if Exhibit 12 is relevant to you're
23 anticipated motion? If you don't want to answer,
24 you don't have to.

1 MR. FLYNN: I -- you know, I suppose it may be
2 discussed. It's part of the overall advice that was
3 given relative to my client recommending a
4 settlement. It's not a major part of the motion.
5 You know, we've got statute of limitations issues
6 which would be part of the summary judgment motion.
7 So I don't think had any bearing on that argument.

8 THE COURT: Is it possible that -- to split this
9 motion?

10 MR. FLYNN: Well, I -- I've always anticipated,
11 you know, unlike my motion this morning on another
12 matter which is one issue, I would have four or five
13 issues on summary judgment in this case. If the
14 Court would allow it, I could use the extra pages
15 anyhow, or I may need to to square it up, and I
16 really won't know until I start writing it, to tell
17 you the truth.

18 THE COURT: Okay. Well, my -- and forgive me if
19 I'm contradicting something, because I'm -- that
20 I've said or done in the past, but is, in effect,
21 the statute of limitations argument is 2-619
22 generally. And I would think that could be isolated
23 from anything involving -- and I would make
24 Mr. Mast's testimony -- we wouldn't have to touch

1 it, I don't think, but I don't know. I don't know
2 what -- I don't know the issues. That's just my
3 general recollection.

4 And I'm thinking of if we are able to at
5 least get rid of some of this without having to
6 reopen discovery, because I anticipate that
7 Mr. Talarico's issues could lead to more
8 depositions. And I'll let you guys proceed how you
9 want. I just want to get something done.

10 MR. FLYNN: I --

11 THE COURT: Let me add to this, the Supreme
12 Court has made it clear that we have to move cases,
13 and if we don't cases --

14 MR. FLYNN: I understand that.

15 THE COURT: -- within the allotted time, we will
16 be punished. They are vague about what punishment
17 is.

18 MR. FLYNN: I understand. I think there are
19 multiple issues on -- I thank you for the
20 (indiscernible) page limit. I may have some
21 problems with that anyway. So I suppose if the
22 Court would allow it, I could attempt to break up
23 the various issues.

24 THE COURT: I'll consider any motion you guys

1 want to file.

2 MR. FLYNN: Okay.

3 THE COURT: And -- but if it's impossible to
4 split it up, then we will waive. Okay.

5 MR. FLYNN: There are a lot of intertwined
6 issues for the Court's ruling. So I'll do my best
7 to make it easy on us all if I can.

8 THE COURT: You know, if they are all
9 intertwined, forget everything I said.

10 Mr. Talarico, do you want to weigh in?

11 MR. TALARICO: Just so I understand, Judge, you
12 are suggesting, and I will comply, a subpoena on
13 Julia Williams as to Exhibit 12, and -- well, if
14 I -- well, then, depending on -- well, I would still
15 like to do a motion to -- to strike or exclude the
16 deposition of --

17 THE COURT: You can, but I think that attorney's
18 testimony or subpoena response is going to be
19 critical to my decision on that --

20 MR. TALARICO: Then, I would --

21 THE COURT: -- because court reporters make
22 mistakes as to attorneys as to judges, and the court
23 reporter's perspective isn't determinative of
24 whether or not an Exhibit 12 was identified and

1 relied upon by all the parties at the deposition and
2 she just doesn't have it. I -- so that -- that's
3 not going to result in my barring the dep or the
4 exhibit, just her testimony.

5 MR. FLYNN: Judge, may I just comment on that as
6 well?

7 THE COURT: Sure.

8 MR. FLYNN: I just wanted to point out and just
9 for the record that these issues for all on the --
10 according to this side of the aisle, the deposition
11 was taken by the plaintiff. The exhibit was
12 introduced by the plaintiff. It is plaintiff's new
13 counsel now that is moving to strike that deposition
14 that was taken by the plaintiff.

15 The only thing I did in this case was pass
16 along what I thought was Exhibit 12 after it was
17 sent to me by the court reporter.

18 THE COURT: And you raise an interesting point,
19 but I'll address that at the appropriate time.

20 MR. TALARICO: Judge, can I make a comment?

21 THE COURT: Sure. Sure.

22 MR. TALARICO: I -- the court reporter gave me
23 no indication that she passed on Exhibit 12 to
24 Mr. Flynn. So that's -- that's a question now.

1 That --

2 THE COURT: Well, it was a Zoom dep, wasn't it?

3 MR. FLYNN: It was.

4 MR. TALARICO: It was a Zoom dep.

5 THE COURT: And was the court reporter even
6 present?

7 MR. TALARICO: No.

8 THE COURT: You see, that's -- that's an issue
9 for me because you've got everybody in separate
10 locations.

11 MR. TALARICO: All I'm saying, Judge, is the
12 documents I sent to Mr. Flynn by the court reporter,
13 there were -- there were ongoing issues with
14 Exhibit 12 saying I don't have it, I don't have it,
15 somebody give it to me, what is this. There is for
16 the -- we have got two things. You've got the
17 reporter actually focusing on 12 and saying I don't
18 have it, the reporter --

19 THE COURT: I believe it.

20 MR. TALARICO: -- not producing an Exhibit 12,
21 and then the document expert saying it's a forgery.

22 THE COURT: I --

23 MR. FLYNN: I may be able to shed a little bit
24 of more light on this as well. This is just for

1 purposes of moving forward.

2 So my recollection was Ms. Williams
3 forwarded the proposed exhibits of the deposition
4 prior to the deposition. My recollection was that
5 some of them were fairly extensive, and I didn't
6 print out every single one. I recall getting hard
7 copies of some of the exhibits to Mr. Mast's office.

8 We had some technical issues with screen
9 sharing the exhibits. I recall showing him one or
10 two hard copies of exhibits. But again, my
11 recollection of the exhibits were sent in the
12 proposed form prior to the deposition. That may, at
13 least, help us, not that I am getting -- chasing
14 down this issue because I'd rather not spend time on
15 it. But just for everyone's edification, I think
16 that was the case.

17 THE COURT: Okay. Mr. Talarico, anything to
18 add?

19 MR. TALARICO: No, Judge.

20 THE COURT: All right. So please issue a
21 subpoena. I guess I had misunderstood. I thought
22 that the deposition was from a companion case, not
23 this case. So simply by names of the attorneys, I
24 had overlooked that. And we will have to address

1 that when we get to it.

2 But if you want to file a motion, file a
3 motion. But I think issuing a subpoena or even
4 contacting her and getting an affidavit is fine. I
5 don't care. But I want to know what she says. And
6 I just don't know where we are going if you file a
7 motion based upon the court reporter saying I never
8 got them because that doesn't establish for me that
9 Exhibit 12 doesn't exist or that the one that you've
10 been produced is the wrong one then, and I don't
11 know how to resolve that.

12 MR. TALARICO: All right, Judge. I will gladly
13 take your advice and move forward with a -- with a
14 subpoena.

15 THE COURT: Okay. When did we want to come
16 back?

17 MR. FLYNN: Judge, is that -- I'm happy to
18 prepare the order. Is fact discovery closed?

19 THE COURT: Yeah.

20 MR. FLYNN: Okay.

21 THE COURT: Closing fact discovery on my motion
22 today. But that does not prevent Mr. Talarico from
23 filing a motion to reopen discovery for purposes of
24 pursuing this issue. So you're really -- with

1 respect to the issues Mr. Talarico has raised today,
2 there is no prejudice. He can still pursue exactly
3 what I said he could pursue.

4 So in case there is any question, I will
5 explicitly grant leave to issue his subpoena or
6 obtain an affidavit from that attorney in question
7 regarding Exhibit 12.

8 MR. FLYNN: Showing who the parties in the
9 order.

10 THE COURT: I think that's better.
11 Mr. Talarico, does that cover what you want to
12 cover?

13 MR. TALARICO: Yes, Judge.

14 THE COURT: So realistically, I'm thinking 60
15 days to resolve the issue with the attorney. That
16 puts us into mid September. How is September 16, a
17 Friday?

18 MR. FLYNN: Works for me.

19 MR. TALARICO: I'm checking, your Honor.

20 THE COURT: Okay.

21 MR. TALARICO: Fine.

22 THE COURT: All right. That will be -- well,
23 let me look at my schedule because I anticipate --
24 let's say 9:30.

1 MR. TALARICO: Okay.

2 MR. FLYNN: And Judge, in this court this
3 morning earlier on the Interrante case, this matter
4 was scheduled for 9:45. I wasn't sure
5 (indiscernible) did we both have to be here, or if I
6 missed something as far as --

7 THE COURT: I have it -- I think I had your
8 other case up at 8:45.

9 MR. TALARICO: Mr. Flynn, you were right, this
10 case was scheduled for 9:45 also.

11 MR. FLYNN: It was. I think, Judge, you drafted
12 the last order. I'm not trying to blame you, but I
13 think originally 8:45 and then it was stricken on
14 the order and then changed 8 to 9:45.

15 THE COURT: That was my mistake, and somebody
16 brought it to my attention and made fun of me. I
17 will accept blame for that.

18 Let's go 9:30. You put it in the order,
19 and you can even say by order of the Judge at 9:30.
20 And the reason for that is so that we don't have to
21 wait for a large call to dissipate before talking.

22 MR. FLYNN: I'll draft the order, Mr. Talarico.
23 I should be able to get it to you within an hour or
24 so.

1 MR. TALARICO: Thank you, sir.

2 THE COURT: All right.

3 MR. FLYNN: That's it.

4 THE COURT: I'll sign it when I see it, and then
5 we will see you at 9:30 on September 16.

6 MR. TALARICO: May I say one more thing, Judge?

7 THE COURT: Yes.

8 MR. TALARICO: I'm sorry. I'm apologizing again
9 for missing court. This is probably the first time
10 in my life, but it was a medical emergency and --

11 THE COURT: Understood.

12 MR. TALARICO: -- I missed court, and I
13 apologize.

14 THE COURT: Okay.

15 MR. FLYNN: No apology necessary. Thank you.

16 THE COURT: No problem. All right. We will see
17 you next month -- or in September.

18 MR. FLYNN: Thank you.

19 THE COURT: Thank you. Bye. Disconnecting.

20 (Which were all the proceedings
21 had in the above-entitled cause
22 this date.)
23
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, JUDY CARLSON, an official Court Reporter
6 for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
14

15 
16 Certified Shorthand Reporter
17 License No. 084-003347
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 The Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 16th day of
16 September, 2022, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by
20 MR. ALPHONSE A. TALARICO, (via Zoom)

21 On behalf of the Plaintiff,

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN, (via Zoom)

24 On behalf of the Defendants.

1 THE COURT: Now, moving on to Dulberg
2 versus -- Forgive me for not remembering. Dulberg
3 versus Mast.

4 Plaintiff's counsel, if you can identify
5 yourself?

6 MR. TALARICO: Good morning, Judge. My name is
7 Alphonse Talarico for the plaintiff.

8 THE COURT: Okay. And defendant?

9 MR. FLYNN: Good morning, your Honor. George
10 Flynn for defendants.

11 THE COURT: All right. We have a -- What's
12 going on? Let me just put it that way.

13 MR. TALARICO: You're right. What is going on?
14 Okay. The last time we were up, you gave me
15 permission to subpoena the records and the
16 deposition of Hans Mast, especially Exhibit 12,
17 which I've been challenging as fraudulent.

18 Served the subpoena on both Ms. Williams
19 and Mr. Clinton. Those are two people that handled
20 the case for the Clinton Law Firm.

21 I got -- The day before they were supposed
22 to respond, I called to try to ask if, you know,
23 they're going to respond. They said yes. They sent
24 me some documents, but other documents, they claim

1 that they are not all that they want -- that they
2 could respond to and were not going to respond.
3 They won't give -- They're not in compliance. They
4 won't give me an affidavit of completion, et cetera.

5 As a courtesy to other -- to two members of
6 the bar, I said, Okay, look, I'll extend this. Can
7 you consider this and do this?

8 So I -- I sent them a notice that I changed
9 the compliance date to October 6th. The earlier
10 compliance date was September 22nd. But every
11 indication in writing is if I -- if I do a motion to
12 compel, they're going to claim attorney-client
13 privilege and work product.

14 THE COURT: Well, they've got to do something.
15 My interpretation of the law is if you're not going
16 to comply with the subpoena, your options are --
17 your only option, then, is to file an objection.
18 You can't just refuse.

19 The ball is in their court. They've done
20 nothing. And you may want to pass that information
21 on to them that unless or until I see something
22 filed on their behalf objecting to the scope of your
23 subpoena, I assume it's appropriate and should be
24 complied with. If you want to do a rule, do a rule,

1 and I'm fine. But they're going to have to do
2 something. They can't just say, No, we're not
3 gonna.

4 MR. TALARICO: That is, so far, what I've
5 gotten, but I will pass that along, your Honor.

6 THE COURT: All right. Yeah. I expect if
7 they're not going to give full compliance -- and
8 based on what you're telling me they're
9 acknowledging it's not full compliance -- if they
10 are not going to give you full compliance, they need
11 to come to court.

12 MR. TALARICO: I'll pass that along.

13 THE COURT: Either voluntarily or involuntarily.
14 It's their call.

15 THE COURT: All right. Anything else?

16 MR. FLYNN: Judge, so yesterday we filed our
17 summary judgment motion on the statute of
18 limitations issue. You may recall we discussed that
19 we believe there were multiple grounds for summary
20 judgment, but they're separate grounds and it made
21 sense to separate those issues.

22 This record relies mainly on the testimony
23 in this instant malpractice case; whereas, some of
24 the other grounds are more geared toward the

1 underlying case.

2 THE COURT: All right.

3 MR. FLYNN: Number one, whether there could have
4 even been liability on the part of the property
5 owners; and secondly, I believe, which dovetails
6 with that, would be the attorney judgment --
7 attorney immunity doctrine, essentially.

8 So those (indiscernible) all relied on
9 facts regarding the accident itself that would have
10 taken, you know, additional five to ten pages of
11 facts that are -- So we'd like to do that
12 separately. In fact, we might wait until if and
13 when expert discovery is completed, but -- I'm going
14 to have some more thoughts, but I think we have
15 plenty to chew on now.

16 As far as the Exhibit 12 from the Hans Mast
17 deposition, I have forwarded a copy of that to
18 counsel. I don't frankly understand what the issue
19 is. I was there for the deposition. Perhaps, at
20 some point, if some motion could clarify what the
21 problem is, but I just don't understand it, and
22 hopefully won't delay the issue -- delay the summary
23 judgment briefing.

24 THE COURT: I don't have any reason to believe

1 it does, but if plaintiff wants to bring that to my
2 attention, I'll listen.

3 MR. TALARICO: Judge, if I might, as to
4 Exhibit 12 in the deposition, I've already drafted
5 the first part of a motion to exclude the
6 deposition, and it's based on Supreme Court Rule
7 206(h)(2). This is not before the Court yet, but
8 I'm giving you some idea of where I'm going.

9 THE COURT: All right.

10 MR. TALARICO: 206(h)(2), and orders of the
11 Supreme Court MR30370 and MR303 -- twice amended.
12 It was amended. So two orders, plus the fact that
13 the exhibit, in any form, was not at the deposition
14 and not shown.

15 THE COURT: Mr. Flynn, for you, is the exhibit
16 and/or deposition relevant to your motion?

17 MR. FLYNN: It is. This is the deposition of my
18 client, Hans Mast.

19 THE COURT: All right.

20 MR. FLYNN: The attorney that handled the
21 underlying case for the Popovich firm. I don't know
22 that Exhibit 12, in particular, has any bearing on
23 the motion. The deposition, overall, does and it
24 will also effect the future motion for summary

1 judgment if that ever becomes necessary.

