

From: Paul Dulberg Paul_Dulberg@comcast.net
Subject: Re: Barch Documents
Date: February 22, 2020 at 11:03 AM
To: The Clinton Law Firm juliawilliams@clintonlaw.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

PD

Also on the topic of the Bankruptcy court ordering the binding mediation.

I have just found out that Dulberg owned the asset and Dulberg alone had final say on whether the asset would be subject to binding mediation. In other words "the client owns the case".

The bankruptcy court was in error and assumed absolute control over an asset that was beyond the courts power to do by ordering it into Binding mediation with high and low limits.

Second this with Dulberg's refusal to sign the ADR agreement and we can have that whole process undone. It does not matter that Dulberg was present at the ADR. What Matters is, did the client sign the agreement?

The Bankruptcy Court should have waited for the case to be resolved then collected the proceeds from the recovery and distributed them to the creditors accordingly.

If need be, I think I can file an appeal on the Bankruptcy's courts decision to prematurely dissolve the asset by court ordered Binding Mediation based on powers not granted to the bankruptcy court and interfering with the clients control over the direction of the suit.

Paul

On Feb 22, 2020, at 9:37 AM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Julia,

The findings of fact would change from the original litigation to include Dulberg's permanent disability as a result of the accident rather than the narrower determination that Dulberg was only severely impaired used in the previous adjudication.

Notwithstanding my first draft to the counter arguments made in the previous email please take a look at the requirements to invoke collateral estoppel in Illinois and How they don't align to our current attempt to relitigate the underlying case collateral estoppel!

Illinois requirements for the application of the collateral estoppel doctrine are:

- (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question;
 - (2) there was a final judgment on the merits in the prior adjudication;
 - (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication.
- "In other words, collateral estoppel or issue preclusion prevents relitigation of an issue between the same parties or their privies in any future lawsuit based on a different claim."

Collateral estoppel applies to questions of law and findings of fact.

1. the issue decided in the prior adjudication is identical with the one presented in the suit in question;

The determination of Dulberg's injuries resulting in permanent disability vs sever impairment makes the issues decided in the prior adjudication vastly different from the issues that would be adjudicated in the present suit.

2. there was a final judgment on the merits in the prior adjudication

The merits used in the prior adjudication could not be the same as the current adjudication. Dulberg was not determined to be permanently disabled from his injuries in the prior adjudication but rather, more narrowly only severely impaired, which makes the merits used in final adjudication different from the current adjudication.

3. the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication

I'll accept that this requirement is met

"In other words, collateral estoppel or issue preclusion prevents relitigation of an issue between the same parties or their privies in any future lawsuit based on a different claim."

The claim of negligence is not different but rather the same. The relitigation of the same claim would bring back Parties that were wrongly removed in the prior litigation and bring to light the merits that were not part of the original litigation or Judgement which are the real damage Dulberg suffered

Collateral estoppel applies to questions of law and findings of fact.

The findings of fact would change from the original litigation to include Dulberg's permanent disability as a result of the accident rather than the narrower determination that Dulberg was only severely impaired used in the previous adjudication.

Only 1 of the 3 requirements are met for collateral estoppel to be invoked upon Dulberg

Paul

On Feb 21, 2020, at 6:49 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Here is my first draft as a counter argument to Collateral Estoppel

Collateral Estoppel

The countervailing and generally successful argument, is that the defendant attorneys Mast and Popovich had their hands in the McGuire settlement, which would not have taken place except for mistakes made by the attorneys Mast and Popovich. The McGuire settlement the chance to litigate with Dulberg at the ADR and could have changed the outcome. Particularly the amount of the award.

The countervailing and generally successful argument is that the attorneys Mast-Popovich had their hand in the dismissal of the McGuires, which would not have taken place except for mistakes made by the attorneys Mast-Popovich in the October 22, 2013 letter to Barch v or consent followed by the next 3 months of false and misleading information given to Dulberg by Mast-Popovich as documented in the emailed communications.

The attorneys Mast-Popovich also had their hands in the false and misleading amounts of insurance available from the remaining defendant Gagnon which was told to Dulberg after the dismissal of the McGuires and played the only hand in the plaintiff Dulberg deciding to file Popovich first telling Dulberg that he would be able to recover everything from Gagnon prior to the dismissal of the McGuires, it is documented in emails that Mast-Popovich was recommending different bankruptcy attorneys to Dulberg as a course of action, the Dulberg ban happened but for the attorneys Mast-Popovich false and misleading statements about what if any possible recovery was available to Dulberg.

