

12A

**FILED**

**SEP. 26 2012**

**KATHERINE M. KEENE  
McHENRY CTY. CIR. CLK.**

CASE NUMBER 12KA326

TRANSFERRED DOCUMENTS

CICSLDLR 09/19/12 12-L-000196

12-L-000196 H MCDONALD MARK  
MCDONALD CHLOE  
MCDONALD IAN  
MCDONALD JULIE EST  
MCDONALD QUINLIN

L A W R E C O R D

V. LAW OFFICES THOMA

CASE DISPOSED

ON JURY CALL 00/00/00

PAGE

1

POPOVICH THOMAS J  
TUTAJ JAMES P

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01/06/12	MCDONALD MARK					
		01/09/12				
1066	LEGAL MALPRACTICE COMPLAINT FILED (	50,000.00	567.00			
35875	ROMANUCCI & BLANDIN	33 N LASALLE #2200	CHICAGO	IL		60602
01/09/12	MCDONALD MARK					
		01/09/12				
3498	CASE MANAGEMENT CALL NOTICE MAILED	03/15/12	9:45 A.M.			
02/14/12	MCDONALD MARK		ROMANUCCI & BLANDIN			
		03/07/12				
3331	NOTICE OF FILING FILED					
02/14/12	MCDONALD MARK		ROMANUCCI & BLANDIN			
		03/07/12				
3372	PROOF OF SERVICE FILED					
03/01/12	MCDONALD MARK		ROMANUCCI & BLANDIN			
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2870	CERTIFICATE FILED					
03/01/12	MCDONALD MARK		ROMANUCCI & BLANDIN			
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3004	EXHIBITS FILED					
03/01/12	MCDONALD MARK		ROMANUCCI & BLANDIN			
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3331	NOTICE OF FILING FILED					
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3390	MOTION FILED					
03/08/12	LAW OFFICES THOMAS J P					
		03/12/12				
1900	APPEARANCE FILED - FEE PAID - (JURY 436.00					
37199	KONICEK & DILLON P.C.	21W STATE STREET	GENEVA	IL		60134
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1900	APPEARANCE FILED - FEE PAID - (JURY 436.00					
37199	KONICEK & DILLON P.C.	21W STATE STREET	GENEVA	IL		60134
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2871	CERTIFICATE OF MAILING FILED					
03/08/12	POPOVICH		KONICEK & DILLON P.C.			
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3303	NOTICE OF MOTION FILED					
03/08/12	LAW OFFICES THOMA		KONICEK & DILLON P.C.			
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3331	NOTICE OF FILING FILED					

03/08/12 POPOVICH 03/08/12 KONICEK & DILLON P.C.  
3372 PROOF OF SERVICE FILED

03/08/12 POPOVICH 03/08/12 KONICEK & DILLON P.C.  
3390 MOTION FILED

03/08/12 POPOVICH 03/08/12 KOGAN RANDYE A  
4234 ORDER ON MOTION TO FILE APPEARANCE OR JURY DEMAND, ANSWER OR PLEAD - ALLOWED - 03/08/12  
LD0000000

03/08/12 POPOVICH 03/08/12 KOGAN RANDYE A  
4234 ORDER ON MOTION TO FILE APPEARANCE OR JURY DEMAND, ANSWER OR PLEAD - ALLOWED - 03/29/12  
LD0000000

03/08/12 POPOVICH 03/08/12 KOGAN RANDYE A  
4283 ORDER ON MOTION TO VACATE ANY OR ALL DEFAULT ORDERS - ALLOWED - LD0000000

03/08/12 POPOVICH 03/08/12 KOGAN RANDYE A  
4335 COURT DATE TO STAND - ALLOWED 03/15/12 LD0000000

03/15/12 MCDONALD MARK 03/15/12 KOGAN RANDYE A  
4231 ORDER ON MOTION TO FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS - ALLOWED - 03/29/  
12 LD0000000

03/15/12 MCDONALD MARK 03/15/12 KOGAN RANDYE A  
4253 ORDER ON MOTION TO PRODUCE EXHIBITS OR OTHER RECORDS OR DOCUMENTS OR PERSON - ALLOWED -  
03/22/12 LD0000000