2 THE COURT: All right. Until I see the motion,
3 both motions, I can't really determine to what
4 extent one is going to impact the other. So I'll
5 wait and see and I'll -- Because summary judgment
6 isn't in the file yet, and --

7 MR. TALARICO: I haven't got notice either.

8 THE COURT: Okay.

9 MR. FLYNN: Counsel, my secretary sent a drop
10 box link to your e-mail address yesterday. So
11 you're aware of it.

12 MR. TALARICO: I'm aware of it. I didn't know
13 you noticed -- I haven't gotten notice that you put
14 it on today's call because I got it yesterday, and
15 all I got was the document. I don't deny that,
16 Mr. Flynn, of course I did. All I'm saying is it
17 wasn't put on the Judge's call, and I didn't know
18 that. So --

19 THE COURT: I'm going to put, on my motion --
20 because here's what I want to do. Your compliance
21 date on the subpoena, the second one -- I think you
22 said October 6th?

23 MR. TALARICO: October 6th, yes.

24 THE COURT: So why don't we come back on the 7th

1 for status of compliance and status on the motion
2 for summary judgment, at which time we'll also,
3 perhaps, address the motion you intend to file.
4 Then I'll have an opportunity to look at them and
5 maybe we'll have compliance by that date. But
6 they're -- They've got to do something. They can't
7 just say, No, we're excused. They've got to come to
8 court and say, We're protected by attorney-client
9 privilege, so this is all the compliance we need to
10 give. They don't get to call those shots.

11 That being said, let's put it on the call
12 for 9:30. Let's say 9:45, sorry, on the 7th.

13 Who wants to send me the order?

14 MR. FLYNN: Well, Judge, I'm happy to send it.
15 Will a briefing schedule be entered today or not
16 until --

17 THE COURT: He doesn't have the motion. It's
18 not noticed up today. I was reluctant -- I can do
19 it, if you're agreeable, but I was (indiscernible)
20 Mr. Talarico's comments that he would be objecting.

21 Mr. Talarico, what do you want to do?

22 MR. TALARICO: I would object because, your
23 Honor, first, it's not on the call, and second, I
24 want to see what's going to happen with the

1 compliance, if there's going to be compliance.
2 Because then my motion to strike the deposition,
3 which is part of his summary judgment motion, would
4 be -- have to be --

5 THE COURT: I'll take a look at it. I'm not
6 going to enter a briefing schedule. I want to take
7 a look at both motions to determine if we can
8 proceed with the summary judgment or if I've got to
9 resolve the motion to strike first.

10 MR. TALARICO: Okay. Thank you, Judge.

11 MR. FLYNN: So the compliance date of the
12 subpoena was October 6th? I just -- I hate to delay
13 this any further. If there's going to be a motion,
14 I would like to see it on file. Fact discovery has
15 been closed for some time.

16 THE COURT: Yeah. You mean the motion to strike
17 the deposition?

18 MR. FLYNN: Right. Right now it's just a
19 thought. There's no motion on file. The fact
20 discovery has been closed --

21 THE COURT: I got the idea it was about to be
22 filed, but maybe that was an incorrect assumption.

23 Mr. Talarico?

24 MR. TALARICO: I'm sorry?

1 THE COURT: When will you file your motion?

2 MR. TALARICO: When? If I could have a week
3 after the 6th when I know -- I'll file my motion
4 within a week after --

5 THE COURT: You're filing a motion to strike the
6 deposition, and I -- I didn't know that was
7 dependent on compliance. How is it dependent on
8 compliance?

9 MR. TALARICO: That's the -- I don't know what
10 information I'm going to get from them regarding the
11 deposition.

12 THE COURT: Okay. How about we come back
13 October 14th? That gives you enough time. Then
14 your motion will be on file by that day and we can
15 deal with everything.

16 MR. TALARICO: Fine with me, your Honor.

17 THE COURT: You know what? I've got to do it on
18 the 13th. I can't do it on the 14th.

19 Can you make it the 13th at 10:00 o'clock?

20 MR. TALARICO: I can, Judge.

21 MR. FLYNN: I'm available. Again, Judge, I've
22 forwarded the exhibits to counsel's attention. I
23 was there at my client's deposition. It was taken
24 by Zoom. The exhibits were scanned electronically.

1 I just don't see what the issue is. It seems as if
2 it's a another dilatory tactic to avoid --

3 MR. TALARICO: I don't do dilatory --

4 THE COURT: Hold on. I can't rule on the motion
5 until I see it. I can't rule -- I can't determine
6 whether or not the issues raised about the
7 deposition are even relevant to your motion -- to
8 the motion for summary judgment until I see it
9 because I do have questions, and I want to resolve
10 those on my own.

11 I don't want any unnecessary delay, either,
12 and that's why I'm trying to give this a short date
13 after the compliance date. I do want to move this
14 along, and the Supreme Court tells me it should have
15 been resolved two years ago, but they don't have to
16 deal with the actual case. Not this one in
17 particular, but all cases should be resolved at
18 three.

19 That being said, is there anything else we
20 need to address today?

21 MR. TALARICO: No, Judge. The only thing I want
22 to say is happy almost fall to everybody.

23 THE COURT: So we'll see you at 10:00 o'clock on
24 October 13th.

1 MR. TALARICO: Thank you, Judge.

2 THE COURT: And, Mr. Flynn, if you could send in
3 the order?

4 MR. FLYNN: Judge, just to be clear, it's
5 10:00 o'clock?

6 THE COURT: Yeah.

7 MR. FLYNN: Okay. 10:00 o'clock on 10/13.
8 Okay.

9 THE COURT: All right. We'll see you then.

10 (Which were all the proceedings
11 had in the above-entitled cause
12 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, KATHLEEN STROMBACH, an official
6 Court Reporter for the Circuit Court of McHenry
7 County, Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
14

15 *Kathleen Strombach*
16 Kathleen Strombach
17 Official Court Reporter
18 License No. 084-003755
19
20
21
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24

STATE OF ILLINOIS)
)
COUNTY OF MCHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

-vs-

HANS MAST, ET AL.,

)
)
)
)
) Case No. 17 LA 377
)
)

ELECTRONICALLY RECORDED Report OF Proceedings in
the above-entitled cause before the Honorable Thomas A.
Meyer, Judge of said Court of McHenry County, Illinois, on
the 13th day of October 2022, in the McHenry County
Government Center, Woodstock, Illinois.

APPEARANCES ON ZOOM:

LAW OFFICE OF ALPHONSE A. TALARICO, by

MR. ALPHONSE A. TALARICO, Attorney

on behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK & DUNNE, by

MR. GEORGE FLYNN, Attorney

on behalf of the Defendant.

1 THE COURT: Dulberg versus Mast. Plaintiff's
2 counsel, if you can identify yourself. You're on mute.

3 MR. TALARICO: Good morning. My name is Alphonse
4 Talarico for the plaintiff Paul Dalberg.

5 THE COURT: Okay. Defendant?

6 MR. FLYNN: Morning, Your Honor. George Flynn on
7 behalf of the defendant Popovich and Mast. Good morning,
8 counsel.

9 THE COURT: Okay. Mr. Talarico, it's come to my
10 attention we have reason to believe that Mr. Dulberg is
11 recording these hearings and I think that's very likely.
12 So you might want to talk to your client about that because
13 I will hold him in contempt of court for doing that and I
14 will refer that for criminal prosecution, if need be. So
15 you might want to talk to him about it.

16 MR. TALARICO: Yes, Your Honor, I will.

17 THE COURT: I'm not going to make you have that
18 conversation here on the record, but it's not going to
19 happen again. And the source of that information is Mr.
20 Dulberg himself, in case you're curious. He has had
21 discussions with our court reporters and he has challenged
22 aspects of the transcript, and the only reasonable way that
23 a person could challenge a transcript would be by having a
24 separate recording, some of the nature of his challenges.

1 So he exposed himself on that issue. It's not going to
2 happen anymore. And if I find out it is, we will pursue
3 it. All right. Let's move on. Let's go back to your
4 motion.

5 MR. FLYNN: Judge, can I address that issue very
6 briefly?

7 THE COURT: Yes.

8 MR. FLYNN: Whatever these communications were
9 with the court staff or circuit clerk personnel are ex
10 parte, I don't know if --

11 THE COURT: He is contacting the court reporter's
12 office. He orders the transcripts. And when they produce
13 the transcripts, apparently he is challenging the language
14 in the transcripts, and there's only one way to do that.
15 There's only one way an individual would be able to have
16 information that would contradict the recordings -- and I'm
17 pointing at the microphones -- the recordings is by having
18 one of his own, so I suspect he's recording these.

19 MR. FLYNN: Okay.

20 THE COURT: And I think the information I have is
21 probably reliable. I'm not going to ask him to respond,
22 but I'm bringing this to the attention of his attorney.
23 It's not going to happen anymore.

24 MR. FLYNN: Very well.

1 THE COURT: And, of course, I could issue a
2 subpoena. I could order -- not issue a subpoena, but I
3 could order production of all those recordings because that
4 may be something that Mr. Flynn wants. I don't know. But
5 in any event, I will move on. With respect to your motion,
6 Mr. Talarico, tell me what's going on.

7 MR. TALARICO: Well, Your Honor, last time we
8 were up you allowed me to subpoena, the record subpoenas,
9 on two of Mr. Dulberg's former attorneys, Julia C. Williams
10 and I think his name is Edward X. Clinton. I have had
11 communications with them, and they have filed documents
12 which I have -- which is part of the clerk's file. I had
13 it filed so that the Court could see what they responded to
14 or how they responded.

15 But my position is very clear. My position is
16 they are not in compliance for a variety of reasons I state
17 within the motion. Starting off with Mr. Clinton hasn't
18 filed a response or an affidavit of compliance.

19 Secondarily, Miss Williams has attempted to amend my
20 affidavit of compliance without asking me or asking the
21 Court's permission to do that. She has changed the wording
22 of the affidavit of compliance. Third of all, she's trying
23 to -- she's attempting to file on behalf of herself and --

24 THE COURT: What's the date of this filing?

1 MR. TALARICO: I don't have it in front of me,
2 Judge, but it was fairly recent. I can't -- I must say I
3 can't go back to the Court's file right now because
4 something new has happened electronically in the last
5 couple of days and I can't get back there.

6 THE COURT: Yeah, we're having issues. I only
7 just got back in 20 minutes ago.

8 MR. TALARICO: So I really can't pull that out
9 right now.

10 THE COURT: In any event, what would you like to
11 do? Because I'm able to pull up the compliance document.

12 MR. TALARICO: Okay. In the compliance document,
13 Your Honor, they have general objections of attorney/client
14 privilege and work product. Without presenting that to
15 you, I have no idea what those documents are. And so I
16 believe they have to bring those to you before they can
17 withhold them from me.

18 THE COURT: Well, I'll just order -- I will order
19 them to produce all such documents being withheld under
20 claims of privilege or work product to me for an in camera
21 inspection.

22 MR. TALARICO: Okay. That's just to clarify, Your
23 Honor, to make it easy on them because in conversation
24 they're talking about a blanket waiver and I believe

1 Illinois Rules of Evidence 502 allows Mr. Dulberg to do a
2 limited waiver and that's what we -- we just want you to,
3 if you would so kindly, include that in the order saying
4 the waiver is relative to --

5 THE COURT: A waiver of what?

6 MR. TALARICO: Of any information sought in their
7 subpoena that is in response to the issue, the subject of
8 the subpoena.

9 THE COURT: So you would waive the
10 attorney/client privilege to the extent that it affects any
11 of the documents to be produced?

12 MR. TALARICO: Correct.

13 THE COURT: Okay. And certainly that doesn't
14 address work product, but I guess I'm confused by that
15 assertion by them. In any event, Mr. Flynn, any comments?

16 MR. FLYNN: Well, Judge, there were a couple of
17 filings or at least motions that had been forwarded to me
18 that I guess should be discussed. So as you know, we filed
19 a summary judgment motion on September 15th. I'm going to
20 ask -- continue to ask that a briefing schedule be set on
21 that. Late last night or late yesterday afternoon I
22 received a motion. It's a long title, but it's a motion to
23 exclude Hans Mast's deposition. Hans Mast is my client.
24 He was deposed by the plaintiff in this case at the

1 beginning of the Pandemic remotely.

2 THE COURT: I haven't seen that. I haven't seen
3 the motion, the motion to exclude, and I'm looking through
4 the court file right now.

5 MR. FLYNN: This was suggested, I guess, by
6 counsel during our last hearing. We discussed the timing
7 of any such motion, again, in view of my summary judgment
8 and request for a briefing schedule.

9 THE COURT: And I take that back. You're right.
10 It was a very long title. I was reading this as a motion
11 to compel, but I see the reference to barring Hans Mast in
12 there as well.

13 MR. FLYNN: Well, there's a confusion, though,
14 there's some confusion because the motion to exclude is
15 contained in the title, two different versions that I
16 received. So one of the motions is directed to the
17 Williams and Clinton firms as a motion to compel. I think
18 it should probably be couched as a petition for rule to
19 show cause because they're third parties at this point.
20 But be that as it may, the second motion that I received
21 late yesterday afternoon was directed at excluding Mast's
22 deposition.

23 THE COURT: Okay. I'm going to let Mr. Talarico
24 explain that to me. On what basis?

1 MR. FLYNN: Okay. Last thing when we were before
2 you, Judge, the indication was that -- a discussion was
3 that Hans -- I would be bringing a motion to exclude the
4 discovery deposition of Hans Mast after I got the replies
5 from Julia Williams and Edward Clinton. The replies I
6 received were non-compliant and, therefore, what I'm asking
7 in addition is that when I do get compliance, I can amend
8 my motion. The motion was served yesterday. It was
9 supposed to be last Thursday, Judge. There was electronic
10 problems with the court's filing system, so it just got
11 submitted yesterday. The one that was served -- I mean
12 submitted on Thursday didn't get accepted until Tuesday of
13 this week, so I didn't --

14 THE COURT: Well, for my purposes, on what basis
15 would I be able to bar Hans Mast's deposition? And correct
16 me if I'm wrong, because I'm relying on memory, the
17 deponents you're seeking records from are your client's
18 former attorneys, aren't they?

19 MR. TALARICO: They are.

20 THE COURT: Okay. So I guess there's a
21 disconnect and maybe I'm missing something. How would I
22 sanction Hans Mast for something your client's attorneys
23 did or allegedly did?

24 MR. TALARICO: The deposition was -- what's it

1 called -- a remote deposition violated the Supreme Court
2 rules and Supreme Court orders. At the time I explained it
3 and spell it out in detail. And it's not just Julia
4 Williams, but Mr. Flynn's electronic equipment stopped
5 working, and I have quotes from him in the deposition. The
6 entire deposition should be wiped out because it's
7 non-compliant. The exhibits, they don't know what numbers
8 they're looking at. They're missing exhibits. It never
9 got concluded.

10 We started with Exhibit 12. Exhibit 12 was never
11 part of the deposition. It was served, I believe, 12 days
12 later after the conclusion. I have to have all this put
13 out. If you read the deposition, Judge, and I cite all of
14 these questions and answers in what's being filed, there
15 has been a total disconnect. They kept saying I can't see
16 that, what's the exhibit, my internet is down. It's not
17 just one. It's through the entire deposition. And, Judge,
18 I would stand on the motion I filed when you see it. I'm
19 quoting them.

20 THE COURT: Is this -- Let me -- Hang on. Mr.
21 Flynn, I don't recall, but is your motion based on anything
22 Hans Mast says from the dep?

23 MR. FLYNN: Well, if I may, Judge, the motion is
24 based on Hans Mast's deposition. I attached it. It's not

1 a reliance on the pages where he was questioned about
2 Exhibit 12.

3 THE COURT: All right.

4 MR. FLYNN: So if I can back up a little bit and
5 explain our position on this. I understand the Court
6 hasn't read the motion to exclude, but I would like to
7 raise some points that hopefully the Court will find
8 relevant when it does read the motion. So Mast was deposed
9 in 2020. Plaintiff's counsels realized -- The deposition
10 was noticed by the plaintiff, perpetuated by the plaintiff,
11 taken by the plaintiff.

12 THE COURT: I realize that, but let's go back to
13 my question because I'm not going -- I haven't read the
14 motion, so I'm not going to rule on the motion I haven't
15 read. But I am trying to get some background. And the
16 purpose of my question about your motion for summary
17 judgment is I wondered is this even a necessary issue
18 before we proceed on your motion. If you're not relying on
19 Hans Mast's deposition, then I think I can defer it until
20 some later date.

