

From: Paul Dulberg Paul_Dulberg@comcast.net 
Subject: Re: Sample to follow to see what the statement of facts should be.
Date: November 22, 2023 at 9:32 AM
To: Law Office Of Alphonse Talarico contact@lawofficeofalphonsetalarico.com
Cc: Tom Kost tkost999@gmail.com

PD

Dear Mr Talarico,

Attached is our work in progress on this subject.

Look forward to working with you to complete.

Paul

Appeal List.pdf

120 KB

short history of
each p...eal.pdf

231 KB

On Nov 21, 2023, at 10:50 AM, Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> wrote:

See statement of facts and additional statement of facts

Alphonse A. Talarico

3126081410

3128081410

<Illinois Standardized Forms - Approved - Appellant_s Brief.pdf><Additional_Statement_Facts_Approved (1).pdf>

POINTS OF APPEAL:

MEYER RECUSAL - FRIENDSHIP WITH POPOVICH

- 1) Judge Thomas Meyer should have self-recused because he knows the parties, was the Judge in the underlying matter 12 LA 178 and is friends with one of the Defendants. Therefore all orders should be reviewed.

F(1) DISCOVERY

- 2) Reopen F(1) discovery.
- 3) The Judge should not be allowed to make an oral motion and grant his own oral motion
- 4) Strike all motions instigated by the Court.
- 5) Plaintiff, a Party with a Pro Se appearance previously filed, should have been allowed to hear and speak at the Zoom proceedings when his attorney was hospitalized.

DEPOSITION OF MAST

- 6) Depositions that violate (multiple) Supreme Court rules should be stricken.
- 7) Zoom depositions with missing exhibits should be stricken, Zoom depositions where the officer authorized to administer oaths was never given all exhibits used should be stricken.
- 8) Allow the contemporaneous audio recording of Defendant Hans Mast deposition made by the officer authorized to administered oaths be entered in to the record as evidence for the purpose of proof that the Deposition Of Defendant Hans Mast contained numerous major violation of Supreme Court Rules.
- 9) Strike the Zoom Deposition of Defendant Hans Mast completed in violation of numerous Supreme Court Rules without the waiver of said violation by the Parties.
- 10) Deny Defendants' Motion for Summary Judgment based upon the Zoom deposition of Defendant Hans Mast.
- 11) Grant Plaintiff's motion to Depose Defendant Hans Mast.

SUBURBAN REAL ESTATE v CARLSON

- 12) Upon remand to consider Plaintiff's additional vicarious pecuniary losses stemming from Defendants erroneous settlement advice in the underlying case to release the homeowners for \$5,000.00 (the McGuires in the underlying case)

Vicarious liability of McGuires is not able to be calculated until Gagnon case closed - This aligns with the suburban case, the only nuance being the vicarious liability delaying when the pecuniary injury could possibly be calculated)

Disregarded the Law of the State of Illinois regarding the Statute of Limitation for Legal Malpractice and the requirement of pecuniary loss as determined by the Illinois Supreme Court in 2022 IL 126935 SUBURBAN REAL ESTATE SERVICES, INC., et al., Appellees, v. WILLIAM

ROGER CARLSON JR. et al., Appellants

OTHER

- 13) Plaintiff's privileged discussions with his attorney Thomas W. Gooch after retention regarding when he knew that Defendants actions were malpractice should be removed from the record. (History: Fraud on Court Gooch "Team-work" Example 5)
 - 14) Determine whether a hearing on Plaintiff's objections made at Plaintiff's deposition were valid.
 - 15) Proposed order not agreed to by the Plaintiff should not have been sent to this Honorable Court and should not have been entered.
 - 16) Find that Plaintiff's objections of "undue burden" to Defendants' Supplemental Requests should be ruled/treated the same as Defendants' discovery objections of undue burden.
 - 17) Have all Court orders redesignated to match the enter date to the file date and to the hearing date.
 - 18) All stipulations must be signed by the party making the stipulation
 - 19) Have Case Management Conferences and Case Management Orders..
 - 20) Oral motions not filed or noticed should not be allowed.
 - 21) Defendants' ex parte communication on November 9, 2022 between non-attorney Ms. Wang and Plaintiff's former attorney Julie C. Williams (formerly Julia C. Floyd) and any other ex parte communication between: this Honorable Court.
 - 22) Plaintiff's former attorneys and Defendants' former offices should be revealed.
 - 23) The Order entered on December 6, 2022 should be stricken and a corrected Order should replace it because: there was no order entered on November 11, 2022 (VETERANS DAY).
-
- Meyers debacle of the Clinton subpoenaed documents (releasing documents to Popovich/Flynn that we did not subpoena from Clinton and were outside the parameters of the subpoena.)
 - Mast testimony about what the McGuires said in their deposition without supplying their deposition as evidence.