03/15/12 LAW OFFFICES THOM 03/15/12 KOGAN RANDYE A  
4288 ORDER ON MOTION TO ISSUE WRIT - ALLOWED - 03/29/12 LD0000000

03/15/12 MCDONALD MARK 03/15/12 KOGAN RANDYE A  
4296 ORDER ON MOTION TO DISCOVERY - ALLOWED - 05/29/12 LD0000000

03/15/12 MCDONALD MARK 03/15/12 KOGAN RANDYE A  
4296 ORDER ON MOTION TO DISCOVERY - ALLOWED - 05/29/12 LD0000000

03/15/12 LAW OFFFICES THOM 03/15/12 KOGAN RANDYE A  
4296 ORDER ON MOTION TO DISCOVERY - ALLOWED - 05/29/12 LD0000000

03/15/12 MCDONALD MARK 03/15/12 KOGAN RANDYE A  
4297 ORDER ON MOTION TO EXCHANGE INFORMATION - ALLOWED - 05/29/12 LD0000000

03/15/12 LAW OFFFICES THOM 03/15/12 KOGAN RANDYE A  
4297 ORDER ON MOTION TO EXCHANGE INFORMATION - ALLOWED - 05/29/12 LD0000000

03/15/12 MCDONALD MARK	KOGAN RANDYE A
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4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 05/29/12 LD0000000	
03/15/12 MCDONALD MARK	KOGAN RANDYE A
03/15/12	
8232 CASE ASSIGNED TO CATEGORY 2 - DISC. COMPLETED IN 28 MONTHS LD0000000	
03/29/12 LAW OFFFICES THOMAS POPOV	KONICEK & DILLON P.C.
03/29/12	
2870 CERTIFICATE FILED	
03/29/12 LAW OFFFICES THOMAS POPOV	KONICEK & DILLON P.C.
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3303 NOTICE OF MOTION FILED 04/06/12 9:15 A.M.	
03/29/12 LAW OFFFICES THOMAS POPOV	KONICEK & DILLON P.C.
03/29/12	
3390 MOTION FILED	
03/29/12 LAW OFFFICES THOMAS POPOV	KONICEK & DILLON P.C.
03/29/12	
3397 MOTION SPINDLED 04/06/12 9:15 A.M.	
03/30/12 TUTAJ JAMES P	
03/30/12	
2104 SUMMONS SERVED - PERSONAL SERVICE 01/16/12	
03/30/12 POPOVICH THOMAS J	
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2104 SUMMONS SERVED - PERSONAL SERVICE 01/10/12	
03/30/12 LAW OFFFICES THOMAS POPO	
03/30/12	
2106 SUMMONS SERVED - CORPORATION/COMPAN 01/10/12	
04/03/12 TUTAJ JAMES P	KONICEK & DILLON P.C.
04/05/12	
2871 CERTIFICATE OF MAILING FILED	
04/03/12 TUTAJ JAMES P	KONICEK & DILLON P.C.
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3004 EXHIBITS FILED	
04/03/12 TUTAJ JAMES P	KONICEK & DILLON P.C.
04/05/12	
3331 NOTICE OF FILING FILED	
04/04/12 MCDONALD MARK	ROMANUCCI & BLANDIN
04/10/12	
3080 INTERROGATORIES FILED	
04/04/12 MCDONALD MARK	ROMANUCCI & BLANDIN
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3342 NOTICE TO PRODUCE FILED	
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3080 INTERROGATORIES FILED	

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN  
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3331 NOTICE OF FILING FILED

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3331 NOTICE OF FILING FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN  
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3372 PROOF OF SERVICE FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN  
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3372 PROOF OF SERVICE FILED

04/05/12 MCDONALD MARK ROMANUCCI & BLANDIN  
04/10/12  
3378 REQUEST TO ADMIT FILED

04/06/12 POPOVICH KOGAN RANDYE A  
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4253 ORDER ON MOTION TO PRODUCE EXHIBITS OR OTHER RECORDS OR DOCUMENTS OR PERSON - ALLOWED -  
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04/06/12 POPOVICH KOGAN RANDYE A  
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4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 04/20/12 LD00000000

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6007 ORDER ON MOTION TO TRANSFER TO OTHER VENUE - OUTSIDE COOK COUNTY - CONTINUED - 04/20/12  
LD00000000

