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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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