21 MR. FLYNN: I'm getting there. I'm sorry. It's
22 taken me a minute, but I just thought it would be important
23 to provide his background, Judge. The answer is no, I
24 don't think it's dependent and the summary judgment

1 briefing should not be held up.

2 But to continue on, Paul Dulberg appeared by Zoom
3 during this remote deposition. By the way, it's not my
4 equipment. It was my client Hans Mast's equipment at his
5 law office at I believe it's called the Compton law firm.
6 I was in his office physically and we were both attending
7 by Zoom that day. You know, as I sit here, I don't know if
8 I had a separate laptop that I brought and I know Hans was
9 using his iPhone for at least part of the deposition. The
10 Wifi went out once or twice. It was really not a huge
11 issue.

12 With respect to Exhibit 12, Mast was questioned
13 about that at pages 49 through 53 of his deposition. It's
14 very general questioning about some case law that was
15 contained in his file relative to the underlying case and
16 the liability of the property orders. That is a motion
17 that we plan to bring, if necessary, a motion at a later
18 date demonstrating that the property owners could never
19 have been found liable and, furthermore, that the attorney
20 judgmental immunity, also known as the attorney judgment
21 rule, bars this claim. The current pending motion for
22 summary motion is based on the statute of limitations.
23 It's my position that that testimony at pages 49 through
24 53, relative to Exhibit 12 have nothing to do and no

1 bearing on the pending motion for summary judgment.

2 THE COURT: Okay. So I could exclude this --
3 Could I exclude this from consideration on your motion for
4 summary judgment and then we can move on to the motion?

5 MR. FLYNN: I don't think there's any need to
6 exclude it. And there are a few other points, Judge. The
7 parties waived any objection to the (indiscernible) to
8 enter.

9 THE COURT: I recognize that, but I'm reluctant
10 to rule until I actually see the motion. But what I'm
11 looking for, a separate path here, is if you're able to
12 tell me yeah, you can exclude reliance on Hans Mast's
13 deposition and we'll stand on our motion otherwise, then
14 this dispute over Exhibit 12 and his deposition is no
15 longer an obstacle to our proceeding on the motion, your
16 motion.

17 MR. FLYNN: I don't see why the defendants really
18 should have to concede or waive anything. The plaintiff is
19 not explaining why it is --

20 THE COURT: I'm just asking you. If you --

21 MR. FLYNN: Right, right. I understand. The
22 path of at least resistance sometimes is the way to go, but
23 I just don't see it here. Plaintiff hasn't identified any
24 reason why the deposition should be excluded relative to

1 this motion, anyway.

2 THE COURT: I'm not ruling that. But if you were
3 going to tell me it makes no difference, I'll concede the
4 point for purposes of my motion for summary judgment, then
5 we -- And I think that it's fine.

6 MR. FLYNN: I think that that portion that he's
7 relying on relative to this exhibit which was part of the
8 deposition and was shared on the screen, although there
9 apparently was some confusion again on the plaintiff's side
10 when his lawyer transmitted it to the court reporter. So
11 none of these disputes and issues --

12 THE COURT: You're arguing the merits of a motion
13 I haven't read yet.

14 MR. FLYNN: Okay.

15 THE COURT: It's not in the court file.

16 MR. FLYNN: Judge, I think that generally the
17 deposition, although it's not heavily relied on, it is part
18 of the motion and I don't think we can exclude it. The
19 plaintiff hasn't explained why it does have a bearing on
20 these issues.

21 THE COURT: I don't know, and I've got to wait
22 and I've got to read the motion, and hopefully the motion
23 will explain to me why it is relevant and necessary for me
24 to address this. That being said, we will enter or grant

1 the request of the plaintiff to compel production of those
2 documents to be produced to the Court for an in camera
3 inspection.

4 Did you want to include the waiver in the order
5 that the plaintiff explicitly waives any claim of
6 attorney/client privilege with respect to such documents?

7 MR. TALARICO: Absolutely, Judge.

8 THE COURT: Then we'll put that in the order.
9 That means one of you gets to draft it. How long do you
10 think it's going to take them to produce the records? I
11 know it's not you, but --

12 MR. TALARICO: They've been resistant all along,
13 Judge. It started in August when we first started.

14 THE COURT: Well, I'm entering an order
15 compelling that they give them to me.

16 MR. TALARICO: Correct.

17 THE COURT: The issue is whether or not -- And
18 I'm not -- I haven't looked at it for this purpose, whether
19 or not the Court has jurisdiction over them, but I will
20 happily hold them in contempt, assuming we've got all our
21 T's crossed and I's dotted to do so because I just want the
22 record.

23 MR. TALARICO: I don't think it would take them
24 long. They must have them.

1 THE COURT: So if I were to put this out two
2 weeks, do you think that is something that can be done?

3 MR. TALARICO: I really don't know, Judge, but I
4 can guess yes.

5 THE COURT: I mean it doesn't sound like we're
6 talking about a lot of documents. Do you have a guess from
7 what they've said?

8 MR. TALARICO: No, Judge, because there's a
9 couple of things that appeared, like Julia Williams has
10 used another name in some of her communications regarding
11 this matter. She used the name Floyd as her email name.
12 So I really don't know if there's Julia Williams Floyd
13 documents. It's in her emails, but we're requesting that
14 communication --

15 THE COURT: I'm going to grant your motion for a
16 rule to show cause.

17 MR. TALARICO: Okay.

18 THE COURT: And I'm going to ask that you -- I'm
19 worried about the notice issue. So I'm going to order that
20 they produce these documents for an in camera inspection or
21 in the alternative that they appear, this is a fake rule to
22 show, I guess, or that they appear in court to explain why
23 they haven't complied with the subpoena. Because I don't
24 think you've noticed up a rule to show cause, but on my

1 motion I'm going to ask that they come in and explain to me
2 what the problems are if they don't send me for in camera
3 inspection, these documents.

4 Mr. Flynn, is there a hole in my thinking?

5 MR. FLYNN: I don't think so. I'm just concerned
6 about the summary judgment. I -- At least issues and
7 disputes between the plaintiff and his various attorneys
8 that we've been ensnared in, I'd rather just stay out of
9 it, but --

10 THE COURT: Well, as a third party to this
11 discussion, I was wondering if -- Because we're not
12 formally doing it the right way, I think in a perfect world
13 plaintiff issues a petition for rule to show cause and
14 let's just leave it that way. Issue -- Have the order
15 reflect that I'm ordering them to comply and submit the
16 records for in camera inspection. And that you are
17 explicitly waiving any attorney/client privilege with
18 respect to any documents that are produced to me for in
19 camera inspection. And I'm granting you leave to file a
20 petition for a rule to show cause against them, and then
21 we'll have that noticed for the date we return. And I
22 think I'm playing a little too fast and loose and we'll do
23 it in the right order. If they don't show up or don't
24 comply, I'll issue the rule and we'll see what happens.

1 So when can you come back? I'm thinking two
2 weeks is going to put us to October 27th. Any day after
3 that is fine by me. You know what, I'm going to put you
4 over to Thursday, November 3rd at 9:15. There is a chance
5 the trial that is scheduled to start next week will still
6 be going, in which case I might not be available, but I'll
7 try and work that out.

8 MR. FLYNN: Judge, I have a 9:00 o'clock in
9 Joliet that day. Well, it's probably going to be attended
10 by Zoom. I know that particular judge, usually he's not on
11 the bench until about 9:15 or 9:20.

12 THE COURT: Let's go Friday, the 4th. Does that
13 work?

14 MR. FLYNN: If it's early, yes.

15 THE COURT: At 9:15, does that give you enough
16 time?

17 MR. FLYNN: Yes. Back to the pending summary
18 judgment motion again because the motion to exclude
19 technically I don't think has even been noticed for
20 hearing.

21 THE COURT: No.

22 MR. FLYNN: Although we did discuss it today.
23 The motion does not provide a basis or a reason to exclude
24 it relative to the summary judgment motion.

1 THE COURT: I'm sorry. To exclude Hans Mast's
2 deposition?

3 MR. FLYNN: Exclude Hans Mast's deposition
4 relative to the summary judgment. So I mean I would just
5 ask a schedule be entered; and if they want to attack it,
6 they need to notice up the motion and explain why.

7 THE COURT: I have an October 6th filing that
8 I -- based on what has been said, I don't think it's the
9 same document. Mr. Talarico, is there a subsequent motion?

10 MR. TALARICO: There was one filed yesterday,
11 Judge.

12 THE COURT: So yeah, I'll enter a briefing
13 schedule over objection.

14 MR. TALARICO: Yes, Judge, I object. I don't see
15 why -- if this is a key document, first Mr. Flynn said he
16 would let it go, last time he said it's important, now he
17 changes. You've ruled and now he just talked you into
18 changing again.

19 THE COURT: I'm sorry. What did I rule on?

20 MR. TALARICO: He told us everything that you
21 wanted in the order.

22 THE COURT: I'm sorry?

23 MR. TALARICO: I'm sorry.

24 MR. FLYNN: It's relative to the motion to compel

1 on petition for rule.

2 THE COURT: I'm letting you do that. And I'm
3 going to assume compliance with the subpoena by the time we
4 return and my intention is to factor in that delay in the
5 time that you're given to respond to the motion. And if
6 something arises, then certainly you've got time to file a
7 motion and we can address it. But I'm going to assume that
8 by the time we return on November 4th, you're in possession
9 of these documents. And if there's another issue, then
10 it's going to be incumbent on you to bring it to my
11 attention.

12 MR. TALARICO: And, Judge, just -- Okay. I think
13 enough has been said on this matter.

14 THE COURT: All right. We'll, as far as -- So
15 let's assume you've got all the documents in your hands on
16 or about November 4th, Mr. Talarico. How long after that
17 do you need to respond?

18 MR. TALARICO: Mr. Flynn's motion is quite
19 extensive. I think it's over 400 pages. No, more than
20 that, maybe 600 pages. I'm just estimating. I'm guessing.
21 So Mr. Flynn, please, correct me if I'm wrong, but I would
22 think at least 60, if not 90 days. There's a lot of -- a
23 lot of -- I think the first filing was 464 pages.

24 THE COURT: And 118.

1 MR. FLYNN: The motion itself, memorandum is
2 combined, it's 15 pages or less. So the remainder of the
3 pages are exhibits which have been well-known to all the
4 parties for many years in this case.

5 THE COURT: I agree, but here's an additional
6 complicating factor. Let's assume, just for sake of
7 argument, I give him the standard 28 days. How long would
8 you need to reply?

9 MR. FLYNN: 28 days from -- So another
10 complication, I'm having a total knee replacement on
11 November 17th, so that's why.

12 THE COURT: I'll explain my smile in a moment.

13 MR. FLYNN: Okay.

14 THE COURT: I'm getting a hip in January. So
15 that's why -- So based on your old man surgery and my old
16 man surgery, I think we're going to have to look at a date
17 after I return for the hearing simply because we'd be
18 cutting it close. I anticipate the earliest date
19 post-surgery, post-anticipated surgery that I think I can
20 give you is February 1st.

21 MR. FLYNN: Okay. Again, the motion has already
22 been on file for nearly a month, so --

23 THE COURT: It is, but unfortunately, you're
24 stuck with my schedule and yours, so I can blame you. How

1 long are you going to be out, out of curiosity?

2 MR. FLYNN: This doctor claims it's a fairly
3 non-evasive surgery. I mean I may be working within seven
4 days, but realistically I'm going to plan for about three
5 weeks.

6 THE COURT: Okay. I was curious about that. I
7 know they've had tremendous advances in the surgery, but
8 still.

9 MR. FLYNN: They have. I'm actually doing it
10 over Thanksgiving holiday, the week before to try to use
11 those long weekends to recover, so I hope to be back in the
12 saddle right after Thanksgiving, but you never know.

13 THE COURT: Yeah, you do never know. February
14 1st.

15 MR. FLYNN: February 1st hearing, sure.

16 THE COURT: Yeah, and that will be at 10:00
17 o'clock. All right. And all I ask, then, let's work
18 backwards from that date. If let's say that can you --
19 Let's say the final brief is due -- the reply is due
20 January 19th, that's a Thursday. How long would you need
21 for your reply because you've also got the Christmas
22 holidays?

23 MR. FLYNN: If I could have 21 days from the date
24 it's served, I mean that should be sufficient.

1 THE COURT: So if we go the 19th, then 21 days
2 back appears to be December 29th. And so Mr. Talarico, can
3 you finish your brief by the 29th? We'll say the 28th.

4 MR. TALARICO: Yes, Your Honor.

5 THE COURT: Okay. So we have the motion on
6 schedule and I will await any motions that are filed. I
7 look forward to the petition for rule to show cause; and
8 when the other motion shows up, I'll take a look at that as
9 well.

10 MR. FLYNN: Judge, did you say 12-28 for the
11 response to the summary judgment?

12 THE COURT: Yeah.

13 MR. FLYNN: Okay. Last thing, now that I've been
14 given a few minutes to think about this, I would ask that
15 any recording of any court hearing in this case be made
16 part of the court file. I'm sure Mr. Dulberg would expect
17 nothing less if it were done on the other side, so that's
18 my request.

19 THE COURT: I'm going to ask you to put that in
20 writing.

21 MR. FLYNN: Okay.

22 THE COURT: And we'll address that further when
23 we return. All right.

24 MR. FLYNN: Thank you, Your Honor.

1 THE COURT: Okay. Is there anything else? Who
2 is going to send me the order? Mr. Flynn, can you send the
3 order?

4 MR. FLYNN: I'll do my best to capture everything
5 and I'll send it to Mr. Talarico for review first.

6 THE COURT: Fine. All right. Thank you and I
7 will sign the order when I see it.

8 MR. FLYNN: Okay. Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. TALARICO: Thank you, Judge, thank you from
11 the plaintiff.

12 MR. FLYNN: Thank you.

13 (Which were all the proceedings had)

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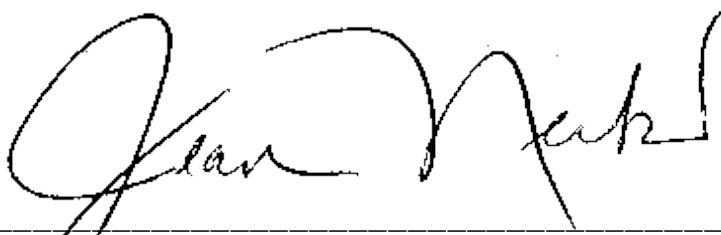
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STATE OF ILLINOIS)
) SS:
COUNTY OF MCHENRY)

I, JEAN NERBO, an Official Court Reporter for the
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Certified Shorthand Reporter

License No. 084-003622

Date: October 26, 2022

STATE OF ILLINOIS }
COUNTY OF McHENRY }

IN THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No. 17 LA 377

THE LAW OFFICES OF THOMAS
POPOVICH, et al.,

Defendants.

ELECTRONICALLY RECORDED REPORT OF
PROCEEDINGS had in the above-entitled cause before
the Honorable THOMAS A. MEYER, Judge of said Court
of McHenry County, Illinois, on the 4th day of
November, 2022, at the McHenry County Government
Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO (via Zoom),

On behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

ALSO PRESENT:

MR. EDWARD CLINTON (via Zoom)
MS. JULIA C. WILLIAMS (via Zoom)

1 THE COURT: All right. If everybody could
2 identify themselves, starting with plaintiff's
3 counsel, then defendant.

4 MR. TALARICO: Good morning, your Honor. Good
5 morning, Counsel. I am Alphonse Talarico for the
6 plaintiff, Paul Dulberg.

7 THE COURT: Okay. Defense.

8 MR. FLYNN: Good morning, your Honor. George
9 Flynn on behalf of the defendants, the Popovich firm
10 and Hans Mast.

11 THE COURT: Okay. Mr. Clinton.

12 MR. CLINTON: Good morning, your Honor.
13 Ed Clinton, former counsel to Mr. Dulberg.

14 THE COURT: All right. And --

15 MS. WILLIAMS: Good morning, your Honor.
16 Julia -- Julia Williams on behalf of -- former
17 counsel to Mr. Dulberg.

18 THE COURT: Okay. And for the record, we have
19 Mr. Dulberg on screen.

20 In any event, plaintiff's counsel, where do
21 you want to start?

22 MR. TALARICO: Judge, I would guess that
23 Mr. Clinton and Ms. Williams' motion to vacate would
24 be the beginning. I filed a rule pursuant to

1 your last -- the transcript -- your last order said
2 if there's something else that comes up.