04/20/12 LAW OFFICE KOGAN RANDYE A  
04/20/12  
4217 ORDER ON MOTION TO CONTINUANCE - ALLOWED - 06/18/12 LD00000000

04/20/12 MCDONALDS KOGAN RANDYE A  
04/20/12  
4231 ORDER ON MOTION TO FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS - ALLOWED - 05/18/  
12 LD00000000

04/20/12 LAW OFFICE KOGAN RANDYE A  
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4231 ORDER ON MOTION TO FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS - ALLOWED - 06/08/  
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04/20/12 LAW OFFICE KOGAN RANDYE A  
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4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 06/18/12 LD00000000

04/27/12 LAW OFFICES THOMA KONICEK & DILLON P.C.  
05/01/12  
3321 NOTICE FILED

04/27/12 POPOVICH THOMAS J KONICEK & DILLON P.C.  
05/01/12  
3321 NOTICE FILED

04/27/12 TUTAJ JAMES P	KONICEK & DILLON P.C.
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3321 NOTICE FILED	
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2871 CERTIFICATE OF MAILING FILED	
05/01/12 TUTAJ JAMES P	KONICEK & DILLON P.C.
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3321 NOTICE FILED	
05/22/12 MCDONALD MARK	ROMANUCCI & BLANDIN
05/23/12	
2870 CERTIFICATE FILED	
05/22/12 MCDONALD MARK	ROMANUCCI & BLANDIN
05/23/12	
3298 RESPONSE / REPLY - FILED	
05/22/12 MCDONALD MARK	ROMANUCCI & BLANDIN
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3372 PROOF OF SERVICE FILED	
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3372 PROOF OF SERVICE FILED	
05/29/12 MCDONALD	KOGAN RANDYE A
05/30/12	
4331 STRIKE FROM CASE MANAGEMENT CALL - ALLOWED 05/29/12 LD0000000	
05/29/12 MCDONALD	KOGAN RANDYE A
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4335 COURT DATE TO STAND - ALLOWED 06/18/12 LD0000000	
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4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 06/18/12 LD0000000	
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6007 ORDER ON MOTION TO TRANSFER TO OTHER VENUE - OUTSIDE COOK COUNTY - CONTINUED - 06/18/12 LD0000000	
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2871 CERTIFICATE OF MAILING FILED	
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3004 EXHIBITS FILED  
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 3298 RESPONSE / REPLY - FILED  
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 3298 RESPONSE / REPLY - FILED  
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 3298 RESPONSE / REPLY - FILED  
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 3331 NOTICE OF FILING FILED  
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 3331 NOTICE OF FILING FILED  
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 4253 ORDER ON MOTION TO PRODUCE EXHIBITS OR OTHER RECORDS OR DOCUMENTS OR PERSON - ALLOWED -  
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 4619 CASE CONTINUED FOR CASE MANAGEMENT CONFERENCE - ALLOWED - 08/06/12 LD0000000  
 08/06/12 POPOVICH KOGAN RANDYE A  
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 4007 TRANSFER TO OTHER VENUE - OUTSIDE COOK COUNTY - ALLOWED LD0000000

\*\*\* END OF DATA FOR CASE 12-L-000196 \*\* LAST UPDATED ON 08/06/12 \*\*\*

CHARGE TO PRINT 12L000196 IS 45.00 (B863 BOP 09/19/12)

**TRANSCRIPT OF RECORD TO  
MCHENRY COUNTY  
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT LAW DIVISION  
COOK COUNTY CASE NUMBER  
12L000196**

**MARK MCDONALD, individually, as Special  
Administrator of the Estate of Julie McDonald, as father of Ian McDonald,  
Quinlin McDonald, and Chloe McDonald, minors**

**PLAINTIFF**

**V**

**DEFENDANT**

**LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P.  
TUTAJ, and THOMAS J. POPOVICH,**

**DOROTHY BROWN**

**CLERK OF THE CIRCUIT COURT**

**PER**

**DEPUTY CLERK**

*Andrea Barnes*

UNITED STATES OF AMERICA

STATE OF ILLINOIS }  
COUNTY OF COOK } ss:

PLEAS, before the Honorable RANDYE A. KOGAN

one of the Judges of the Circuit Court of Cook County, in the State of Illinois, holding a branch Court of  
said Circuit Court, at the Court House in said County and State, on AUGUST 6, 2012.