POINTS OF APPEAL:

MEYER RECUSAL - FRIENDSHIP WITH POPOVICH

- The 22nd Judicial Circuit Clerk website <https://caseinfo.mchenrycountyil.gov/pca/Home/Search> or “Public Case Access” does not return results for any past legal malpractice cases filed with the court using the name “Popovich”, “Law Offices of Thomas J. Popovich, P.C.” nor any other iteration of the name we could think of. The only way we found to find past legal malpractice cases involving the Law Offices of Thomas J. Popovich, P.C. in the 22nd Judicial Circuit Clerks files was to know the exact case number prior to conducting a search.
- On March 1, 2023 Dulberg sent for a records request for case 12LA326.¹
- On March 2, 2023 Dulberg received the case file 12LA326 from the clerk.^{2,3}
- In the file⁴ Associate Judge Thomas A. Meyer recused himself from 12LA326 because Mr Meyer is a personal friend of Thomas J. Popovich.⁵
- Of special note here is that sometime between March 2, 2023 and today this legal malpractice case became searchable using the name “Popovich” on the 22nd Judicial Circuit Clerk’s website.

F(1) DISCOVERY

History? ask Paul

ROP Vol 1 of 1

2022-06-10

R 354 - R 359 (Talarico in hospital - Flynn is “A Voice” - Dulberg had to text to convey message to court”)

2022-07-11

R 360 - R 388 (Judge Meyer closes F1 discovery on his (Kangaroo Courts) motion - Talerico’s Supoena to court reporter in Mast deposition disclosed no exhibit 12 exists - etc.)

DEPOSITION OF MAST

History described in Ch 2, Section 2K, K1 to K11 in the Clinton Williams ARDC complaint below:

1 [Exhibit 99_2023-03-01_1035_Records request for case 12LA326_SENT.pdf](#)

2 [Exhibit 100_2023-03-02_1402_Records request for case 12LA326_RECV.pdf](#)

3 [Group Exhibit 35_Records request 12LA326](#)

4 [Group Exhibit 35_Records request 12LA326/2012LA000326/](#)

5 [Exhibit 101_2012LA000326--2012-10-19--ORDREA_0004.pdf](#)

2K-1. On April 30, 2020 at 11:13 AM Flynn emailed Williams stating:⁶

“... The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would suggest the 2nd half of June. ...”

2K-2. On May 4, 2020 at 11:37 AM Williams replied to Flynn stating:⁷

“... I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don’t want to hold this up indefinitely.

Let’s plan for the end of June. If the “stay at home” orders get extended again, we will reconsider the “in person” v “remote” deposition. ...”

2K-3. On May 4, 2020 at 11:37 AM Williams emailed Flynn stating:⁸

“... Made an executive decision on this one. I thought that if Paul wants to be present, and I am sure he will, it will be easier to communicate with him in person as opposed to a video dep. ...”

2K-4. On May 4, 2020 at 11:43 AM Flynn emailed Williams stating:⁹

“... Sounds like a plan. ...”

2K-5. On May 29, 2020 at 4:37 PM Williams emailed Flynn stating:¹⁰

“... I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. ...”

It appears that Williams does an ‘about face’ on her earlier “executive decision” to wait for an in person deposition, has read and understands the supreme court rules on remote depositions and will “take advantage” of those rules.

2K-6. On June 18, 2020 at 9:32 AM opposing counsel Flynn sent an email to Williams stating:¹¹

“... Please let me know when you can about your plan for exhibits. I will assume that I do not need to print or bring anything with me unless you advise otherwise.”