3 I did file a rule after I read their motion
4 to vacate. Historically, or chronologically, I
5 think maybe that's the starting point.

6 (Indiscernible) you held them in contempt and --

7 THE COURT: I did?

8 MR. TALARICO: -- here we are. You did.

9 THE COURT: When did I hold them in contempt?
10 I'm looking at --

11 MR. TALARICO: I think so. The last order.

12 THE COURT: Okay. I'm looking at October 17th.
13 He must appear. Yeah, I don't see an explicit
14 finding of contempt, at least in the October 17th
15 order. Was --

16 MR. TALARICO: I thought -- with all due
17 respect, Judge, if I can find the order, I think the
18 first sentence says you grant my motion.

19 THE COURT: Plaintiff's motion to compel is
20 granted as --

21 MR. TALARICO: Oh, I'm sorry. Compel. Forgive
22 me.

23 THE COURT: All right.

24 MR. TALARICO: My mistake.

1 THE COURT: In any event, I read the motion to
2 vacate and I -- are you -- and this is directed at
3 Mr. Clinton -- are you concerned about the order to
4 produce, or something else?

5 MS. WILLIAMS: Would you like me to --

6 MR. CLINTON: Yeah, go ahead.

7 MS. WILLIAMS: Your Honor, we're not concerned
8 about producing. We're -- Mr. Dulberg is entitled
9 to these documents, even without a subpoena.

10 THE COURT: Yeah.

11 MS. WILLIAMS: So the production is not our
12 concern. It's the portion of the order that
13 insinuates that we weren't try -- not complying with
14 the subpoena when we were rightfully doing so.

15 So we are (indiscernible) --

16 THE COURT: Thank you.

17 MS. WILLIAMS: So that's what we're concerned
18 about.

19 THE COURT: All right. I'll vacate that
20 because -- yeah, I don't see that as critical.

21 So to the extent that you're concerned, any
22 suggestion in the order of October 17th suggesting
23 or implying that you had failed to cooperate, I will
24 vacate. I saw from your motion to vacate you were

1 contesting that issue, and I'm not going to go down
2 that path to find out who's right, ultimately,
3 because it doesn't make any difference, at least to
4 me.

5 So all I care about is the production of
6 the documents. And am I correct that -- my reading
7 of your response indicated that you've produced the
8 documents. Is that -- was that accurate?

9 MS. WILLIAMS: Yes, your Honor. So we have
10 produced nonconfidential documents to both -- at
11 this point, we've now produced to both counsels of
12 record in this case, plaintiff's counsel and
13 defendant's counsel. The only thing that has not
14 been produced to defendant's counsel is the
15 communication between our firm and Mr. Dulberg,
16 which was produced to plaintiff's counsel. And then
17 there are, I want to say, about 13 pages of e-mails
18 that were internal work product communications
19 within our office that have not been produced to
20 any -- anyone.

21 THE COURT: Um, why would you -- and here's, I
22 guess, my confusion. Why would you withhold those
23 from Mr. Dulberg? And I --

24 MS. WILLIAMS: The work product -- product

1 privilege -- I mean, we can --

2 MR. CLINTON: We can give them.

3 MS. WILLIAMS: We can give that.

4 MR. CLINTON: We're not going to give you a hard
5 time about that.

6 MS. WILLIAMS: We'll waive that and give those
7 to Mr. Dulberg.

8 THE COURT: Because I'm --

9 MS. WILLIAMS: (Indiscernible.)

10 THE COURT: -- starting from the premise, at
11 least based on the order, that Mr. Dulberg is,
12 through counsel, waiving any attorney/client
13 privilege. And, yeah, if we get into the issue --
14 my problem is if it's work product, arguably,
15 Mr. Dulberg is entitled to those documents, and if
16 he chooses to disclose them, that's up to him. But
17 I'm not -- unless there's something else I'm
18 missing, if Mr. Clinton or -- is it Ms. Williams?

19 MR. CLINTON: (Indiscernible.)

20 THE COURT: Is it Ms. Williams?

21 MS. WILLIAMS: Yes.

22 MR. CLINTON: And we'll turn them over today.

23 MS. WILLIAMS: We'll turn them over today.

24 THE COURT: Okay. Mr. Talarico.

1 MR. TALARICO: Judge, your last order included a
2 limited waiver. It's not waiver for all things.
3 It's waiver -- waiver for the responses to the
4 subpoena.

5 THE COURT: Yeah. Okay. But are you saying
6 that that should or should not include work product?
7 I don't have a problem either way, but, really, it's
8 your call.

9 MR. TALARICO: Judge, I believe work product
10 and -- and attorney/client privilege, yes. He's
11 including all of that --

12 THE COURT: All right. So --

13 MR. TALARICO: -- in response to the subpoena.

14 THE COURT: -- you want -- and I'm not trying to
15 box you in, but I just want to understand.

16 You want them to produce the entire file,
17 including their work product, and you are waiving
18 any claim of privilege related to work -- to
19 attorney/client insofar as those records are
20 concerned. Is that accurate, or did I miss
21 something?

22 MR. TALARICO: Again, your Honor, Mr. Dulberg is
23 specifically waiving the attorney/client -- client
24 privilege for documents that are in response to the

1 subpoena served upon Mr. Clinton and Ms. Williams.

2 THE COURT: Okay. And that includes work
3 product?

4 MR. TALARICO: Yes, it does.

5 THE COURT: All right. Problem -- I think,
6 problem solved.

7 Mr. Clinton or Ms. Williams, comment?

8 MR. CLINTON: We have no problem with that at
9 all.

10 MS. WILLIAMS: I think we're (indiscernible).

11 THE COURT: Okay. So how quickly can you turn
12 those over?

13 MS. WILLIAMS: We've already produced them to
14 your Honor, so we have them. So I will -- I can
15 e-mail them to both counsel --

16 THE COURT: Yeah, you did.

17 MS. WILLIAMS: -- today.

18 THE COURT: All right. I do have that.

19 MS. WILLIAMS: (Indiscernible).

20 THE COURT: But I didn't really make a point of
21 looking through them too much, so -- because I'm not
22 ruling on privilege, so it was not necessary for me
23 to see the internal workings of the file.

24 That being said, Mr. Talarico, does that

1 satisfy your concerns or interest?

2 MR. TALARICO: It does.

3 THE COURT: All right. And now -- so are you --
4 do you have any objection to my vacating any orders
5 to compel or orders of compliance against
6 Mr. Clinton and Ms. Williams?

7 MR. TALARICO: No, your Honor. That's the
8 appropriate move.

9 THE COURT: I'm going to ask that Mr. Clinton
10 and Ms. Williams send in the order memorializing
11 the -- that. If you can send it in to this
12 e-mail -- you can take --

13 MS. WILLIAMS: Yes.

14 MR. CLINTON: Thank you. We will do that.

15 MS. WILLIAMS: (Indiscernible.)

16 THE COURT: And be sure to copy Mr. Talarico and
17 Mr. Flynn, if you have both of their e-mail
18 addresses.

19 MR. CLINTON: Of course.

20 THE COURT: Do you have Mr. Flynn's?

21 MR. CLINTON: We do.

22 MS. WILLIAMS: We do.

23 THE COURT: All right. I see Mr. Flynn raising
24 his pen. Yes.

1 MR. FLYNN: (Indiscernible) next question,
2 Judge.

3 THE COURT: Yeah. What is your question?

4 MR. FLYNN: Okay. My understanding, then, is
5 that these documents that are being produced that
6 were previously withheld are being produced to all
7 parties in this case.

8 THE COURT: I'm going to shift that to
9 Mr. Talarico. Is that your understanding?

10 MR. TALARICO: That is my understanding.

11 THE COURT: Okay. Does that satisfy your
12 concerns, Mr. Clinton and Ms. Williams?

13 MR. CLINTON: Yes, your Honor.

14 MS. WILLIAMS: Yes, your Honor. If the client
15 is waiving --

16 MR. TALARICO: We waived privilege.

17 MS. WILLIAMS: -- (indiscernible) to produce
18 to -- we will produce in compliance with the
19 subpoena, and we will submit those both to
20 Mr. Talarico and Mr. Flynn at the same time.

21 THE COURT: All right. For purposes of clarity,
22 what I am understanding just transpired is that
23 plaintiff's current attorney, Mr. Talarico, has
24 waived the attorney/client privilege and any claim

1 of work product with respect to your file, and
2 further, granted you permission to issue copies of
3 that subpoena response to defense counsel,
4 Mr. Flynn, at the same time.

5 Any -- if there's anything incorrect with
6 what I said, tell me.

7 MR. TALARICO: If you're saying that I'm --
8 that Mr. Dulberg is waiving all attorney/client --

9 THE COURT: No.

10 MR. TALARICO: -- privilege -- just -- just in
11 response to the subpoena, that's all.

12 THE COURT: Exactly.

13 MR. TALARICO: Yes.

14 THE COURT: Okay. Does that cover --

15 MR. FLYNN: Thank you, Judge.

16 THE COURT: All right. So send in your order
17 and I -- I will vacate any order directed against
18 you, because we're resolved, and as soon as I see it
19 I will sign the order.

20 MS. WILLIAMS: Thank you very much, your Honor.

21 MR. CLINTON: Thank you, Judge.

22 THE COURT: Okay. And you know what? Are you
23 in our e-mail system? Did they have to sign up --

24 MS. WILLIAMS: I believe we are, your Honor,

1 because we were parties to the -- we were counsel in
2 the case, so we should be.

3 THE COURT: Yeah. Forgive me. Okay. Then no
4 problem. I'll sign it whenever it shows up.

5 MR. CLINTON: Thank you, Judge.

6 MS. WILLIAMS: Thank you very much.

7 (WHEREUPON, Mr. Clinton and
8 Ms. Williams disconnect.)

9 THE COURT: All right. Moving on.

10 Mr. Flynn, we have your motion for summary
11 judgment; am I correct?

12 MR. FLYNN: That's already been --

13 THE COURT: Yeah, I do see that.

14 MR. FLYNN: Yeah. The briefing schedules are
15 set on that. There, actually, was another motion
16 that relates to Ms. Williams and this Exhibit 12
17 from the Hans Mast deposition. I was kind of hoping
18 that she might stay on the line there.

19 THE COURT: I apologize.

20 MR. FLYNN: That's okay.

21 THE COURT: I -- you know, Mr. Talarico, can you
22 call them back? If you have their number.

23 MR. TALARICO: I don't.

24 THE COURT: Or, Mr. Flynn, if you've got their

1 number, one of you. Because, yeah, I screwed up
2 there.

3 MR. FLYNN: I'll see if I can. I think I've got
4 a number here.

5 THE COURT: All right. Thank you.

6 MR. FLYNN: Judge, I was able to reach
7 Mr. Clinton and Ms. Williams. I think they're going
8 to log back on.

9 THE COURT: All right. As soon as I see them,
10 I'll let them in.

11 MR. FLYNN: Thank you.

12 (WHEREUPON, Mr. Clinton and
13 Ms. Williams reconnect.)

14 THE COURT: There he is. All right. I
15 apologize. Mr. Flynn pointed out that I was dumb,
16 and I let you go before we resolved one other
17 question.

18 Mr. Flynn, I'll let you speak.

19 MR. FLYNN: And for the record, I did --

20 THE COURT: And for the record --

21 MR. FLYNN: -- not say that.

22 THE COURT: -- he implied.

23 So, Mr. Clinton -- Mr. Flynn, you had a
24 question for Mr. Clinton.

1 MR. FLYNN: Well, for Ms. Williams. It's not
2 necessarily a question, but I think that this next
3 motion -- there's a motion to exclude the Hans Mast
4 deposition. Ms. Williams was involved in that,
5 noticed the deposition, took the deposition, was
6 involved in the communications with the court
7 reporter.

8 So I thought that if she could and would be
9 willing to explain what happened. And, you know,
10 it's my position that there's nothing nefarious
11 about this deposition. It was taken at the
12 beginning of the pandemic when lawyers were still
13 trying to figure out how to use the Zoom deposition
14 method. All objections to that manner were waived
15 by both parties. The deposition was, again, noticed
16 by the plaintiff, Mr. Dulberg's agents. The court
17 reporter was hired by the plaintiff, his agents.

18 THE COURT: But your question for Ms. Williams
19 is?

20 MR. FLYNN: If she could explain what happened
21 with Exhibit 12. I think I know what -- and, again,
22 there's been a 213(f)(3) opinion that was just
23 disclosed a day or two ago. I think it's improper
24 because --

1 THE COURT: In this case?

2 MR. FLYNN: (Indiscernible). In this case.

3 THE COURT: Oh, I don't (indiscernible).

4 MR. FLYNN: It was a document examiner who was
5 identified by the plaintiff.

6 THE COURT: But that's a different issue, so I'm
7 going to cut you off.

8 MR. FLYNN: No, it's not a different issue.

9 THE COURT: I want to cut -- I want to cut to
10 what my one question is.

11 Ms. Williams, what can you tell us about
12 Exhibit 12?

13 MS. WILLIAMS: So -- so my understanding -- as I
14 recall, yes, it was the beginning of the pandemic.
15 We had Mr. Mast's deposition, I believe, scheduled,
16 I want to say, for March, and we canceled it because
17 it was March 2020, right when everything was -- was
18 starting, and it was canceled due to COVID concerns.
19 And -- and so we -- we opted to utilize the -- the
20 court's -- I think it was the Illinois Supreme Court
21 that came out with the rules as to -- and I could be
22 incorrect, it could be each county court, but that
23 said you could do Zoom depositions.

24 So we noticed it up for a remote

1 deposition, and we utilized a court reporter. I
2 can't remember the court reporter's name. There are
3 several e-mails about this with Mr. -- Mr. Flynn
4 that -- that have been produced pursuant to the
5 subpoena that we received. And my recollection is
6 is that we took that deposition, and there were
7 several difficulties with Mr. Mast's internet
8 connection, and so we had come on and off, but we
9 did get through the deposition.

10 Mr. Flynn had -- I had produced to
11 Mr. Flynn, prior to the deposition, all of the
12 exhibits that I believed we would use. And then I
13 also, during the deposition, uploaded them into the
14 court reporting system so that the court reporter
15 would have them and mark them.

16 As to Exhibit 12, we had uploaded it into
17 the system. I don't know that Mr. Mast could
18 actually see those, so he may have used the paper
19 copies that Mr. Flynn had.

20 And then after the deposition, the court
21 reporter notified me that Exhibit 12, specifically,
22 was -- they couldn't read it, and we needed to get
23 them a copy. I believe there's e-mails to that
24 effect, as well. If I'm recalling correctly, a

1 number of the pages were blank. It was a larger
2 exhibit. I want to say it was around 27 pages, I
3 think, or 25 pages.

4 So sometime after the deposition, we -- we
5 did provide the exhibit that was utilized in the
6 deposition to the court reporter, and at that time
7 they marked it and sent it back to everyone.

8 THE COURT: Okay. What was Exhibit 12 again?

9 MS. WILLIAMS: It was a series of cases. I
10 don't know that -- I just can't recall what all was
11 asked about it, but I know there were -- it was --
12 it was --

13 THE COURT: All right. These would have --

14 MS. WILLIAMS: -- copies of case law.

15 THE COURT: All right.

16 MR. FLYNN: They were photocopies of the old
17 books, Judge, cases that were contained in Mast's
18 file.

19 THE COURT: Okay.

20 MR. FLYNN: And he was -- you know, they
21 have -- they're, obviously, not complete because
22 they -- placed on a printer, appeared like we used
23 to do in the old days.

24 THE COURT: Yes.

1 MR. FLYNN: So the issue now, though, is that
2 the plaintiff knew --

3 THE COURT: Hang on. Before -- before we get
4 into argument, Mr. Talarico, is there anything --
5 any questions you have, since we have Ms. Williams
6 here?