The underlying litigation at the ADR Binding Mediation which was brought about by the bankruptcy court would not have happened but for Mast-Popovich hands in the false and misleading information they gave to Dulberg which sealed Dulberg's decision to file for bankruptcy

Bottom Line: Dulberg hired and trusted Mast-Popovich as 20 year veterans in personal injury liability and as 20 year veterans as officers of the court to be honest with him and Mast-Popovich violated and abused that trust as document in the email correspondence which sh every part of the underlying case except for the litigation at the ADR.

Because Mast-Popovich have their well documented dirty hands in all decisions in the underlying cases up until they withdrew as counsel, they breached their duty of care for Dulberg and caused the most likely course of events in the underlying case to be litigated in a manner interests for their client Dulberg well before Mast-Popovich withdrew from it.

On Feb 21, 2020, at 5:44 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Thank you for the correct terminology
I will do some reading on it

When is Mast's deposition and when will we get together before it?

Have a good weekend
Paul

On Feb 21, 2020, at 5:41 PM, Julia Williams <juliawilliams@clintonlaw.net> wrote:

Ed is not talking about judicial estoppel. The doctrine is collateral estoppel, when an issue has been litigated and cannot be relitigated. Here is a link to a Minnesota article that explains it well. Minnesota law and Illinois law are similar on this issue. But feel free to do your law.

<https://mitchellhamline.edu/minnesota-administrative-procedure/12-1-res-judicata-and-collateral-estoppel/>

Julia Williams
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Sent from my iPhone.

This message may be privileged or confidential. If you are not the intended recipient, please notify the sender and delete this message immediately.

On Feb 21, 2020, at 5:30 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

2 quick points

What is the probability the defense will take the \$261,000 right now if we demand it?

I need to understand exactly how judicial estoppel applies to my case considering the 5 requirements needed to invoke judicial estoppel don't come close to aligning to our case.

Thanks,
Paul

On Feb 21, 2020, at 11:06 AM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

Please don't take this as confrontative, perhaps I just don't understand.

If judicial estoppel doesn't apply because I have never taken two different positions that are that are factually inconsistent in separate judicial or quasi-judicial administrative proceedings what's left that binds us to the adr award for the demand?

Please see the emails sent today
Subject: judicial estoppel and Re: judicial estoppel

Thanks,
Paul

On Feb 21, 2020, at 10:54 AM, Ed Clinton <ed@clintonlaw.net> wrote:

Paul,

At most your demand could be \$261,000 based on the arbitration award.

You cannot get around that award in this case.

You are stuck with it.

Ed Clinton, Jr.

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On Feb 15, 2020, at 12:36 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

Sorry but No.

That's less than the balance left from ADR award of 660,000

The balance left from ADR is 360,000 if we choose to enforce the ADR award and not retry the underlying case.

November 26, 2018, \$5.5 million settlement on behalf of a man who was severely injured on his motorcycle in McHenry County, Illinois

Please follow my logic here...

I believe a jury would have awarded between 5.5 and 6.6 million in the underlying case and still will be very close to that today.

I believe the most I could have actually collected from a jury award from the defendants insurance policies and their assets is 1.2 million.

Since Mast Never did an asset check or pulled the insurance policy limits on the Gagnons or McGuires, they have no idea what the defendants could actually pay.

For all the defense knows, the McGuires and Gagnons could have been carrying 1 million in additional insurance coverage each plus their assets.

My thought is offer them 2.25 million to settle now or our demand amount goes up 500,000 each time I'm asked to try and settle.

Put on a good poker face and let them know we will retry both the underlying case and the malpractice case in front of a jury and see where the chips fall.

2.25 million and rising is my number

Paul

On Feb 15, 2020, at 9:45 AM, Ed Clinton <ed@clintonlaw.net> wrote:

I was thinking more like \$350,000.

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Sent from [Mail](#) for Windows 10

From: Paul Dulberg <Paul_Dulberg@comcast.net>
Sent: Friday, February 14, 2020 7:39:32 PM
To: Ed Clinton <ed@clintonlaw.net>
Cc: Julia Williams <juliawilliams@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
Subject: Re: Barch Documents

Hi Ed,

I haven't heard back so I'm assuming you just want a number.

If you need a number to start negotiating from start at 6,600,000 - 300,000 that was already paid from the ADR award.
Thats 6,300,000.

Let's see where they come in at.

Thats the number from everything I've researched over the past 9 years that a jury today would award in the underlying case.

I hope that these are for settlement purposes only because I have no intention of limiting any possible recovery.

Thanks,
Paul

On Feb 14, 2020, at 6:32 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

Sorry for all the emails in a row but I have too many questions

How does this demand then negotiation work?