⁶ Exhibit K2-Dulberg v Popovich-3.pdf (Page 1)

⁷ Exhibit K2-Dulberg v Popovich-3.pdf (Page 2)

⁸ Exhibit K2-Dulberg v Popovich-3.pdf (Page 4)

⁹ Exhibit K2-Dulberg v Popovich-3.pdf (Page 6)

¹⁰ Exhibit K2-Dulberg v Popovich-3.pdf (Page 8)

¹¹ Group Exhibits (showing key folders)/Exhibit folder 2-Dulberg Master File/Dulberg Emails 2020 August 19/US Legal Support Confirmation of Scheduling Job No 923267.pdf

2K-7. On June 19 2020 at 2:35 PM, six days before the deposition of Mast, Flynn sent an email to Williams stating:¹²

“Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?

My experience with receiving liens at this stage of litigation(in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast’s dep. ...”

Flynn is correct, Williams and Clinton are preparing to withdraw and have no intention of representing Dulberg in litigating this case any further.

2K-8. On June 19, 2020 at 2:54 PM Williams emails Flynn and states:¹³

“... We are still on. This will be the first remote deposition that I have taken so I am still working on figuring out the exhibits. I believe that I can upload them to the US Legal system and then share them during the deposition. But, if not, I will be sure to have them to you no later than Tuesday by 5pm. ...”

2K-9. June 23, 2020 at 4:25 PM Williams Emails Flynn stating:¹⁴

“... I am attaching the deposition exhibits that I may use on Thursday. I don’t believe there will be any additions between now and then, but if there are they will minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.

I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.

I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well. ...”

It appears from the email that Williams sent Flynn 23 proposed exhibits in this email. There is no evidence that she did the same for the court reporter. Williams has already set herself up for violating the Supreme Court rule and the deposition is still days away.

2K-10. On June 24, 2020 at 12:50 PM Flynn emailed Williams stating:¹⁵

“Thanks Julia. I also received the additional exhibit you may use. See you tomorrow.”

12 Exhibit K3-Dulberg -2.pdf (Page 1)

13 Exhibit 22-Dulberg -2.pdf (Page 2)

14 Exhibit K4-Dulberg v Popovich Firm et al Mast Deposition Exhibits.pdf (Page 1)

15 Exhibit K11-US Legal Support Confirmation of Scheduling Job No 923267-2.pdf (Page 13)

(After several exhaustive searches, Dulberg cannot locate any file containing the email where Williams sends Flynn this “additional exhibit” in the Clinton case file.

Possibly sent to Flynn using “Julia.c.floyd@gmail.com”?¹⁶⁾

Could this possible backchannel email address be why Mr Flynn announced himself as “George Floyd” in open court on February 25, 2019 and later harrassed the court reporter to change the transcript to read “George Flynn”?¹⁷

The court reporter did not sign the certification page of the transcript that now reads “George Flynn”¹⁸ even after being reminded and asked to do so twice.¹⁹

2K-11. Flynn preprinted some of the proposed exhibits and only portions of the larger exhibits to save paper, Most having the wrong exhibit number from what will be used in the deposition.

SUBURBAN REAL ESTATE v CARLSON

History in Evidence Fraud on Court Gooch-Walczyk “Team-work” Example 5 beginning paragraph 170 and 179 and 197

1-170. On February 10, 2021 in court the following exchange took place. Note that opposing counsel Flynn uses the logic of focusing entirely on (a) while ignoring (b) throughout. Mr Talerico (Dulberg’s new attorney) and and Dulberg tell both Flynn and Judge Meyer that they are ignoring (b), yet Judge Meyer doesn’t recognize (b) as relevant:²⁰

MR. FLYNN: Sure. Thank you, Your Honor. **Mr. Dulberg has placed his communications with his prior lawyer, Thomas Gooch, at issue in this case.** Plaintiff has admitted that it filed its complaint -- I’m sorry, plaintiff has filed its complaint more than two years after my clients, his former lawyers, the Popovich firm, withdrew or were terminated from his representation. That’s not at issue.

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

The response does nothing to address those issues or object to the discovery that’s been propounded, so I would request that he be forced at a minimum to answer this discovery,

16 Exhibit K11-US Legal Support Confirmation of Scheduling Job No 923267-2.pdf

17 Exhibit K6-2019-02-25_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-4.pdf (Page 2 Line 3 and Page 7 Line 3)

18 Exhibit K6-2019-02-25_Pages from ROP_Vol_1_of_1_230421_1628_8FF9DDF1-4.pdf (Page 10)

19 Exhibit K7-In Re Dulberg v Popovich et al.pdf (Page 1 and 3)

20 [Exhibit 142_2021-02-10 ROP.pdf](#)

that any objection be overruled, and essentially **that the communications between Dulberg and Mr. Gooch be produced in whatever form.** And to the extent that a subpoena to The Gooch Firm would be necessary at a later date, I would rather take it one step at a time and analyze whatever it is that Mr. Dulberg produce. So, in a nutshell, that's the motion.

