

From: Paul Dulberg Paul_Dulberg@comcast.net 
Subject: Questions for Mast Deposition
Date: February 8, 2020 at 8:59 AM
To: Julia C. Williams juliawilliams@clintonlaw.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

PD

Hi Julia,

Earlier this week I sent you 2 files.

[questions_for_mast.txt](#)
[timeline_of_mcguire_settlement.txt](#)

I sent the same files I sent you in July of 2019 by mistake because these were updated in November 2019 using the POP Numbers, Dulberg Bates numbers and the old file names so they can be found and referenced more easily.

Please replace timeline_of_mcguire_settlement.txt with 2109-11-19_updated_timeline_of_mcguire_settlement.txt attached below.

I have also attached questions_for_mast.txt which is identical to what I sent earlier this week so we have them both in the same email.

Thanks,
Paul



2109-11-19_upd
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questions_for_
mast.txt

Timeline of McGuire settlement

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

OCTOBER 30, 2013: Mast in an email to Dulberg first expresses doubt about Dulberg's case against Gagnon.
(Dulberg 001531, Dulberg 001533, Dulberg 001534, Dulberg 001535, Dulberg 001536) (POP 000195)
(email: folder 2013 10, files Mast2-213, Mast2-217)

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

NOVEMBER 4, 2013: Mast requests a meeting with Dulberg. Dulberg brings Barbara, his mother, to the meeting. Neither Dulberg nor Barbara know what the meeting will be about. It is at this meeting that Dulberg is first informed by Mast that Mast believes Dulberg has no case against the McGuires. Mast makes a number of statements which surprise Barbara. He claims that juries in this area are very conservative and Dulberg can't win against an old lady. Dulberg disagrees. It is at this meeting when Dulberg first gives Mast permission to look into a settlement.
(Dulberg 001531)
(witness: Barbara Dulberg, Paul Dulberg)
(email: folder 2013 11, file Mast2-211)

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

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

"In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. "
(Dulberg 001515)

(email: folder 2013 11, file Mast2-201)

Dulberg answers:

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

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

...

I'm not happy with the offer."

To which Mast replies:

"Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case."

(Dulberg 001519)

(email: folder 2013 11, file Mast2-204)

Dulberg replies:

"I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm. Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?"

To which Mast comments:

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

(Dulberg 001519)

(email: folder 2013 11, file Mast2-204)

Dulberg later replies:

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

By claiming they had no control over the work dave did after all the preparation, money and time spent out in the yard yelling at him that they wanted certain things done in a particular way I don't see how they get out of the direct over site of the project because now that

there is an injury they don't feel they had any real direct control over their own workers actions?

This is ridiculous.

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

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

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

(email: folder 2013 11, files Mast2-202, Mast2-198, Mast2-196, Mast2-190, Mast2-189, Mast2-207, Mast2-205, Mast2-204, email: folder 2013 12, files Mast2-919, Mast2-192, Mast2-187)

NOVEMBER 19, 2013:

Dulberg wrote to Mast:

"Hans,

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

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

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

I cannot believe that a conservative jury isn't going to award anything less than the cost of the medical damages and lawyer fees from them unless something catastrophic changes. I do see them being

conservative as to what I will end up with at the end but not the real medical and lawyers bills. Even the conservative juries in this county are not so conservative that they won't give the base bills.

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

Other than fearing a motion to dismiss the suit against the McGuire's insurance based on some false concept that because they didn't have their finger directly on the chainsaw trigger they hold no responsibility for damages.

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

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

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

When you advised me to seek a settlement with the McGuires insurance, I agreed to look at it only because they didn't have their hands directly on the trigger of the chainsaw and That you would get at the least the medical bills paid for out of it. I thought that was made clear in your office.

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

(Dulberg 001517, Dulberg 001518)

(email: folder 2013 11, file Mast2-202)

NOVEMBER 20, 2013:

Mast sends an email to Dulberg:

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

situation."

(Dulberg 001515, Dulberg 001516)

(email: folder 2013 11 file Mast2-201)

Dulberg replies:

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

Dulberg agrees to have another meeting with Mast in his office.

(memo of meeting: POP 000003)

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

(Dulberg 001515, Dulberg 001516)

(Witness Thomas Kost)

(email: folder 2013 11, file Mast2-201)

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

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

Mast also gave Dulberg a packet of other examples of case law.

(Dulberg 000204 through Dulberg 000225 and Dulberg 000301 through Dulberg 000305)

Thomas Kost kept a rough set of notes during the meeting.

(Dulberg 001217)

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

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

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

Mast writes a Memo to a person named "Jen"

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

Therefore, we will not need to call on the balances but we will only need to provide a settlement memo containing only any liens listed on the settlement memo.

