

From: Julia Williams juliawilliams@clintonlaw.net 
Subject: Second Amended Complaint
Date: December 5, 2018 at 10:35 AM
To: Paul Dulberg paul_dulberg@comcast.net

JW

Dear Paul,

Attached please find the revised version of the second amended complaint. We will plan to file it tomorrow by morning. If you can, I request that you send further thoughts and edits by 5pm today. I have a deposition in the afternoon and cannot file it later in the day.

I reviewed your comments and edits. Overall, many were accepted. There were some, particularly the language about the bankruptcy, that I thought were unnecessary and would simply muddy the waters for the judge.

In this case, we need to show that Mast/Popovich had a duty to advise you properly and protect your interest, they failed to do that by urging you to settle with the McGuires when you could have continued with the case against them and obtained a much better result, instead you settled and were not able to recover at least \$300,000. The bankruptcy proceedings are necessary to this case. They will add color to the case and the information will definitely come out in the discovery process. That being said, I don't want to confuse the issues and the recovery by making allegations about the bankruptcy in the complaint.

Further, I don't want to increase any burden of proof we may have by making allegations that are necessary to prove our case.

I believe the number typos have been resolved, but before we file, I will definitely have Mary review for grammar and typos.

Best Regards,

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Dulberg Second
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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J.	)	
POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as “DULBERG”), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as “POPOVICH”), and HANS MAST (hereinafter also referred to as “MAST”), as follows:

**COUNT I
LEGAL MALPRACTICE**

A. Parties and Venue

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.
2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.
3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for ~~Mast's~~ actions alleged herein.

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5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams")(Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

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7. Dulberg ~~lives in the next neighborhood over from~~ the McGuire family.

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8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, Cook County, Illinois (~~"the Property"~~).

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9. David Gagon is Caroline's son and Williams's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. ~~The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut~~ down the tree.

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12. ~~Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.~~

13. William ~~was~~ physically assisted with cutting down the tree and, ~~then,~~ later supervised Gagnon's actions.

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14. ~~Caroline,~~ supervised Gagnon's and William's actions.

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or should have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

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28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

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29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

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30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, current and future medical expenses in amount in excess of \$260,000, lost wages in excess of \$250,000, loss of use of his right arm, and other damages.

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31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A.**

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32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

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33. Mast and Popovich entered into an attorney client relationship with Dulberg.

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34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

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35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

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36. The claims against Gagnon were resolved later through binding mediation with new counsel.

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37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for \$5,000.

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39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the \$5,000.00, "the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

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40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the \$5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

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41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of \$5,000.00 and if he did not, he would get nothing.

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42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

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43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for \$5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

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45. Mast also told Dulberg that Gagnon's insurance policy was limited to \$100,000.

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46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lead Dulberg to believe that the matter was being properly handled.

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47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

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48. After accepting the \$5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

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49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

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50. The McGuires owed their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

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51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

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52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

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53. In December of 2016, Dulberg was awarded a gross amount of \$660,000 and a net award of \$561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately \$300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

- a) failed to fully investigate the claims and/or basis for liability against the McGuires;
- b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
- c) failed to accurately advise Dulberg of the McGuires insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' insurance policy;
- d) failed to properly investigate the claims against the McGuires;

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Deleted: → a) → Failed to take such actions as were necessary during their representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of Dulberg, for example hiring a liability expert; ¶
→ b) → Failed to thoroughly investigate liability issues against property owners of the subject property; ¶
→ c) → Failed to conduct necessary discovery, so as to fix the liability of the property owners to Dulberg, for example hiring a liability expert; ¶
→ d.) → Failed to investigate the insurance policy amounts of the McGuires and Gagnon; ¶
→ e.) → Incorrectly informed Dulberg that Gagnon's insurance policy was "only \$100,000.00" and no insurance company would pay close to that; ¶
→ f) → Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues; ¶
→ g) → Improperly urged Dulberg to accept a settlement from the property owners, and dismissed them from all further responsibility; ¶
→ h) → Failed to appreciate and understand further funds could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation; ¶
→ i) → Falsely advised Dulberg throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that Dulberg had no choice but to accept the settlement; ¶
→ j) → Coerced Dulberg, verbally and through emails, into accepting the settlement with the McGuires for \$5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion". ¶

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e) failed to properly prosecute the claims against the McGuires including failing to obtain an expert to testify as to the claims against the McGuires;

f) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over \$300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his
attorneys The Clinton Law Firm

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