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

THE COURT: Okay. Plaintiff's counsel?

MR. TALARICO: Let's see, Your Honor, (indiscernible) to start with, I think this is a two-step analysis. I hope the court sees it the same way. **I think it should be looked upon as a 2-619 motion** and at the same time a -- the **question of whether there was a waiver of the attorney-client privilege under Rule of Evidence 502.** I believe that **if the 2-619 is decided -- I'm sorry. Yeah, the 2-619 motion is dismissed and decided against the defendants,** then the matter -- **the second step would be the waiver of attorney-client privilege which I think my client did not do under either 502(a) or 502(b).**

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

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

THE COURT: Okay. Defense counsel?

MR. TALARICO: If I might --

THE COURT: Go ahead, plaintiff.

MR. TALARICO: -- expound a little bit. I wasn't aware that a 2-619 motion had been up. It was denied by this court, but denied with the ability to get -- to bring it again. All I've seen when I came into the case was a decision saying, you know, denied, so at that point in time I did not, let's say, approach the issues of the statute of limitations or the statute of repose. I think those two issues help clarify the 502 argument. The 502 argument is what -- what information can be gathered, and I think my responses to that would simply be 502(b) and 502(a) have been complied with.

THE COURT: Defense counsel?

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

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

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

MR. TALARICO: I guess I'm not clear on what counsel was saying. I respectfully say that we have complied with the -- the 502(b) was inadvertent within the deposition and the attorney at the time, who was -- I think her name was Williams, Julia Williams, objected and objected on a continuing basis for any of the questions regarding that information. Counsel has not brought a motion to have this court decide whether or not that was appropriate, but he had answered under the continuing objection by Miss Williams that this was a protected attorney-client discussion. As to the 502(a), the intentional disclosure, that was, in my estimation -- and I hope the court agrees -- that was done in the pleadings, in the complaint, but it was done in the -- I wouldn't say in the alternative. **I would say it's additional information.**

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

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

THE COURT: He references -- he references in his complaint -- I assume we're talking about the allegations in the complaint.

MR. TALARICO: Yes.

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

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

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

MR. DULBERG: **It is. It already is.**

MR. TALARICO: **Judge, it's my position that that is not relevant to the question. The question is, when did -- when did he become aware, when does the statute start**

running. And the answer I believe under Illinois law is it begins running when he knows of his injury, and the injury took place with the binding arbitration award; not before, not after. So I'm saying --

THE COURT: **And I guess I -- you're losing me because I -- I don't understand how a binding arbitration award is going to disclose to anybody whether or not malpractice had been -- had taken place.** The -- your client -- I don't know if you can see him. He keeps raising his hand. I'm ignoring him because he has an attorney. I'm going to -- I'm going to focus on you.

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

MR. DULBERG: May I clarify on the record.

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

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

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

MR. DULBERG: I understand.

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

MR. TALARICO: Judge, **I think in all three -- the original complaint, the first amended complaint and the second amended complaint, all three plead the injury happening with the -- I can't think of the word -- but with the binding arbitration statement. It thereafter talks about other matters and each time the drafter of that complaint, the first -- I'm sorry, the original, the first and the second, adds in different aspects which I believe are really irrelevant. I think the focus is on when the injury occurred. The injury I believe occurred when the binding arbitration award was granted and I think that's when the statute of limitations should run.**

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

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

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

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

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

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

THE COURT: Counsel, --

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

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

THE COURT: I'm ignoring what's being said. Mr. Talarico, do you have a comment?

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

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

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

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

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

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

MR. FLYNN: Judge, may I clarify that.

THE COURT: Go ahead. Yeah.