7 MR. TALARICO: Yes. Was the Tilsner case
8 included in -- in the blank Exhibit 12 you sent to
9 U.S. Legal, Barbara Schmidt? And was -- when you
10 discussed with Mr. Flynn the failure of his -- or
11 Mr. Mast's internet, didn't he say, I can't see
12 these, I can only see their first one
13 (indiscernible), which was the Lagano (phonetic)
14 case? And wasn't there continued discussion by
15 Mr. Flynn that he didn't -- he didn't produce all of
16 the documents you sent on -- in hardcopy because he
17 wanted to save paper?

18 MS. WILLIAMS: So that's -- I guess that's a lot
19 of questions. So what --

20 MR. TALARICO: It is.

21 MS. WILLIAMS: What -- what -- I cannot recall
22 what cases were included and weren't included at
23 this point. There -- there was an e-mail to
24 Mr. Flynn with the exhibit that is attached that I

1 believe was produced in the subpoena.

2 So whatever that exhibit was is -- is what
3 I would have used. So I know there was, like, a
4 Laravo case or -- I remember the first case was like
5 Laravo or Lavajo, L-A-V-A-J-O, or something like
6 that.

7 But right now, off the top of my head, I
8 don't remember what other cases were included.

9 MR. TALARICO: I'm talking about -- Judge, if
10 I might, please? Excuse me. I'm sorry,
11 Ms. Williams.

12 There was -- what the reporter had was
13 blank. What Mr. Flynn's client said was, I see the
14 Lagano (phonetic) one. So the Exhibit 12 that was
15 sent, like, a week or two after the deposition had
16 Lagano, Troy, and the same exact Lagano case, and it
17 did not have the Tilsner case involved, and the
18 Tilsner case was very important. So it was an exact
19 duplication of one case and a second case.

20 But this is -- Judge, it's not just the
21 Exhibit 12. The entire deposition --

22 THE COURT: Well, are you asking a question
23 about Exhibit 12? Because if we're done asking
24 questions, I'm gonna let her go.

1 MR. TALARICO: Okay. Yep. I'm done.

2 THE COURT: Okay. Mr. Flynn, anything?

3 MR. FLYNN: Yes, Judge. So, again, this -- this
4 213(f)(3) report that was just produced --

5 THE COURT: Well, do we need the Clinton --
6 Mr. Clinton and Ms. Williams for this?

7 MR. FLYNN: Yes. I'm getting there.

8 THE COURT: Okay. Sorry.

9 MR. FLYNN: So if you can just indulge me for a
10 moment.

11 So the expert document reviewer is of the
12 opinion that the exhibit sticker on Exhibit 12 did
13 not come from the same batch as the other exhibit
14 stickers.

15 The defense's position is, so what? You
16 know, these kind of things happen, I'm sure, with
17 the court reporter, and if it was marked later
18 because it was not sent in until later, that makes
19 perfect sense.

20 But this is -- this is -- the argument
21 that's being made is that -- and there's no other
22 conclusion, it's just that it didn't come from the
23 same batch. So, again, it's the so-what position on
24 our part.

1 But because it's being used to exclude the
2 deposition, it's our position that the deposition
3 was fine -- finally concluded to the satisfaction of
4 plaintiff's counsel, that there was never any
5 indication that they needed a follow-up deposition
6 or a supplemental deposition or a Session 2.

7 So in our view, any objection to that
8 deposition has been waived. And, again, there was
9 nothing nefarious. Ms. Williams was nothing but
10 professional and courteous during her tenure in this
11 case.

12 This motion -- this conspiracy that's been
13 presented and caused the defendant to be caught in
14 the crossfire between the plaintiff and his former
15 attorney is through no fault of theirs, and should
16 not continue.

17 THE COURT: All right. Mr. Talarico, you can
18 respond.

19 MR. TALARICO: Two points, Judge. First of all,
20 what's very obvious -- the label on Exhibit 12
21 doesn't even have the deponent's name spelled right.

22 THE COURT: Okay. But what does -- what impact
23 does that have?

24 MR. TALARICO: What impact is that it was not

1 done at the same time by the same people. It was
2 never produced in time.

3 Secondarily, about Mr. Flynn's allegation
4 of some type of conspiracy, if he wants to push
5 that, I think I have evidence that, if necessary,
6 that -- that Mr. Flynn and Ms. Williams have
7 consulted at times.

8 THE COURT: I'm sorry? Have what?

9 MR. TALARICO: Consulted.

10 THE COURT: Okay. Frankly, Counsel, if you're
11 suggesting that either one of them has engaged in
12 unethical behavior, I'm sure you're aware of the
13 Himmel decision, and --

14 MR. TALARICO: I am.

15 THE COURT: -- it's not something you can
16 threaten; you have to do.

17 MR. TALARICO: And I will.

18 THE COURT: Don't make that threat and not
19 follow through with it if, in fact, there's anything
20 to it. You don't -- you don't have an option. And
21 you put a burden on me, as well, when you start
22 going down this road.

23 So you've got to make a decision, and --

24 MR. TALARICO: (Indiscernible.)

1 THE COURT: -- I'm not going to hear -- I'm not
2 going to hear suggestions of unethical behavior.

3 I mean, you're either going to pursue it or
4 we're not even going to entertain that, so
5 please continue.

6 MR. TALARICO: Well, Judge, I will -- I will not
7 pursue it if Mr. Flynn (indiscernible) --

8 THE COURT: It's not an issue. You don't get to
9 choose.

10 MR. TALARICO: I'm aware.

11 THE COURT: I'm not -- I'm not telling you that
12 you have to do one thing or the other. But the
13 Himmel decision removes discretion from the
14 equation. You have to act, if you are aware.

15 So I'm not telling you that -- that you've
16 got to file. You know what you have. But what I'm
17 saying is, if you're going to make an argument
18 suggesting that other attorneys engaged in unethical
19 behavior, I'm not going to listen to it unless
20 you're also making a -- making a complaint with the
21 ARDC.

22 So I'm not interested in attorneys casting
23 aspersions on each other and then not following
24 through, if that makes sense. Following through

1 with the ARDC.

2 That being said, what -- what is your
3 response on the -- do we have to keep Ms. Williams
4 and Mr. Clinton here? Does anybody else need them?

5 MR. TALARICO: I have no need for them.

6 MR. FLYNN: I don't. Just in closing, with
7 respect to Ms. Williams, again, I was just provided
8 these documents by Ms. Williams and/or her court
9 reporter and then passed them along. I had nothing
10 to do with -- with anything other than I did print
11 out certain of the exhibits for ease of use at the
12 deposition when I went to Hans Mast's office. And
13 because I was working from home at the time, I
14 printed a few of them out, not all of them, due to a
15 limited amount of printer paper. And that is my
16 total involvement in Exhibit 12.

17 THE COURT: Okay. Ms. Williams and Mr. Clinton,
18 do you want to stay? You can, until we resolve the
19 issue, since we're addressing you guys. What do you
20 want to do?

21 MS. WILLIAMS: Your Honor, if you wish for us to
22 stay, we're happy to stay.

23 MR. CLINTON: I think we can stay.

24 THE COURT: All right. I was giving you the

1 option to leave, if you wanted.

2 All right. So, Mr. Talarico, we're moving
3 on to your motion to -- to bar; am I correct?

4 MR. TALARICO: Yes, your Honor. Within the
5 motion, I asked to amend the motion after I get the
6 responses from Clinton and Williams. They may be
7 appropriate to put into the motion. I filed a
8 motion. The motion can be -- actually, Mr. Flynn
9 just responded to the motion without responding --
10 without responding.

11 I don't know how you want to look at it.
12 If that was his response, I'll file a reply to what
13 he said. But I still -- I have asked, from the
14 beginning, to be allowed to amend that motion once I
15 find out what Mr. Clinton and Ms. Flynn have -- I'm
16 sorry, Ms. Williams. Forgive me.

17 THE COURT: All right. Can you -- are you
18 asking me for leave to supplement your motion?

19 MR. TALARICO: Not -- Judge -- yes. If you want
20 me to make a determination now, yes.

21 THE COURT: All right. And we haven't proceeded
22 to hearing.

23 Mr. Flynn, have you filed a response to the
24 motion? I'm not seeing it.

1 MR. FLYNN: Judge, I have not. And my -- my
2 point is that there hasn't even been a prima facie
3 showing of any prejudice to the plaintiff with
4 respect to his deposition. For my client to again
5 have to file a written response to a brief of this
6 nature --

7 THE COURT: You don't really have -- I don't
8 know that -- I mean, it's up to you as to whether or
9 not you want to file a written response. I've heard
10 your argument. Plaintiff -- more importantly,
11 plaintiff's counsel has heard your argument, so
12 there's -- there's not going to be any prejudice if
13 he simply files his reply or if I allow amendment
14 and then we proceed to hearing. I don't think it's
15 that complicated an issue.

16 MR. FLYNN: I don't either.

17 THE COURT: So I don't know that we need further
18 briefing.

19 What do you want to do, Mr. Flynn, because
20 the ball will be in your court once he files his
21 amendment.

22 MR. FLYNN: I'd like to examine whatever the
23 amendment is and then, if necessary, request, I
24 guess, what will be called a surreply. However, I'm

1 doubtful that I would need to file it.

2 THE COURT: Mr. Talarico, when can you file
3 your -- your brief?

4 MR. TALARICO: Well, after I get and review the
5 response from Ms. Williams and Mr. Clinton, two
6 weeks.

7 THE COURT: Mr. Clinton, how quickly can you get
8 him the documents? I know you said it earlier.
9 You're on mute.

10 MR. CLINTON: My apology, again. We can get
11 them to him today.

12 THE COURT: Okay. So I think two weeks from
13 today, ultimately, is plenty of time. That would
14 give plaintiff until --

15 MR. TALARICO: (Indiscernible.)

16 THE COURT: -- November 18th to file his amended
17 response -- or amended motion. And then why don't
18 we -- and then I'm out.

19 So I'll give plaintiff until the 21st and
20 then we'll come back on November 28th, and then,
21 Mr. Flynn, at that point, you can tell me what you
22 want to do.

23 MR. FLYNN: Thank you, your Honor. And, again,
24 I know -- I understand this is not on the table but

1 it's a housekeeping issue with respect to this f(3)
2 opinion. This (f)3 opinion, the document examiner
3 was disclosed as a trial witness relative to this
4 Exhibit 12. I don't think that's proper --

5 THE COURT: Yeah, I -- you know --

6 MR. FLYNN: And then he called it a mini trial
7 but not trial.

8 THE COURT: The -- I -- I haven't seen the
9 report, but if the expert is going to render
10 opinions on case law, copies of case law that were
11 allegedly tendered by former counsel to Mr. Dulberg,
12 I don't see how that comes up in the trial of the
13 matter.

14 MR. FLYNN: He's really only opining on the
15 authenticity of the exhibit sticker and whether it
16 came from the same batch as the other stickers in
17 that deposition.

18 So it has nothing to do with the standard
19 of care in this case or any --

20 THE COURT: I don't know. I'll let Mr. Talarico
21 tell me otherwise. Not now, but I -- there's a
22 couple of thresholds. I don't know. I haven't seen
23 exactly what he says, and I -- I suspect we could
24 even stipulate that the sticker is different without

1 a whole lot of -- a whole lot of effort or prejudice
2 to anybody. Because based on what you've told me,
3 it likely is a different sticker because of the way
4 the documents were transferred back and forth and
5 the problem at the deposition.

6 That all being said, I'm -- I'm going to
7 be -- frankly, Mr. Talarico, I'm going to be
8 hard-pressed, but I need to see the report before I
9 can say anything further, so I'll quit speculating.

10 Anything else that we've got to deal with
11 today? No?

12 MR. TALARICO: No.

13 THE COURT: All right. Mr. Talarico or
14 Mr. Flynn, can you send in the order memorializing
15 what we're doing on your case? And then, of course,
16 Mr. Clinton and Ms. Williams will send in the order
17 that is vacating any -- any order compelling them to
18 do anything.

19 MR. FLYNN: Judge, I actually have a meeting
20 with a client in about ten minutes. If Mr. Talarico
21 wouldn't mind preparing the order this time, I'd
22 appreciate it.

23 MR. TALARICO: I will.

24 THE COURT: Okay. All right. Then we'll see

1 you on the 28th.

2 THE CLERK: What time?

3 MR. FLYNN: Thank you Mr. Clinton and
4 Ms. Williams for your time.

5 MR. TALARICO: Thank you, your Honor.

6 THE CLERK: What time on the --

7 THE COURT: You know what? Hang on. Hang on.
8 Make it 9:15, not 8:45. At 9:15.

9 MR. FLYNN: I'm sorry. On what date again?

10 THE COURT: On November 28th at 9:15.

11 MR. TALARICO: Thank you, Judge.

12 MR. FLYNN: You know, Judge, we talked last time
13 about my knee replacement. Is there any way we
14 could bump that back one more week?

15 THE COURT: Wait. Yeah, I can do it the --

16 MR. FLYNN: Although, I hope for a speedy
17 recovery. The surgery is on the 17th and --

18 THE COURT: Sure. Sure. If you want to come --
19 what's the next week? December 5th?

20 MR. FLYNN: I'm very hopeful that that will
21 work.

22 THE COURT: All right. Good luck.

23 MR. FLYNN: Thank you.

24 THE COURT: All right. December 5th at 9:15.

1 MR. TALARICO: Your Honor, what --

2 THE COURT: Yes?

3 MR. TALARICO: December 5th?

4 THE COURT: Yeah.

5 MR. TALARICO: Thank you, your Honor.

6 THE COURT: All right. Thank you.

7 Disconnecting.

8 (Which were all the proceedings
9 had in the above-entitled cause
10 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, KATHLEEN STROMBACH, an official
6 Court Reporter for the Circuit Court of McHenry
7 County, Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
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15 Kathleen Strombach
16 Kathleen Strombach
17 Official Court Reporter
18 License No. 084-003755
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 5th day of
16 December, 2022, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by
20 MR. ALPHONSE A. TALARICO, (Via Zoom)

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN (Via Zoom),

24 On behalf of the Defendant.

1 THE COURT: All right. In the meantime, do we
2 have everybody on Dulberg?

3 MR. FLYNN: I believe so, your Honor.

4 THE COURT: Mr. Dulberg has, I think you can see
5 it, I tested my speakers. They work. I believe the
6 Court has my audio muted. I do not. I have done
7 nothing. So I don't know what the problem is. In
8 any event, although, I might think about it -- might
9 have thought about doing that, but in any event --
10 and that's because of the prior issues regarding the
11 recording of these proceedings.

12 In any event, Mr. Talarico, do you have the
13 records from the former attorneys? Do you have
14 everything?

15 MR. TALARICO: I have -- I have a response
16 from -- yes. I have response from Williams and
17 Clinton.

18 THE COURT: Okay. Are you satisfied they are
19 complete?

20 MR. TALARICO: I am.

21 THE COURT: Okay. Mr. Flynn, do you have a
22 motion?

23 MR. FLYNN: Yes, I do. And this relates to that
24 production. Judge, after we were on the record,

1 after the parties went back and forth on the
2 language of your order from November 9, Ms. Williams
3 and Mr. Clinton forwarded by email the records that
4 were at issue that had previously been tendered to
5 the Court and had been identified as responsive to
6 Mr. Talarico, Mr. Dulberg's subpoena. And what I
7 received were redacted copies, even though the
8 understanding was that unredacted copies would be
9 sent to me and to Mr. Talarico.

10 So they sent me a redacted copy. They sent
11 an unredacted and a redacted copy to Mr. Talarico.
12 So I emailed Ms. Williams and asked what was going
13 on, and she said, well, we have now determined that
14 those withheld documents are not responsive to the
15 subpoena, even though, as I indicated in my motion,
16 they identified them as being responsive before.

17 So -- so we filed a motion to enforce your
18 order from November 9. I've got the motion. I
19 don't know what to say other than that there was an
20 agreement. There were plenty of representations on
21 the record, and we should have these records.

22 THE COURT: Okay. Forgive me, but I'm confused.
23 So let me explain or tell you what I'm drawing from
24 this. After the fact, Clinton and company decided

1 that certain of their records were nonresponsive and
2 withheld them or redacted them or both?