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

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

(POP 000177)(Dulberg 001514)
(email: folder 2013 11, file Mast2-200)

Later that evening Dulberg writes to Mast:

"Hans,

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

(Dulberg 001512)
(email folder 2013 11, file Mast2-198)

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

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

DECEMBER 4, 2013: Dulberg receives his own deposition in the mail. Dulberg again informs Mast he wants to see Gagnon's deposition.
(Dulberg 001504)
(email: folder 2013 12, file Mast2-191)

Dulberg writes to Mast:

"Hans,

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

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

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

(Dulberg 001504)

(email: folder 201 12, file Mast2-191)

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

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

DECEMBER 18, 2013:

Dulberg writes to Mast after reading Gagnon's deposition:

"Hans,

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

...

As far as the McGuires are concerned give me a call."

(Dulberg 001500)

(email: folder 2013 11, file Mast2-189)

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

Mast writes the following memo after the call:

"On December 18, 2013, I called Paul today after and email and we had
a long discussion about the McGuire's liability and he seemed to
concede and understand that probably based on the testimony there is
nothing we can prove against the McGuire's and he is willing to take

their \$5,000 settlement offer."
(POP 000884)

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

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

JANUARY 31, 2014: Final release papers are signed by Dulberg and in the mail.
(Dulberg 001491)
(email: folder 2014 01, file Mast2-180)

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

For the first time Mast recommends to Dulberg that he look for alternative counsel that wishes to pursue the matter.
(Dulberg 001484)
(email: folder 2014 04, file Mast2-176)

Questions for Mast:

- 1) When did you first express doubts to Dulberg about whether McGuires were liable for Dulberg's injuries? What were those doubts?
- 2) When did you first inform Dulberg that you were unwilling to take the McGuire case to trial and that he should seek a settlement?
- 3) When did you first express doubts about whether Gagnon could be proven to be liable for Dulberg's injuries? What were those doubts?
- 4) When did you first inform Dulberg that you were unwilling to take the Gagnon case to trial?
- 5) If you felt that McGuires were not liable for Dulberg's injuries and you felt it would be difficult to prove Gagnon liable, why didn't you suggest Dulberg seek alternative counsel before accepting the \$5,000 settlement (which wouldn't pay for 10% of Dulberg's medical bills) with the McGuires?
- 6) What new information did you receive between November of 2013 and April 14, 2014 that convinced you that you would be unwilling to take the Gagnon case to trial. If none, than why didn't you inform Dulberg you were unwilling to take the Gagnon case to trial before or while urging him to settle for \$5,000 with the McGuires?
- 7) Did you send interrogatory questions to Gagnon? Did you send a request to produce to Gagnon?
- 8) Did you ever receive Gagnon's answers to interrogatory questions submitted by you? If yes, why were they not included in Dulberg's case file that you gave to him when you withdrew from counsel? If yes, why were they not included in the documents produced in this lawsuit? If yes, then why do this date does nobody seem to have a copy of them?

9) In the documents turned over to Dulberg when you withdrew from counsel, there is a request to produce for Gagnon prepared by you but there is no evidence that Gagnon ever turned over any of the documents requested. One of the documents you requested of Gagnon was a certified copy of his insurance policy. Did you ever receive any of the documents which you requested Gagnon to produce? Did you ever receive a certified copy of Gagnon's insurance policy? If yes, why were they not included in the documents you gave to Dulberg when you withdrew from counsel?

10) In an email from you to Dulberg dated February 26, 2015 about the case file you handed over to Dulberg you wrote, "I don't think I have any insurance policies in the file." Since you requested both the McGuires and Gagnon to produce certified copies of their insurance policies, why didn't you have a certified copy of either insurance policy in Dulberg's case file?

11) Why did you repeatedly inform Dulberg that Gagnon's insurance limit was \$100,000?

12) How did you obtain information that the Gagnon policy limit was \$100,000?

13) Did you make an offer to settle the McGuire case for \$7,500 to Ronald Barch on October 22, 2013? If yes, did Dulberg authorize you to make that offer?

14) Do you have any documented evidence that Dulberg authorized you to make that offer? Do you have any evidence Dulberg authorized you to seek a settlement with the McGuires on or before October 22, 2013?

15) When Ron Barch made an offer of \$5,000 to settle the McGuire case on November 18, 2013, Dulberg's response was that he was unhappy with the amount offered. Do you believe that Dulberg was aware that the offer of \$5,000 was actually a counter-offer to your proposal of \$7,500 made on October 22, 2013? Do you have any evidence that Dulberg was aware that the McGuire offer of \$5,000 was actually a counter-offer to the offer you initiated on October 22, 2013?