MR. FLYNN: Thank you. You know, **the plaintiff has attempted I think to use both, a report that he received from a chainsaw -- so-called chainsaw expert, so a liability expert, relative to the underlying case. There's been some confusion with respect to his pleading and reliance on that report. However, what I clarified at his deposition is that he relied on a legal opinion to toll the statute of limitations in this case. It's that legal opinion in December of 2016 which informed him of the malpractice.**

Again, he wasn't very specific. I tried to question him about each and every violation of the standard of care, breach of the standard of care, and when he found out about it; and you can read the whole deposition, but his answers are evasive. They've been evasive in his original interrogatory answers. We've covered the waterfront with every possible

question and interrogatory and production request we could, but it's clear that he is relying on a legal opinion. Now, he's not very specific about what that legal opinion is, and maybe there isn't anything in Gooch's records or in the emails and whatnot to and from Gooch and Dulberg, but, in any event, that's what he testified to, and so it's our position we should be entitled to those legal opinions, whatever they are.

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

MR. FLYNN: I'm not sure if that's accurate, Judge. I think that -- **I think he's pinpointed the time period to December of 2016**, but I think he also testified that there was regular email communication between Dulberg and Gooch, you know, --

THE COURT: In any event, **I am going to direct production of all those communications on which the plaintiff is basing his claim of the applicability of the discovery rule**; and that's a little broader than I first intended, but given the nature of this discussion, **it sounds like it's more than just a couple of documents**. It might be several of them. **I will also have those items produced to me for an in camera inspection** so that I can determine to what extent that they are disclosing information relevant to our investigation into the discovery rule, because while I agree the defendant should be allowed to investigate that issue, that doesn't mean he gets the benefit of prior counsel's work product outside of the discovery rule issue. Does that make sense?

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

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

MR. TALARICO: Judge, if I might.

THE COURT: I'm sorry?

MR. TALARICO: If I might speak.

THE COURT: Yeah.

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

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

MR. DULBERG: (Indiscernible) that.

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

MR. TALARICO: Of the injury, --

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

MR. DULBERG: May I.

THE COURT: Anything else?

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

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

MR. DULBERG: I will speak on the record.

THE COURT: So I will --

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

THE COURT: Sir, --

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

THE COURT: Sir, --

MR. DULBERG: -- of the injury.

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

MR. DULBERG: Yes.

THE COURT: Do not tell me what the law is. I will make that decision. I've instructed you numerous times not to talk, and yet you feel the need to express yourself. You have an attorney. Your attorney has ably represented you, but I get to make a decision regardless of what your personal thoughts are. So we will go back to my discussion. Forgive the outburst, but I have invited him not to speak and that wasn't acceptable to him. So, in any event, how long, Mr. Talarico, do you need to produce this information?

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

THE COURT: Okay. Twenty-eight days is fine with me. Mr. Flynn?

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

THE COURT: You need a privilege log certainly as to the documents, and so I'm going to direct that you be given a privilege log because they are claiming privilege as to these items. I assume there hasn't previously been one. Is that true?

MR. FLYNN: That is true.

THE COURT: All right. So you're entitled to the privilege log. As far as the other interrogatories are concerned, Mr. Talarico -- How many interrogatories do we have outstanding?

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

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

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

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

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

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

interrogatories, which ones?

MR. FLYNN: These were the interrogatories propounded by Hans Mast, my other client, and that was Exhibit D, I believe, to the motion. I did not attach his answers, but Hans Mast's interrogatories which were propounded back on March 22 of 2019 -- one, two, three -- just four interrogatories. I do believe that we have a response, but it's incomplete. It doesn't -- it doesn't identify these communications with Mr. Gooch or the legal opinion that has been alleged in the complaint and placed at issue.

THE COURT: Yeah, and I -- my concern is -- and the answer, direct answer, to those is going to require my review of the documents, so I'm going to enter and continue that part of the motion until I make a decision with respect to the documents. Is there anything else?

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

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

MR. FLYNN: I believe so. Okay.

THE COURT: Okay? And the order -- we'll pick a new date in a moment. The order will provide that the plaintiff will provide you with a privilege log for those -- provide you answers to the production request as well as a privilege log with respect to any documents that are withheld, and I'm entering and continuing your motion with respect to the interrogatories. Plaintiff will provide me with the documents withheld and identified in the privilege log within 28 days and then we'll come back perhaps two weeks after that. Twenty-eight days is March 10th; two weeks after that would be around March 24th, and I can provide you with my ruling then. So how's March 24th at 1:30?

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

THE COURT: How about the 25th? Thursday.

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

THE COURT: Yeah. Mr. Talarico?

MR. TALARICO: One second, Your Honor.

THE COURT: Okay.