3 MR. FLYNN: They were redacted.

4 THE COURT: All right. So -- but as far as the
5 documents are concerned, you guys have everything
6 you think you are entitled to.

7 MR. FLYNN: I think we had those in the first
8 place, Judge. The whole purpose of that hearing
9 was -- was relative to those documents. So I don't
10 know what the whole point of the November 9 hearing
11 was because we already had those -- your Honor had
12 copies of those for an in camera inspection which
13 never occurred. And then they decided, okay, well,
14 we are not going to produce the unredacted copies to
15 defense counsel, only to plaintiff's counsel
16 pursuant to a subpoena.

17 THE COURT: If -- if -- all right.
18 Mr. Talarico, what comment, if any, do you have?

19 MR. TALARICO: May I start, Judge, with happy
20 holidays --

21 THE COURT: Thank you.

22 MR. TALARICO: -- to you and Mr. Dulberg and
23 Mr. Flynn. And I'm sorry to hear that things are
24 going to be changing there as far as what kind of

1 cases you'll be hearing. I think -- well, I won't
2 tell you what I think, but -- okay.

3 Now, as far as -- first thing is there is a
4 motion that's just up. I want time to respond. I
5 mean -- but if you want me to tell you what I'm
6 thinking, that's easy. But I would like time to
7 respond to the motion so I have -- so I have it of
8 record.

9 THE COURT: Well, here is my -- let me walk
10 through a little of this.

11 The prior order says attorney-client and
12 work-product privileges are waived. Therefore, any
13 redactions based upon attorney-client privilege or
14 work product are inappropriate based on my order. I
15 think that's pretty black and white, and I covered
16 it, I think, extensively because I was concerned
17 about this issue. And I was concerned that Clintons
18 would be afraid of disclosing documents for fear of
19 a malpractice claim.

20 So I'm at a loss to see what -- what
21 remains at issue because my order is straightforward
22 and we addressed this. But Mr. Talarico, I'll let
23 you respond.

24 MR. TALARICO: Your Honor, what Ms. Clinton

1 redacted was nonresponsive answers. There were --
2 there were a time frame and a subject matter and
3 your order was -- and we waived all attorney-client
4 privilege and work product in response to the
5 subpoena. And Mr. -- Mr. Flynn received those.

6 THE COURT: But then she decided that -- all
7 right. So you are saying that the redactions
8 contain irrelevant information.

9 MR. TALARICO: Correct.

10 THE COURT: All right. And the -- if that's the
11 basis of your position, I don't think it's a valid
12 one because you don't make the determination of
13 relevance at this stage. Relevance is determined at
14 trial. And certainly, it may not be permitted at
15 trial, but --

16 MR. TALARICO: I'm sorry.

17 THE COURT: It's not a -- relevance is not an
18 objection I put a lot of weight on in the course of
19 written discovery.

20 MR. TALARICO: Judge, the word relevant -- I'm
21 not saying relevant.

22 THE COURT: Okay.

23 MR. TALARICO: Responsive. Responsive. That's
24 what we waived, what was responsive to the subpoena.

1 Anything and everything she had that was responsive,
2 and Mr. Flynn has received that.

3 THE COURT: But you got them too.

4 MR. TALARICO: Of course.

5 THE COURT: So he is being denied possession of
6 documents that you were given, and the contention is
7 that they -- what you were given isn't responsive.
8 I guess I'm having a hard time reconciling this
9 argument with the discussion we had, and I've also
10 reviewed those documents, although, I don't have
11 them in front of me right now. And that wasn't an
12 issue that jumped out at me as I read them.

13 So I really don't know where we are going
14 because responsive is kind of an odd objection. I
15 think that really is something that rests with the
16 defendant in this case, not you, on behalf of
17 Clinton.

18 MR. TALARICO: Well, Judge, I'm not objecting.
19 This is what Ms. Williams decided was responsive to
20 the subpoena, and she sent it to Mr. Flynn. Now,
21 what we are talking about as what's responsive and
22 not responsive is documents that are outside the
23 date range, outside the subject range, anything and
24 anything -- anything and everything that are not

1 responsive, we didn't waive. We waived everything
2 that's responsive. Anything that's from a year ago
3 that's in those documents is not responsive, and
4 she -- and she -- she struck that.

5 And I -- I (indiscernible) Mr. Flynn if he
6 has an issue, it's with her, not with me. I'm not
7 going to turn over documents that I wasn't ordered
8 to turn over. But we are only talking about things
9 that were stricken that were not responsive, dates
10 and subject matter. If they are talking about -- or
11 if their documents are in reference to something
12 other than what the subpoena called for which was
13 the deposition of Hans Mast on June, I believe 25,
14 2020, that's not -- that's not what we waived.

15 THE COURT: Okay. But then, if you have waived
16 your attorney-client and work-product privilege,
17 then there really doesn't seem to be a basis on
18 which you can withhold the documents, and I --

19 MR. TALARICO: Judge, we didn't waive -- I'm
20 sorry. I apologize.

21 THE COURT: Well, that's where I'm having a
22 problem.

23 MR. TALARICO: Judge, we didn't waive all
24 attorney-client. It was a limited waiver, if you

1 remember. It was limited to the responses to the
2 subpoena.

3 THE COURT: Those documents. No. No. I'm not
4 buying this. Mr. Flynn, what do you got?

5 MR. FLYNN: Same argument, your Honor. I mean,
6 these documents were tendered to the Court as being
7 responsive to that subpoena. There was a subpoena
8 response that Williams and Clinton served, and they
9 served an amended response.

10 THE COURT: Okay.

11 MR. FLYNN: We had a lengthy discussion on the
12 record. I have attached the transcript and the
13 order to my motion this morning. Now, they -- to
14 turn around in their third -- third swoop here and
15 saying, well, they are not responsive. Well, I
16 don't buy it either. Of course, I can't read the
17 documents because I -- they are redacted as far as
18 the version I got. But they can't have it both
19 ways.

20 THE COURT: All right. So Mr. Flynn, what's the
21 relief you're asking for?

22 MR. FLYNN: I didn't notice Ms. Clinton and
23 Mr. Williams -- I'm sorry, Mr. Clinton and
24 Ms. Williams on this motion because plaintiff has

1 copies of these records. They are pursuant to this
2 subpoena. I'm just asking that the Court order the
3 plaintiff to turn these over unredacted.

4 THE COURT: Okay. I'm going to grant that
5 request. I'm going to direct plaintiff to turn them
6 over to you in seven days, and -- because I -- we
7 have been through this and we have been through this
8 extensively, and I don't think nonresponsive is a
9 valid objection at this stage, particularly in light
10 of the fact that I have previously reviewed the
11 documents.

12 And responsiveness, I don't think that
13 that's an objection that the plaintiff is able to
14 make when we are talking about documents that were
15 produced by a third party. So they can't be
16 withheld, and since plaintiff has them, defendant
17 gets them. And the only bases under which I would
18 allow plaintiff to withhold them is if they breached
19 attorney-client or work-product privilege, but as we
20 have disclosed, that's been waived.

21 So plaintiff has seven days to turn them
22 over, and let's come back in ten days for status of
23 compliance. Ten days would take us to
24 December 15th, that's a Thursday. Does that day

1 work for both of you? 16th is fine too.

2 MR. FLYNN: The 15th is better for me, your
3 Honor, if that's okay.

4 MR. TALARICO: 16th is better for me.

5 THE COURT: All right. Let's check 16th. How
6 about 9:15 on the 16th?

7 MR. FLYNN: I have a 9:00 o'clock. Can we make
8 it say 9:30 or 9:45?

9 THE COURT: 9:30.

10 MR. FLYNN: Okay.

11 THE COURT: Sorry. I can't give you 10:00.

12 MR. FLYNN: And then there is the other matter,
13 Judge, the motion to exclude the Hans Mast
14 deposition. Plaintiff filed his --

15 THE COURT: All right. Let me switch gears for
16 a moment because Ms. Vernagallo and Ms. Polo are
17 waiting, and they have -- want something really
18 simple.

19 (Whereupon the afore-captioned
20 cause was recalled.)

21 THE COURT: All right. Now, we will go back to
22 Dulberg. Mr. Flynn, what were you saying?

23 MR. FLYNN: Yes, your Honor. The Court granted
24 the plaintiff leave to file a second amended motion

1 to exclude the Hans Mast deposition. We had some
2 extensive argument about the motion at the last
3 hearing. At the time, I didn't expect to file a
4 response, but after having received the second
5 amended motion that was filed after the hearing, and
6 despite my knee replacement, I decided -- I thought
7 I'd get something on record. So I did file a
8 response on November 30.

9 THE COURT: Okay. So Mr. Talarico?

10 MR. TALARICO: Judge, I'd like to -- I want to
11 file a reply.

12 THE COURT: All right.

13 MR. TALARICO: I'd like 14 days.

14 THE COURT: Sure. I'll give you 14 days. All
15 right. 14 days will give you until the 19th, and I
16 think one way or another, even if I'm gone, this is
17 more appropriately brought back in front of me. So
18 I can do the hearing at 9:30 on December 21, that is
19 a Wednesday. Does that work for you guys?

20 MR. FLYNN: That day works, Judge. May I just
21 address the request for the reply, though?

22 THE COURT: Yeah.

23 MR. FLYNN: Given that this is the second
24 amended motion, I mean, this -- I did file a

1 response, you know, not even pursuant to the
2 briefing schedule. I got it on file quickly.

3 We have a summary judgment motion pending.
4 The last thing that I want is for the dates to be
5 affected by any of these motions.

6 THE COURT: What's the date of your summary
7 judgment?

8 MR. FLYNN: It's -- the plaintiff's response is
9 due on December 28. The motion was originally filed
10 way back on September 15. So it's -- we have had an
11 extensive amount of time.

12 THE COURT: I won't be hearing the summary
13 judgment. So --

14 MR. FLYNN: Yeah. I understood there was some
15 comments being made before I left about your Honor's
16 handling the case or --

17 THE COURT: Well, after 13 years, they have
18 decided this is the worst place for me. So I'm
19 being moved to traffic, and then, Judge Berg is
20 taking over January 1. So it's -- I don't know
21 what's going to happen with the scheduling of your
22 summary judgment because he's going to be combining
23 his small claims call with a law division jury, and
24 I -- I question the practicality of that but that's

1 not my -- that's not my call.

2 MR. FLYNN: Well, then, I would request from the
3 chief judge that your Honor hear this motion through
4 since it's -- because of your familiarity with the
5 case over these many years.

6 THE COURT: Yeah, but I don't make the rules.
7 So --

8 MR. FLYNN: Sure. I understand.

9 THE COURT: Mr. Talarico, what did you want to
10 say?

11 MR. TALARICO: Yes, Judge. I was allowed to
12 file an amended motion, and Mr. Flynn has filed two
13 responses. The first one was before you, an oral
14 response, if you remember --

15 THE COURT: Yes.

16 MR. TALARICO: -- the transcript. And you said
17 to him, if you decide to do a written one -- he
18 called it a sur-response, I want to sur-reply.

19 THE COURT: Okay.

20 MR. TALARICO: He's had two shots at this
21 already.

22 THE COURT: You got it. You got it.

23 MR. TALARICO: But he's -- yes. Thank you.

24 THE COURT: So can we do the hearing on the Hans

1 Mast deposition on the 21st?

2 MR. TALARICO: Judge, that's -- can we do it the
3 9th? It's going to affect my time no matter what.
4 Can it be done closer to Christmas, like the 23rd
5 or -- the 23rd I can do.

6 THE COURT: Nope. Nope.

7 MR. FLYNN: The 21st works for me.

8 THE COURT: The 21st is my last day before
9 vacation. And as much as I love you guys, I'm not
10 coming back for you. It will -- yeah, we got to get
11 it done on the 21st, and -- because, frankly, given
12 the status of this motion, I can't imagine Judge
13 Berg not sending it back to me to complete it.

14 So I think for -- it's all in our best
15 interests to get this done in front of me before the
16 21st. So that's why I'm picking 9:30 on the 21st.
17 Can we do that?

18 MR. FLYNN: That works for me, Judge.

19 MR. TALARICO: Judge, I'll move things around.

20 THE COURT: Okay. I mean, is there a time that
21 day that works better?

22 MR. TALARICO: I have to move things around no
23 matter what.

24 THE COURT: You know what, I can do -- I can do

1 it later. I've got -- I could do it at 10:00
2 o'clock or -- also.

3 MR. FLYNN: What is the other date that we are
4 coming back, Judge?

5 THE COURT: I don't know.

6 THE CLERK: December 16.

7 THE COURT: The 15th?

8 THE CLERK: 16th.

9 THE COURT: 16th we are coming back.

10 MR. FLYNN: I mean, could this be done by then?
11 I mean, I've got my response on file, given the knee
12 replacement and Thanksgiving holiday, a couple of
13 days. So --

14 THE COURT: We can --

15 MR. TALARICO: I'm sorry.

16 THE COURT: Why don't we do both hearings at the
17 same time rather than come back on the 16th. I --
18 that makes sense since it's only four days -- five
19 days. Can we do them both on the 21st?

20 MR. FLYNN: Sure.

21 MR. TALARICO: Yeah. Yes, Judge.

22 THE COURT: What time do you want because I'm
23 free from 10:00 o'clock on?

24 MR. TALARICO: Like I said, whatever is more

1 convenient for Mr. Flynn. I have to move things
2 around one way or the other. Morning or afternoon.

3 MR. FLYNN: I'm wide open on the 21st.

4 THE COURT: All right. Why don't we say at
5 10:00 o'clock. And Mr. Flynn, I would ask that you
6 prepare the order --

7 MR. FLYNN: I will.

8 THE COURT: -- and send that in. As soon as I
9 see it, I'll sign it.

10 MR. FLYNN: Okay.

11 THE COURT: All right.

12 MR. FLYNN: Thank you, your Honor.

13 THE COURT: Okay. Thank you. Anything else?

14 MR. TALARICO: No. Just happy holidays to
15 everyone.

16 THE COURT: Thanks.

17 MR. FLYNN: Happy holidays.

18 THE COURT: Thank you. All right. We will see
19 you the 21st.

20 MR. TALARICO: All right. Thank you.

21 (Which were all the proceedings
22 had in the above-entitled cause
23 this date.)
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, JUDY CARLSON, an official Court Reporter
6 for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 21st day of
16 December, 2022, at the McHenry County Government
17 Center, Woodstock, Illinois.

18
19 APPEARANCES:

20 LAW OFFICE OF ALPHONSE A. TALARICO, by
21 MR. ALPHONSE A. TALARICO (via Zoom),

22 On behalf of the Plaintiff,

23 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
24 MR. GEORGE K. FLYNN (via Zoom),

On behalf of the Defendants.

1 THE COURT: For the record, this is on Dulberg
2 versus Mast.

3 Plaintiff's counsel, if you could identify
4 yourself.

5 MR. TALARICO: Yes, your Honor. My name is
6 Alphonse Talarico.

7 THE COURT: And defendant.

8 MR. FLYNN: Good morning, your Honor. George
9 Flynn for the defendants.

10 THE COURT: And for the record, I -- Mr. Dulberg
11 is in attendance, and once again, I hope we're not
12 being recorded. That being said, we'll move on to
13 the motion.

14 Plaintiff, you have a motion.

15 MR. TALARICO: Yes, Judge. I'd like to -- we
16 filed our motion -- we filed -- counsel filed a
17 response, we filed a reply. We'd like to rely on
18 that, with one additional presentation or request of
19 the Court.

20 THE COURT: Okay. What is that?

21 MR. TALARICO: I'd like to offer an informal
22 proof -- an offer of proof, which is the exact
23 and -- and -- what is the best way -- the audio
24 transmission of the deposition, in full, with all

1 the parties, which was sent to us through a
2 subpoena.