Is it true that even if they agree to some arbitrary number don't we still need to prove the McGuires and Gagnons could pay for it or is that the case only if it goes to trial?

Paul

On Feb 14, 2020, at 6:11 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

Should I hire an expert to come up with the number?

Thanks,
Paul

On Feb 14, 2020, at 5:40 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

A number is tough.

In that Demand draft I was already at 3.2 in todays dollars but considering future inflated dollars, off the top of my head I would say 10x what the ADR awarded but I think what you're asking is what number woi to go through a trial.

Let me ask you, in your experience what kind of number will make them really think about it?

This will give me a starting point.

Thanks,
Paul

On Feb 14, 2020, at 5:32 PM, Ed Clinton <ed@clintonlaw.net> wrote:

We will rewrite it.

We need a number so can start negotiating.

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On Feb 14, 2020, at 4:13 PM, Paul Dulberg <paul_dulberg@comcast.net> wrote:

Hi Ed,

You said work on the demand so today I spent all day trying to draft a demand letter.

I have no idea what I'm doing

I have attached it as Demand Draft - in process.txt

It's not even close to being finished and I'm not sure if I'm even on the right track

Please review it and let me know where I need to fix it.

Thanks,
Paul

On Feb 13, 2020, at 5:26 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

I think we are talking past each other here because this is complex and we discussing different topics.

You are correct, there is nothing wrong with me giving my deposition on Wednesday.

Yes, I will give my deposition next week on Wednesday.

On the Mast Deposition topic: I definitely want to see Barch documents before Mast is deposed.

If this is possible, we are in agreement and on the same page.

Thank you,
Paul

On Feb 13, 2020, at 5:04 PM, Ed Clinton <ed@clintonlaw.net> wrote:

Paul,

We need to know if you are going to do your deposition on Wednesday next week.

Second, I admit I don't understand your reluctance to be deposed. It does not make sense to me.

We need to resolve this quickly .

We need to get this case moving.

I'm concerned we are not on the same page.

We believe Mast was negligent but we don't think those communications (that you were not a party to) are relevant to your testimony.

I'm much more concerned that this case is not moving along appropriately - there is no demand and no one will pay you until you are deposed.

Ed

On Feb 13, 2020, at 3:25 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

On the demand portion it would also be helpful to get the McGuires insurance policy from Barch.

William McGuire said his limits were 300,000 in his Interrogatory but that is just his word.

The actual policy from the McGuires would be helpful before writing a demand letter

Can we get that with the rest of the Mast/Barch Communications and documents?

While we are at it, it would also be helpful to have the Gagnon asset check that the Baudins did as well as getting a McGuire asset check done. I don't see it in the documents, did the Baudins include the Gagnon asset check they performed with the Case file?

Ed: Baudins asked for a \$250K on the ADR and the belief that was based on the Gagnon asset check and his insurance limits of 600,000 as well as multiple oral testimony. We could not ask for

Paul - Paulino asked for 1.2 million at the ADP and I believe that was based on the Gagnon asset check and his insurance limits of 500,000 as well as my injuries and lost wages. We could not ask for permanent disability because that was determined the following year by social security.

Thanks,
Paul

On Feb 13, 2020, at 2:38 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

I did not address the demand portion of your email.

We should have the entire Popovich policy before moving forward on this.

Popovich only supplied the declaration pages in the document disclosure.

Are we not entitled to see the entire policy?

Thanks,
Paul

On Feb 13, 2020, at 1:29 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

I agree with everything you wrote.

I can only testify to what I know.

As of July 2019, I now know about the October 22, 2013, \$7500 offer Mast made to Barch without my knowledge.

We need to confirm this letter is real by acquiring the Barch firms documents and communications with Mast by compelling them if necessary.

I have been asking for the Barch communications and documents since last July.

Why hasn't Barch turned over those communications and documents?

Do we need to be concerned that Barch feels those documents may implicate himself somehow or has he made a backroom deal of some sort with Mast/Popovich?

The only reluctance that I have is the amount of time Mast and Popovich will have to both read and formulate a strategy before being deposed themselves.

I have learned the hard way not to trust these two gentlemen (Mast & Popovich) and have cause for concern or we wouldn't be here.

In the underlying case, after reading Caroline McGuire's deposition it became obvious to both myself and Mast that she had read my deposition prior to her being deposed.

Caroline McGuire described my description of the chainsaw incident.

After I realized that Caroline McGuire had information that she would not otherwise have had or possibly known before being deposed I learned to never let that happen again.

It is not fair that the defense witnesses get to read my testimony/deposition before giving their own testimony/deposition.

Even if the defense witnesses don't read my deposition directly I'm positive they will be briefed by their counsel on the key points they need to address.