MR. TALARICO: Fine.

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

MR. FLYNN: Okay.

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

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

THE COURT: All right. Anything else then?

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

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

MR. FLYNN: Thank you.

THE COURT: See you in March.

MR. FLYNN: Thank you, counsel.

THE COURT: All right. Bye.

179. In simple terms:

- a. If the agent paid the whole award for its negligent actions then the principal wouldn't owe the plaintiff anything because the amount owed is zero and there is nothing left to quantify or realize as a pecuniary loss or injury.
- b. If the agent cannot pay the whole award for its negligent actions then the principal would owe the plaintiff greater than zero and the amount can be quantified and realized as a pecuniary loss or injury.

c. If the plaintiff was found to be greater than 50% at fault then neither the agent nor its principal would owe the plaintiff and there is nothing left to quantify or realize as a pecuniary loss or injury.

In any scenario above the plaintiff's pecuniary injury attributable to a principal vicariously liable for its agent's negligent actions cannot be calculated, quantified or realized until an award is issued for the agent's negligent actions.

197. Over a period of 6 years Gooch, Clinton and Williams never referred to pecuniary injury as cited in *Suburban Real Estate v Carlson* or the related cases²¹ cited within and they all omitted or ignored that McGuire's Vicarious Liability for its agent's negligent actions could be quantified and realized for the first time on December 12, 2016 as a pecuniary injury. Neither Judge Meyer nor Judge Berg could see any relevance in *Suburban Real Estate v Carlson* or the notion of receiving a 'financial injury' on December 12, 2016. Judge Meyer "didn't buy" the claim. Judge Berg found no relevance in the claim of a 'financial injury' that was received on December 12, 2016.

OTHER

- 13) Plaintiff's privileged discussions with his attorney Thomas W. Gooch after retention regarding when he knew that Defendants actions were malpractice should be removed from the record. (History: Fraud on Court Gooch "Team-work" Example 5)
- 14) Determine whether a hearing on Plaintiff's objections made at Plaintiff's deposition were valid. (2021-04-01 ROP Vol 1 of 1 R 160 - 176 around page 13 and still need to identify page numbers for previous months when Priviledged Gooch communications were court ordered to be turned based on deposition transcript before ruling on ongoing objections made during deposition)
- 15) Proposed order not agreed to by the Plaintiff should not have been sent to this Honorable Court and should not have been entered. (several instances - work with Talarico to identify specific Orders)
- 16) Find that Plaintiff's objections of "undue burden" to Defendants" Supplemental Requests should be ruled/treated the same as Defendants' discovery objections of undue burden. (2021-03-15 ROP Vol 1 of 1 R 125 - R 153 and 2021-04-01 ROP Vol 1 of 1 R 160 - 176 and 2022-01-04 ROP Vol 1 of 1 R 230 - R 269, possibly more)
- 17) Have all Court orders redesignated to match the enter date to the file date and to the hearing date. (work with Talarico to identify these)
- 18) All stipulations must be signed by the party making the stipulation. (2022-06-10 ROP Vol 1 of 1 R 354 - R 359 and possibly others)
- 19) Have Case Management Conferences and Case Management Orders..(work with Talarico on how to identif this)
- 20) Oral motions not filed or noticed should not be allowed. (see F1 Discovery earlier in this

²¹ See paragraph 209

document and work with Talarico to identify others)

- 21) Defendants' ex parte communication on November 9, 2022 between non-attorney Ms. Wang and Plaintiff's former attorney Julie C. Williams (formerly Julia C. Floyd) and any other ex parte communication between: this Honorable Court. (still need to locate these emails - ask Talarico for help here)
- 22) Plaintiff's former attorneys and Defendants' former offices should be revealed. (ask Talarico for help on this)
- 23) The Order entered on December 6, 2022 should be stricken and a corrected Order should replace it because: there was no order entered on November 11, 2022 (VETERANS DAY).

Possibly add these 2 points?

- Meyers debacle of the Clinton subpoenaed documents (releasing documents to Popovich/ Flynn that we did not subpoena from Clinton and were outside the parameters of the subpoena and outside the release of attorney client privilege.)
- Mast testimony about what the McGuires said in their deposition without supplying their deposition as evidence, (Mast testifies to Heresay without ever making depositions in 12LA178 part of the record in 17LA377)(most likely because documents had forged signatures).