3 THE COURT: Okay. You mean from Mr. Mast's --
4 or Mast's -- deposition?

5 MR. TALARICO: Correct. Everything that -- that
6 would help the Court understand all of these
7 problems. Because you --

8 THE COURT: Well, we do have -- we have the
9 transcript.

10 MR. TALARICO: Yes, your Honor, but the
11 transcript is selective.

12 THE COURT: Okay. Mr. Flynn, comment.

13 MR. FLYNN: I would object, Judge. The
14 plaintiff has already filed a second amended motion
15 and response. He's had plenty of opportunity to
16 bring this to the Court's attention.

17 THE COURT: Okay. Mr. Talarico, final word.

18 MR. TALARICO: Judge, this is for the aid to --
19 for the Court -- this Honorable Court to understand
20 what's going on.

21 As to the second amended, I replied to
22 that, that -- the only difference between the
23 amended and the second amended, Judge, was the stamp
24 on Exhibit 17 didn't show up, so I re-filed it. But

1 it was filed timely. As soon as I realized the
2 stamp didn't show up on Exhibit 17, I re-filed it
3 with an emphasis on the Exhibit 17. Mr. Flynn
4 received it on time with notification that it's
5 Exhibit 17.

6 THE COURT: Well, that's not the issue, but the
7 issue is --

8 MR. FLYNN: It's not. And just for the record,
9 there was a typo in my response brief. I wasn't
10 taking issue with the timing of the filing of the
11 second amended, other than the fact that it's two
12 years after the deposition.

13 THE COURT: But that -- that's a different --

14 MR. FLYNN: But --

15 THE COURT: That's a different issue.

16 MR. FLYNN: Exactly.

17 THE COURT: The first issue is whether or not
18 to -- the Court will accept plaintiff's request to
19 submit the audio of the deposition at issue of
20 Mr. Mast that, I believe, was taken June 25th, 2020.

21 And, Mr. Talarico, anything else to say in
22 support of that oral motion?

23 MR. TALARICO: No, Judge. That -- that's -- if
24 you'll accept it, it's in the -- I believe

1 Mr. Dulberg is in the courtroom, and if he may
2 approach the bench, he will hand it to you.

3 THE COURT: No, he's on Zoom. In any event, I'm
4 going to deny the -- oh, are you -- Come on up.

5 MR. SCOTT DULBERG: Do you mind if I just hand
6 it here?

7 THE COURT: Well, no, you're going to come up.
8 I'm not going to accept that.

9 Your name, sir?

10 MR. SCOTT DULBERG: Scott Dulberg.

11 THE COURT: Okay. And you're here to deliver a
12 Zip drive of the audio; am I correct?

13 MR. SCOTT DULBERG: Yes.

14 THE COURT: All right. And I -- But I'm going
15 to rule on plaintiff's motion. I'm not going to
16 accept it. I'm not going to consider it for
17 purposes of the hearing on this motion. So you can
18 keep it, but thank you for -- for showing up and
19 bringing it.

20 MR. SCOTT DULBERG: Thank you.

21 THE COURT: Because -- I'm not going to accept
22 it because I don't think it adds, materially, to my
23 understanding of what transpired. I've got the
24 deposition transcript. I've read the parts that I

1 believe are relevant. I've read the motions. I've
2 heard this argument.

3 I don't think that the audio tran- -- the
4 audio recording is going to assist me in any way,
5 based upon my understanding of what the ultimate
6 issue is on this motion.

7 So that will be denied, and we'll
8 incorporate that into the motion -- or in the order.
9 I'm sorry.

10 Moving on to the motion, this is
11 plaintiff's motion to either re-depose or strike, or
12 both, the deposition of Mr. Mast taken June 25th,
13 2020; am I correct?

14 MR. TALARICO: Yes, your Honor.

15 THE COURT: And, further, am I correct that
16 the -- the reason for this is issues with respect to
17 what's identified as Exhibit 12?

18 MR. TALARICO: No, your Honor. That's just one
19 small part of it. The entire motion is based on
20 Supreme Court rules and on -- or in effect at the
21 time the deposition was taken.

22 THE COURT: No, no, no. Tell me the substance.
23 Don't tell me what the rules are. Because my
24 reading of your motion focused on Exhibit 12 and the

1 failure -- or the alleged failure to produce it
2 prior to the deposition or give an exhibit list.

3 So tell me, what is the reason why you want
4 to re-depose Mr. Mast? Because I think that's
5 ultimately your request.

6 MR. TALARICO: That's right. Judge, within our
7 motion and our reply, we've indicated that it's not
8 just Exhibit 12. Focusing on Exhibit 12 makes it
9 too easy. The entire deposition -- the Internet
10 went down almost the entire time. It's in the notes
11 that I highlighted. It's in the transcript. They
12 were not seeing Exhibits 1 through 15 at the same
13 time. They weren't seeing them. They weren't being
14 uploaded to the admin- -- the administer of -- of
15 oath. 12 wasn't even part of it. It was added, I
16 don't know, 14 days later.

17 THE COURT: But, ultimately --

18 MR. TALARICO: So we --

19 THE COURT: -- the exhibits were seen; am I
20 correct?

21 MR. TALARICO: No. They were not seen.

22 THE COURT: None of the exhibits were seen?

23 MR. TALARICO: They were not seen in accordance
24 with the rules, your Honor.

1 THE COURT: That's -- see, you --

2 MR. TALARICO: The rules --

3 THE COURT: You throw those phrases in, in
4 accordance with the rules.

5 Did the deponent see the exhibits, yes or
6 no?

7 MR. TALARICO: No.

8 THE COURT: Mr. Flynn, comment.

9 MR. FLYNN: Judge, to say that the Internet was
10 down for --

11 THE COURT: I don't want to go down there. Did
12 the -- did Mr. Mast see the exhibits?

13 MR. FLYNN: My recollection and understanding is
14 that Mr. Mast saw all of the exhibits. There may
15 have been an issue with a portion of Exhibit 12;
16 however, he was -- he was cross-examined at Page 49
17 through 52 regarding Exhibit 12, generally speaking,
18 and the case law that was contained in his file.

19 The bottom line is, it doesn't add
20 anything. He didn't recall the specific cases that
21 he discussed with --

22 THE COURT: Did he see the exhibits? That's all
23 I wanted to know.

24 MR. FLYNN: I don't know that he saw the full

1 exhibit in its entirety.

2 THE COURT: Okay.

3 MR. FLYNN: It -- But it wasn't necessarily
4 provided to him, so --

5 THE COURT: For purposes of this record,
6 Exhibit 12 is copies of case law; am I correct?

7 MR. FLYNN: Generally speaking, correct.

8 THE COURT: Mr. Talarico.

9 MR. TALARICO: That's correct, Judge. But,
10 again, we're not just focusing on Exhibit 12. We're
11 focusing on all the exhibits that were supposedly
12 shown to Mr. -- to Mr. Mast. He didn't see them.
13 He didn't see them.

14 THE COURT: Okay.

15 MR. TALARICO: There was confusion as to what
16 the numbers were.

17 THE COURT: Whose exhibits were they?

18 MR. TALARICO: They were the plaintiff's, but it
19 was the defendant's equipment that caused the
20 problem.

21 THE COURT: And the plaintiff conducted the
22 deposition; am I correct?

23 MR. TALARICO: That is correct.

24 THE COURT: And the plaintiff was aware of

1 any -- the plaintiff's attorney, at that time, was
2 aware of any glitches or difficulties with respect
3 to having the deponent view all of the exhibits; am
4 I correct?

5 MR. TALARICO: That's correct, your Honor.

6 THE COURT: And the plaintiff (sic) who was
7 representing Mr. Dulberg at the time, for whatever
8 reason, did not raise an objection at the time or
9 ever with respect to the manner in which the
10 deposition proceeded.

11 MR. TALARICO: No, your Honor. (Indiscernible)
12 she left it to me -- or to the following counsel.
13 She said to Mr. Dulberg, Mr. Dulberg, whatever those
14 objections are, your next counsel has to make them.

15 THE COURT: Okay. Well, that -- but the
16 handling attorney at the time who represented
17 Mr. Dulberg's interests proceeded with the
18 deposition and did not give notice to anyone of any
19 complaint with respect to the manner in which it was
20 conducted; am I correct?

21 MR. TALARICO: You are correct.

22 THE COURT: Okay. What else do you want me to
23 know?

24 MR. TALARICO: I want you to know, Judge, also,

1 that not only does the objection have to take place
2 at the time of the deposition itself. When the
3 evidence is being brought -- when the evidence is
4 being subject to admission, I can bring that -- I
5 can raise that now and object to it.

6 THE COURT: Okay. But the -- the exhibits were
7 always in control of the plaintiff's attorneys, and
8 you're asking to penalize the defendant for what
9 appears to be a -- an issue you have with the manner
10 in which prior counsel conducted the deposition.

11 MR. TALARICO: No, your Honor. It's -- as far
12 as the defendant, it's their electronic equipment
13 that failed.

14 THE COURT: And there were no objections made at
15 the time or subsequent, and this motion was brought
16 approximately two and a half years after the
17 deposition in question; am I correct?

18 MR. TALARICO: You are correct. But it's also
19 within the time of the ruling. I can do this now.

20 THE COURT: You can file any motion you like,
21 but I'm -- I'm going to deny your request. I don't
22 think that there's any reasonable basis under which
23 I can compel the defendant to appear for a second
24 deposition because of these issues. It appears that

1 prior counsel was satisfied with the -- her ability
2 to conduct the deposition, and she was always in
3 control of all of the exhibits, so I don't see a
4 problem there.

5 If anybody should have been raising an
6 objection about the problems, it should have been
7 defendant, not -- not the plaintiff two and a half
8 years after the deposition they proceeded with. So
9 I'm going to deny the request.

10 Anything else that we need to do
11 today?

12 MR. FLYNN: Judge, just that there was some
13 additional relief requested in the latest reply
14 brief filed, and that included a request that the
15 Court take judicial notice of -- what's really an
16 implication. I think this is on Page 17 of the
17 response.

18 I would just request that that specific
19 request for relief also be denied in connection with
20 the motion.

21 THE COURT: Okay. Let me just call it up. I'm
22 looking at Page 18. What is it?

23 MR. FLYNN: I believe it was on Page 17 of the
24 response -- I'm sorry -- the reply brief that was

1 just filed.

2 THE COURT: Okay. The notice of the
3 adjudicative facts?

4 MR. FLYNN: Correct. I think it says in
5 Paragraph 12(j), plaintiff requests that this
6 Honorable Court take judicial notice of the
7 adjudicative fact that the references to Restatement
8 (Second) of Torts Section 318 impliedly references
9 Tilschner versus Spangler.

10 THE COURT: That -- that's not really ultimately
11 the purpose of this motion, and it's not contained
12 in the prayer for relief. That strikes me as a new
13 motion. Wasn't going to consider it, and so I'm --
14 to the extent that I have to rule on it, on an
15 issue I don't even think that's in front of me
16 appropriately --

17 MR. FLYNN: It's just relief that was in -- in
18 this response that I didn't have any opportunity to
19 address.

20 THE COURT: I will -- I will deny all aspects of
21 plaintiff's motion.

22 MR. FLYNN: Okay.

23 THE COURT: I think that covers it.

24 Is there anything else?

1 MR. FLYNN: Thank you. That's it.

2 THE COURT: Okay. We have a future date, don't
3 we?

4 MR. FLYNN: We have a pending motion for summary
5 judgment, and plaintiff's response is due, I think,
6 next week.

7 THE COURT: Okay. All right.

8 MR. FLYNN: But I don't --

9 THE COURT: You're back February 1st, and I --
10 Mr. Flynn, could you draft the order and please get
11 it in as early as possible.

12 MR. FLYNN: I will. And, Judge, we spoke
13 last time about your continued handling of the
14 case. Do you have any information to share in that
15 regard?

16 THE COURT: Nope. Nope. I -- I'm in a
17 different division and, um, I can't take cases with
18 me.

19 MR. FLYNN: Okay.

20 THE COURT: That would be interesting, but no, I
21 can't take them. I can't take them with me. Too
22 many --

23 MR. FLYNN: Okay. So --

24 THE COURT: -- egos involved. Not -- I'm not

1 referring to Judge Berg.

2 MR. FLYNN: Sure.

3 THE COURT: But there -- Yeah, there's too many
4 hurdles to try --

5 MR. FLYNN: I understand. So the schedule
6 stands?

7 THE COURT: The schedule stands. If you wish to
8 have that addressed, you'll have to bring it in
9 front of Judge Berg.

10 MR. FLYNN: Okay.

11 THE COURT: I will warn you, he's got a small
12 claims call. I would -- I'm warned to avoid
13 Thursdays and Fridays for hearing because those,
14 apparently, are heavy days.

15 But you may find out the hard way. Who
16 knows?

17 MR. FLYNN: Okay.

18 THE COURT: All right.

19 MR. FLYNN: Thank you very much, your
20 Honor.

21 THE COURT: You can send in the order. I will
22 sign it when I see it.

23 MR. FLYNN: Thank you.

24 THE COURT: All right. Thank you. Have a good

1 day.

2 MR. FLYNN: You, too. Thank you.

3 (Which were all the proceedings
4 had in the above-entitled cause
5 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, KATHLEEN STROMBACH, an official
6 Court Reporter for the Circuit Court of McHenry
7 County, Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
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16 Kathleen Strombach
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1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF
13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable JOEL D. BERG, Judge of said Court of
15 McHenry County, Illinois, on the 1st day of
16 February, 2023, at the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE TALARICO, by

20 MR. ALPHONSE TALARICO, (Via Zoom)

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by

23 MR. GEORGE K. FLYNN,

24 On behalf of the Defendant.

1 THE COURT: You are here on Dulberg against
2 Mast?

3 MR. FLYNN: I am, Judge.

4 THE COURT: I have the other side here on that
5 as well. Well, no. I have Mr. Dulberg here. I
6 have Mr. Talarico as well. Mr. Talarico, are you
7 ready for a hearing if I call it early, sir? I'm
8 sorry, sir, you are muted. I'm not --

9 MR. TALARICO: Yes, your Honor.

10 THE COURT: Good morning. Are you ready for
11 hearing a couple minutes early, sir?

12 MR. TALARICO: Absolutely.

13 THE COURT: Thank you very much. This is
14 Dulberg against Mast, et al. I have Mr. Talarico
15 present via Zoom as is Mr. Dulberg. Counsel, would
16 you please state your name?

17 MR. FLYNN: Thank you, your Honor, George Flynn
18 on behalf of the defendants.

19 THE COURT: Thank you, Mr. Flynn. We are before
20 the Court for a hearing on pending motions. The one
21 most notable is the summary judgment. What else are
22 we hearing this morning, gentlemen?

23 MR. FLYNN: That's all we have, as far as I
24 know, Judge.

1 THE COURT: Good. Because that's all I read.

2 MR. TALARICO: That's all I know, Judge.

3 THE COURT: Now I feel way better. It just said
4 pending motions. All I could find was summary
5 judgment. I read the motion. I read the response.
6 I read the reply. I have read all the attachments,
7 as they were relevant. It's your motion.

8 MR. FLYNN: Thank you, Judge. And I wasn't sure
9 I -- with Judge Meyer's standing orders, with
10 respect to courtesy copies, I wasn't sure if the
11 Court had a chance to review the briefs, but since
12 your Honor has indicated that you have --

13 THE COURT: I have read everything. It's all
14 based on a two-year statute of limitations on a
15 lawsuit over a chain saw.

16 MR. FLYNN: That's exactly right. So I will be
17 brief. The only case cited by the plaintiff in its
18 response with respect to the accrual of the injury
19 was a Suburban Real Estate case which is a
20 transactional legal malpractice case, not a
21 litigated matter. I think the -- all of the cases
22 we have cited and including the dicta in that
23 Suburban Real Estate case indicates that the accrual
24 date in a litigated matter is the date of

1 settlement, judgment or dismissal.

2 Here, we had a January 14 settlement that
3 was consummated. There was a good faith finding and
4 dismissal at that time. Mast and Popovich continued
5 to represent Mr. Dulberg for another year or so and
6 prosecuting the case against the other defendant in
7 the case.

8 Dulberg became disillusioned with Mast,
9 admitted that he was looking for additional
10 counsel -- or substitute counsel even as early as
11 July of 2014. Ultimately, Mast and Popovich
12 withdrew in March of 2015. The case proceeded
13 against Gagnon. There was a mediation in December
14 of 2016 at which time he indicates now that he first
15 became aware of his legal malpractice case.