Given enough time they (Mast & Popovich) will develop an alternative fictional half truth as a strategy.

Fictional half truths is exactly what Mast and Popovich did to me when they lied and bullied me into settling with the McGuires.

These two gentlemen (Mast and Popovich) have a proven track record of deceiving and lying to me so why would I believe documents they turn over without confirming them by getting those records?

If we need to postpone Mast and Popovich's depositions by a month because we haven't received the Barch communications then it seems only fair that my deposition is also postponed.

I don't know if Mast turned over all the communications and documents with Barch or not, the only way to find out is to see what Barch has, who knows what else those documents will show?

Believe me, I wish to get this over with as soon as possible but limiting the time both Mast and Popovich have to prepare after reading my deposition is more important and **having the Barch com deposing Mast and Popovich is essential**.

If I could wave a magic wand and get the Barch documents and everyone deposed today I would do it in a heart beat.

There is more than just the Barch documents that would be ideal to show the 2-1/2 years of deception, lies and abuse perpetuated by Mast and Popovich on me, their client, but those other documents and communications are not at the core of our case.

The Barch firms communications and documents are at the core of our case and must be obtained.

I'm sorry if I hurt anyone's feelings because I don't want to give Mast and Popovich over a month to pour through my deposition before answering questions but this is too important to care about the

Paul

On Feb 13, 2020, at 11:52 AM, Ed Clinton <ed@clintonlaw.net> wrote:

Paul,

Just remember that you cannot win a case during your deposition.

Testify from your own personal knowledge.

I highly doubt that you can testify (or that you should testify) about a letter somebody else wrote, which may or may not be genuine.

Stick to what you know - what you saw and what you observed.

Please focus on getting the deposition done and making a demand.

Ed
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On Feb 13, 2020, at 7:18 AM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Ed,

Is the October 22, 2013 letter an actual communication between Mast and Barch or is it a strategy or trick?

It is essential to verify this from the Barch documents to determine if the letter is a fact or not.

It is also important to limit the time between depositions.

This is my only reluctance.

Paul

On Feb 12, 2020, at 8:12 PM, Ed Clinton <ed@clintonlaw.net> wrote:

Paul,

Is there a reason you are reluctant to be deposed?

Ed

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On Feb 12, 2020, at 6:42 PM, Paul Dulberg <paul_dulberg@comcast.net> wrote:

Hi Julia,

Perhaps we should file a motion to compel Ronald Barch and Auto-Owners Insurance to turn over all communications and document records with Hans Mast and the Popovich law firm as :

My thought is if we get those documents now and have a few days to digest them maybe we can keep the deposition dates as they are scheduled.

Thanks,
Paul

On Feb 12, 2020, at 5:28 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Julia,

How did we get fixed, forced or locked in on a date to give my deposition before we have finished document discovery of the Barch communications?

Determining relevance of documents not yet gathered or analyzed on a central issue to our case isn't solely up to the defense to decide.

It is not fair to us to have to walk into a discovery deposition without seeing the all the documents first whether or not the defense thinks those documents are relevant to my deposition.

We will determine if the Barch documents are relevant to my deposition or not after seeing what is in them.

It is also not fair to push Mast and Popovich depositions a month further out on the calendar if the defense is going to try and compel me to testify now. This serves no purpose other than more time to formulate responses to what is discovered in my deposition.

The dates of the depositions should stay as close together as logistically possible if we want the truth and not some formulated fiction of it.

Let them file the motion to compel. I believe the Judge would agree that we should be able to analyze the Barch records and keep the depositions as close together as possible to get to 1

I believe it is within our rights to see all documents before any depositions begin.

When can we expect to see the Barch communications and documents and how long will we have to analyze them before depositions begin?

Thanks,
Paul

On Feb 12, 2020, at 1:29 PM, Julia Williams <juliawilliams@clintonlaw.net> wrote:

Dear Paul,

We can move Hans Mast and Tom Popovich to the end of March.

Defense counsel will not agree to move your deposition and would file a motion to compel.

At this stage, I think it makes sense for you to go ahead and sit for your deposition on Feb. 19 at 1pm; we will prepare on Feb. 18 at our office at 1pm.

For Feb. 19, I propose we meet here, at our office at 12:30 and walk to Karbal together.

As an FYI, here is the information for opposing counsel's office:

George Flynn

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Best Regards,

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On Feb 12, 2020, at 12:26 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Hi Julia,

Due to the significance of the October 22, 2013 letter between Mast/Popovich and Ronald Barch/Auto-Owners I feel that the documents and communications between Mast and Barch prior to any depositions.

When can we get them?