16) Dulberg's email reply to the \$5,000 offer of November 18, 2013, dated November 19, 2013, states:

"When you advised me to seek a settlement with the McGuire's insurance, I agreed to look at it only because they did not have their hands directly on the trigger of the chainsaw and that you would get at the least the medical bills paid for out of it. I thought that was made clear in your office."

Did you advise Dulberg to seek a settlement with the McGuires as he stated? Was it first discussed during meeting in your office as he stated? During which office visit was that discussed? Was it at the November 4th meeting or at an office visit that happened earlier?

17) If looking into a settlement was first discussed with Dulberg at the meeting of November 4, 2013, how could you make the \$7,500 offer on October 22, 2013 and claim that Dulberg agreed to it?

18) There was a second meeting between you and Dulberg in your office on November 20, 2013. What was the purpose of the meeting?

19) Did you hand Dulberg documents of case laws at the meeting of November 20, 2013? What case laws were in those documents? Did you discuss cases at the meeting? Which cases were cited? In what way are those cases applicable to the situation with the McGuires?

20) Did you send a request to produce to the McGuires? If yes, why was it not included in the documents you handed over in relation to this lawsuit so far?

21) In a request to produce which you gave to the McGuires, you asked for a certified copy of their insurance policy. They answered that they will give it to you when they receive it. Did you ever receive it? A certified copy of the McGuires insurance policy was not included in the case documents that you turned over to Dulberg when you withdrew from counsel. It was also not included in the documents you turned over in this present lawsuit. Why not?

22) If Dr Levin diagnosed Dulberg with dystonia in August of 2013 and Dr Kajawa diagnosed Dulberg with task specific focal dystonia definitely caused by trauma to his right arm in September of 2013, why did you feel that injury due to Dulberg's chainsaw accident was difficult to prove?

23) Did you read Gagnon's and Dulberg's depositions in order to compare the detailed differences in their version of the days events and the accident?

24) Did you note that Gagnon's description of the accident given to you by phone was very different from how it is described in his deposition? In his description over the telephone he never mentioned anything about Dulberg moving his arm. Later in the deposition he claimed Dulberg moved his right arm into the chainsaw blade. How do you account for this difference?

25) Did you notice that the decription of the chainsaw accident given by Dulberg was completely different from the description of the accident given by Gagnon? For example, Dulberg describes the branch being cut to be about 15 feet long while Gagnon describes it as about 5 feet long. Dulberg describes holding the base of the branch with one hand while Gagnon describes Dulberg holding a 5 foot branch vertically with his left hand above the place where Gagnon was cutting and his right hand holding the same branch below the place where Gagnon was cutting. How do you account for such a large descrepancy?

26) Can you please describe how it is physically possible, using Gagnon's description of the accident given in the deposition, to explain how Dulberg was cut on the lower portion of his right forearm perpendicular to the forarm? (Gagnon described Dulberg holding a branch with his left hand above where Gagnon was cutting and with his right hand below where Gagnon was cutting.)

27) Did you note that your client claimed he was invited by Gagnon to the McGuires to see if he wanted the firewood, not to work?

28) Did you note that your client claimed he was sitting with Carolyn for at least an hour watching Gagnon working with William McGuire, and after William McGuire refused to work any longer it was Carolyn McGuire that first asked Dulberg if he could help Gagnon?

29) Did you note that the McGuires purchased the chainsaw, that they claimed the chainsaw was new, and that they were in possession of the chainsaw and provided it for Gagnon to use contrary to the clear warnings on the cover and opening pages of the chainsaw owners manual?

30) Did you note that the McGuires were in possession of the owners manual and that the manual explicitly has clear warnings written on the cover, on the opening pages and throughout the manual to not do what they admit to allowing to be done with it?

31) If you did not wish to take the McGuire case to trial, why wouldn't you simply advise your client to seek alternative counsel rather than to settle with the McGuires for an amount that wouldn't pay for 10% of his medical bills or anything towards future lost wages?

32) Considering that \$5,000 is such a small amount of money relative to Dulberg's medical bills and practically nothing compared to future lost wages, why would you urge your client sign a release barring any future legal action against the McGuires connected to the chainsaw accident in exchange for such an insignificant sum?

33) Why were you so sure the presiding judge would allow the McGuires to get out of the case on a motion considering the same Judge allowed the complaint to proceed to discovery? Why didn't you believe the judge would allow the case against the McGuires to proceed to trial?

34) Considering that \$5,000 wouldn't change much for Dulberg in the predicament he was in, wouldn't he have been better off in taking his chances by proceeding with new counsel?