16 Mr. Dulberg had every opportunity in
17 discovery through interrogatories, production
18 requests, I took his deposition. I asked him over
19 and over again in several different ways how he
20 first became aware of his injury and that it was
21 wrongfully caused. The only response he could give
22 was that a lawyer told him that he had a case. He
23 couldn't provide any specifics. He has a burden of
24 proving the -- a late discovery. He cannot meet it.

1 He will never be able to meet it.

2 THE COURT: Do we know, by the way, how did he
3 come to me because the lawyer, if I recall, was
4 Mr. Gooch. So he was represented by I believe
5 Mr. Balke if I recall correctly followed by
6 Mr. Baudin.

7 MR. FLYNN: That's correct.

8 THE COURT: Where did Mr. Gooch come into this?
9 Who shipped him off to Mr. Gooch to even get
10 opinion, do we know?

11 MR. FLYNN: One of those two lawyers, I think,
12 recommended that he seek an opinion from a lawyer,
13 generally speaking, that handles legal malpractice
14 cases. Whether it was a direct referral, I don't
15 know if the evidence shows that. I think
16 Mr. Dulberg testified that I believe it was
17 Mr. Baudin recommended that he see a legal
18 malpractice attorney.

19 So Mr. Gooch met with him. Allegedly
20 provided an opinion that there was a case without
21 any reason and then almost a year later filed a
22 lawsuit. Again, first Mr. Dulberg raised privilege
23 when I asked him how -- how and what -- how you
24 became aware of this legal malpractice case, the

1 injury and the wrongful causation, he claimed
2 privilege. Finally, that was waived or otherwise
3 disposed of, and then, he admitted he couldn't -- I
4 said the legal opinion Dulberg received from Gooch
5 was verbal. Gooch simply stated you have a case
6 here. You have a valid case. When asked did he
7 tell you exactly what they did wrong in connection
8 with the representation, Dulberg said he probably
9 did. I'm not recalling it right now. I'm pulling a
10 blank. There are no specifics.

11 So again, the burden is his to prove a
12 later discovery. He's not able to do that. I'm
13 happy to answer any questions the Court has, but
14 again, I'll rest on the briefs.

15 THE COURT: Thank you very much. Mr. Talarico,
16 sir?

17 MR. TALARICO: Yes, sir. I'm -- what would you
18 like me to address first? I guess we could start
19 with the fact that defendant didn't follow the local
20 rules, and therefore, plaintiff could not properly
21 respond. And the local rule says that if they do
22 not follow the local rules, you can strike the
23 motion or deny it.

24 All I'm asking is deny the motion based on

1 the fact that they did not follow the local rules.

2 THE COURT: I respectfully decline to do so,
3 sir. A written motion could have been filed
4 expressly asking for that relief. A response was
5 filed that addressed it. I've read the response. I
6 understand your concerns that by not following the
7 local rules, they may have made it more difficult
8 for us to suss out what are the disputed issues of
9 material fact and what aren't. But I've been able
10 to pretty much get a grip on everything the way it's
11 been filed.

12 MR. TALARICO: All right. Thank you, Judge.
13 The second thing is, again, we didn't follow the
14 rules that (indiscernible) we didn't respond -- we
15 responded generally. So I would like that the
16 ruling you just made to extend to our response too.

17 THE COURT: Of course it does.

18 MR. TALARICO: Thank you, sir. Okay. Then, the
19 next issue is the Suburban case. Plaintiff --
20 defendant, I'm sorry, defendant seems to indicate --
21 well, he does indicate that the reason that Suburban
22 doesn't apply is that there is a difference between
23 a transactional case and a litigation case. Now, I
24 read the Suburban case many, many times over and the

1 Supreme Court does not distinguish that their ruling
2 is for one type of case or the other. What their
3 ruling is is that the statute of limitation and they
4 construed the exact specific statute does not begin
5 until there is a pec -- pecuniary loss.

6 Prior to that, Mr. Dulberg would have
7 brought an action, he would have had no damages. So
8 that -- what that does is because the general rule
9 and which has been voiced in -- by the Illinois
10 Supreme Court Justice Thomas in the Porter case is
11 that when the Supreme Court construes a statute,
12 that becomes part of the statute until the -- the --
13 I can't think of the word, legislation --
14 legislature decides to change it. So what we have
15 is the prior cases cited by Mr. Dulberg are not
16 effective because he's citing it to the rule and not
17 to the particular case we are talking about. The
18 Suburban case says no damages, the statute does not
19 begin to run. And that is part of the statute. It
20 hasn't been changed.

21 Now, as to the last thing, we have raised
22 many affirmative -- I mean, I'm sorry, many issues
23 of material fact that are in dispute. But most
24 important -- the clearest ones, Judge, are the

1 defendant's affirmative defenses. There are four
2 affirmative defenses which -- which plaintiff has
3 denied all four.

4 Now, there is a recent case, if you'll hold
5 on just one second, and I'll find it, but the
6 indication -- it's not that recent, but it's -- the
7 indication is that -- this is West Suburban Mass
8 Transit versus Consolidated Rail Corporation. It's
9 1-89-2916. If this was done the Appellate Court but
10 it was by the -- the opinion was by Justice
11 McMorrow, who of course became Supreme Court judge,
12 that summary judgment is not appropriate when there
13 is affirmative defenses in dispute.

14 I think that pretty much sums it all,
15 Judge. We have got many material facts in dispute,
16 including four affirmative defenses which were
17 denied specifically by plaintiff.

18 THE COURT: Respectfully, sir, merely saying
19 something is in dispute does not make it so though,
20 does it?

21 MR. TALARICO: Judge, I'm saying that the answer
22 filed was it was in dispute.

23 THE COURT: So by filing a response to their
24 affirmative defense denying the affirmative defense,

1 you're telling me that that in and of itself is
2 sufficient to defeat summary judgment.

3 MR. TALARICO: Yes, I am.

4 THE COURT: What if your client --

5 MR. TALARICO: I --

6 THE COURT: What if your client at subsequent
7 depositions testifies inconsistent with the answer?

8 MR. TALARICO: In the case that I cited, Judge,
9 the burden is upon the person, in effect, in this
10 case the defendant, to eliminate that dispute. The
11 dispute exists as he did not resolve that dispute.

12 THE COURT: So when did the cause of action
13 arise?

14 MR. TALARICO: December 12, 2016, I believe.

15 THE COURT: Why on that date?

16 MR. TALARICO: Because there was an arbitrary --
17 a mandatory arbitration hearing which I included
18 the -- the findings that showed that the judge --
19 the retired judge in that case evaluated it at
20 \$660,000, and Mr. Dulberg was not able to obtain
21 anything close to that.

22 THE COURT: And why not?

23 MR. TALARICO: Well, for two reasons, one,
24 because he settled first improperly for \$5,000 with

1 the landowner, and the second case is because he was
2 instructed improperly to -- to sign -- well, he
3 actually claims he never signed the agreement, but
4 that there was an agreement to do a binding
5 arbitration limited to the policy amount of 300,000.

6 THE COURT: Who entered into that agreement?

7 MR. TALARICO: That is a question of fact. I
8 don't know, but Dulberg says he did not sign it and
9 never wanted to.

10 THE COURT: When was the agreement entered into?

11 MR. TALARICO: I don't have the exact date,
12 Judge. A few months before that. I can only say
13 that that was -- that was during the time that
14 Mr. Dulberg was in bankruptcy, and that was also
15 part of the Baudin's instruction.

16 THE COURT: So the agreement to limit recovery
17 to 300,000 was signed well after the Popovich firm
18 was no longer representing Mr. Dulberg on this
19 matter?

20 MR. TALARICO: Yes, that's true.

21 THE COURT: So how is his change in strategy
22 somehow extend -- so in other words, what you're
23 saying -- well, I'm trying to wrap my head around
24 this. You are saying that that agreement your

1 client never wished to enter into, he didn't sign,
2 Popovich didn't sign, Mr. Mast didn't sign. His
3 actual third attorney signed it, Mr. Baudin, not
4 even Mr. Balke. But because that was somehow signed
5 and in effect, then the cause of action against Mast
6 and Popovich for legal malpractice is extended out
7 to the date of the final mediation hearing because
8 of an agreement and limitation on damages at the
9 mediation hearing over which they had zero control?

10 MR. TALARICO: What I am saying, Judge, is the
11 analysis in the Suburban case, the damages -- prior
12 to that, Mr. Dulberg had no actual damages,
13 therefore, he couldn't bring an action. He had
14 nothing to say that Mast cost him this much or this
15 much or Popovich cost him this much because that
16 would -- that would have been stricken for -- they
17 had no damages, so he had no cause of action.

18 The damages arrive -- arose on the days
19 that Mr. Dulberg found out through the binding
20 arbitration that the case was worth so much more
21 than what he's going to get, and therefore --
22 that -- that enumerates the damages.

23 THE COURT: But respectfully, Mr. Talarico, and
24 please correct me if I'm wrong because this is where

1 I'm getting the disconnect, the but-for portion of
2 this analysis but for the high-low agreement
3 limiting damages to the policy amount of \$300,000,
4 he would have had a judgment for the entire \$660,000
5 if Tom Popovich and Hans Mast had never even
6 existed.

7 MR. TALARICO: I'm not clear on what you are
8 asking, Judge. Could you --

9 THE COURT: What I'm asking is isn't the failure
10 to recover the \$660,000 as opposed to 300,000
11 attributable to the high-low agreement that was
12 entered into well over a year or if not two or more
13 years after Popovich and Mast were out of the case?

14 MR. TALARICO: Well, Judge, I -- first of all,
15 he didn't enter into it. He's claimed over and over
16 that that's not his signature. It was forged.
17 There is many issues about that in the bankruptcy.

18 THE COURT: But again, counsel -- but again, my
19 point being I don't really care if he signed it or
20 didn't sign it. My point being that it is that
21 agreement that limited his damages, and that
22 agreement was entered into way after Popovich and
23 Mast withdrew from this case, right?

24 MR. TALARICO: That's right, but --

1 THE COURT: He so would have got -- so he would
2 have gotten all 660,000 had that agreement not been
3 entered into.

4 MR. TALARICO: Judge, but at -- before the judge
5 ruled in that binding mediation, he had no idea how
6 much the case was worth. They had told him it was
7 worth \$5,000 and then some. That -- that date --
8 that's the date when he knows when there was a
9 factual pecuniary damage. He knows the case is
10 worth much more than they told him and he's got
11 numbers behind it. Before that, he had nothing to
12 plead.

13 THE COURT: Respectfully, the case is worth that
14 much against Mr. Gagnon, not necessarily against
15 Mr. Gagnon's -- I believe it was his parents, the
16 two people that settled out of it. The \$660,000 is
17 a finding of liability against Mr. Gagnon, isn't it?

18 MR. TALARICO: Yes, it is.

19 THE COURT: So how is it a finding of liability
20 against the two people that were settled with?

21 MR. TALARICO: Because those people were settled
22 with instructions by Mr. Mast that they could not
23 win any money against them. His instructions were
24 that they -- they would get out on summary judgment,

1 he would get nothing, take \$5,000 as a gift. He was
2 over and over that that -- that that argument was
3 made between Mast and between Dulberg, and some of
4 those documents are part of what we filed.

5 THE COURT: All right. Anything else,
6 Mr. Talarico?

7 MR. TALARICO: Not at the moment, Judge. Thank
8 you.

9 THE COURT: Thank you, sir. Final word, please.

10 MR. FLYNN: Thank you, Judge. Just briefly with
11 respect to the pecuniary loss, the loss or the
12 injury, which is the language used in the statute,
13 was in January of 2014 when the case against the
14 McGuires, Bill and Caroline McGuire. Caroline was
15 Gagnon's mother. Bill McGuire was the stepfather.
16 That case was foreclosed in January of 2014. No
17 recovery could have been had other than the \$5,000
18 at that point in time. That's when there was an
19 injury.

20 The question -- the second prong of the
21 analysis is when did he have a reasonable belief
22 that the injury was wrongfully caused. Dulberg had
23 every opportunity, he admitted that he had talked to
24 hundreds of lawyers. He could have asked Balke, he

1 could have asked Baudin. He didn't ask any of them,
2 allegedly.

3 Under Illinois law, he has a duty to
4 investigate if he thinks there is an issue. He
5 had -- he became disillusioned with Mast in 2014.
6 Mast withdrew in March of 2015. Again, the injury
7 is January 2014.

8 THE COURT: Thank you very much.

9 MR. TALARICO: Judge, may I say one thing?

10 THE COURT: You may.

11 MR. TALARICO: Thank you. The Supreme Court
12 case, the Suburban case makes it clear that being
13 alerted to a problem or alerted to malpractice is
14 not sufficient enough until -- they use the specific
15 word alerted and say that is not sufficient. There
16 has to be a pecuniary loss.

17 So whether he talked to a thousand
18 attorneys and whether they all told him all
19 different things, he's alerted but he had to face a
20 loss. That's all, Judge. Thank you.

21 THE COURT: Thank you. He was clearly alerted.
22 Let's cut to the chase. He was hesitant -- he was
23 hesitant to ever even sign the settlement agreement
24 to the point where it took him over two months to do

1 it. He clearly had his doubts. He clearly had his
2 lack of faith. He signed the settlement agreement
3 anyway. A year later, the attorneys withdrew. He
4 went to another attorney, still raised the issue.
5 Went to another attorney, still raised the issue.
6 Met with hundreds of attorneys. He was clearly
7 alerted.

8 When did the pecuniary loss occur? Here is
9 the amazing part, and this is what -- where the
10 disconnect comes on this case and it's why I'm
11 having so much trouble with it, I'm being urged that
12 the pecuniary loss occurred when the decision was
13 given on the binding mediation. But the reason I
14 believe that's a disconnect is because -- for two
15 reasons. The loss that occurred on the binding
16 mediation that is being urged upon the Court is a
17 loss of what appears to be \$360,000. The difference
18 between the \$660,000 that the mediator indicated
19 the -- were the appropriate measure of damages
20 against Mr. Gagnon and the \$300,000 insurance policy
21 limit, that \$360,000 difference and the amount that
22 was awarded and the amount that the mediator claimed
23 should have been awarded is based on an agreement
24 that somebody entered into. We don't know who that

1 somebody was, but we know for a fact that that
2 somebody was not Hans Mast or the Law Offices of Tom
3 Popovich because the agreement occurred well after
4 they were out of Dodge.

5 But didn't the pecuniary loss itself, in
6 fact, occur if there was a cause of action to which
7 you were alerted? The pecuniary loss occurred when
8 he only got \$5,000. I agree with defense counsel.
9 Statute of limitations lapsed. Merely denying the
10 statute of limitation without more in the
11 depositions and the sworn testimony does not itself
12 create an issue of material fact.

13 The motion for summary judgment is heard.
14 It is most respectfully allowed. Thank you very
15 much, gentlemen.

16 MR. FLYNN: Thank you.

17 THE COURT: Both of you, outstanding. Even
18 though they didn't comply with local rules, I will
19 say gentlemen, to both of you, outstanding
20 pleadings. Very thorough, very well written. I had
21 no issues going through them. I spent three days
22 going through all of them repeatedly, and you both
23 made my job -- well, I'm not going to say easy, but
24 you certainly did your jobs. And I very much

1 appreciate your time. Thank you, gentlemen.

2 MR. FLYNN: Thank you, Judge. And for what it's
3 worth, I apologize for not doing numbered paragraphs
4 on the statement of facts. I did follow that format
5 with Judge Meyer in another summary judgment motion
6 that was granted. This case was originally before
7 Judge Meyer. So --

8 THE COURT: I take no offense. I take no
9 offense by anybody. The pleadings were what they
10 were, and I had no issue reading them. Thank you
11 all very much for your time.

12 MR. TALARICO: Thank you, Judge.

13 THE COURT: Thank you, sir.

14 (Which were all the proceedings
15 had in the above-entitled cause
16 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
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5 I, JUDY CARLSON, an official Court Reporter
6 for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
13 recording.
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