PRESENT: The Honorable RANDYE A. KOGAN  
Judge of the Circuit Court of Cook County

Attest: DOROTHY BROWN, Clerk.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.:

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

2012 JUN -5 10:11 AM  
CIRCUIT COURT  
LAW DIVISION

2012 JUN 05 10:11 AM  
CALENDAR ROOM  
TIME 00:00  
LAW DIVISION

**COMPLAINT AT LAW**

NOW COME, the Plaintiffs, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, by and through their attorneys, ROMANUCCI & BLANDIN, LLC, and as their Complaint against the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH states as follows:

**GENERAL ALLEGATIONS**

**PARTIES**

1. On November 28, 2011, Plaintiff, MARK MCDONALD, was appointed as Special Administrator of the Estate of Julie Ann McDonald by the Circuit Court of Walworth County, Wisconsin, for purposes of filing and prosecuting this action (A copy of the Letters of Special Administration is attached hereto as Exhibit A).

2. On and before June 29, 2010, Plaintiff, MARK MCDONALD, was a resident of the City of Elkhorn, Walworth County, Wisconsin.

3. On and before June 29, 2010, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., was a professional corporation created by and under the laws of the State of Illinois.

4. On and before June 29, 2010, and at all times relevant hereto, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., maintained an office at 212 W. Washington St., Suite 808 in the City of Chicago, Cook County, Illinois and/or at 849 N. Franklin St., Suite 1409 in the City of Chicago, Cook County, Illinois.

5. On and before June 29, 2010, and at all times relevant hereto, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C. was a law firm consisting of attorneys licensed to practice law in the State of Illinois, and was actively practicing law in the area of medical malpractice litigation.

6. On and before June 29, 2010, and at all times relevant hereto, Defendant, JAMES P. TUTAJ was an attorney, licensed to practice law in the State of Illinois, and practiced law as a partner, member, principal, or associate with the Law Offices of Thomas J. Popovich, P.C.

7. On and before June 29, 2010, and at all times relevant hereto, Defendant, THOMAS J. POPOVICH, was an attorney, licensed to practice law in the State of Illinois, and practiced law as a partner, member, principal, or associate with Law Offices of Thomas J. Popovich, P.C.

## **FACTS**

8. On November 15, 2005, Julie McDonald presented to Aurora Health Center in the City of Lake Geneva, Walworth County, Wisconsin with a fever of 102.5 and was seen by Dr. Theodore Galvani.

9. On said date, Dr. Galvani diagnosed Ms. McDonald with strep throat. Dr. Galvani prescribed antibiotics, commonly known as Levaquin 750 mg.

10. On November 15, 2005, after taking the prescribed dose of Levaquin, Ms. McDonald went into anaphylactic shock and died.

11. On November 16, 2005, an autopsy revealed that Ms. McDonald died of a Levoquin-induced anaphylactic shock.

12. At the time of her death, Julie McDonald left surviving her, Plaintiff, MARK MCDONALD, her surviving husband, Cole McDonald, her surviving adult son, Micaela McDonald, her adult daughter, Sydney McDonald, her adult daughter, Ian McDonald, her minor son, Quinlan McDonald, her minor son, and Chloe McDonald, her minor daughter.

13. Under Wisconsin law, Plaintiff, MARK MCDONALD, and his minor children, Ian McDonald, Quinlan McDonald, and Chloe McDonald were the beneficiaries of any recovery made arising out of a wrongful death/survival action.

14. Prior to November of 2008, Plaintiff, Mark McDonald hired Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C. to investigate and prosecute a medical malpractice case against Dr. Theodore Galvani and Aurora Health Center.

15. After being retained by Plaintiff, Defendants, JAMES P. TUTAJ and THOMAS J. POPOVICH were assigned to be the handling attorneys on the file.

16. The statute of limitations for medical malpractice actions filed in the State of Wisconsin is 3 years from the date the injured party knew or should have known of the negligence.

17. The statute of limitations for wrongful death actions filed in the State of Wisconsin is 3 years from the date of the injured person's death.

18. At no time relevant hereto, was Defendant, JAMES P. TUTAJ admitted to practice law in the State of Wisconsin.

19. At no time relevant hereto was Defendant, THOMAS J. POPOVICH admitted to practice law in the State of Wisconsin.

20. At no time relevant hereto were any attorneys retained or employed by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., licensed to practice law in the State of Wisconsin.

21. At no time relevant hereto, did Defendants, LAW OFFICES OF THOMAS J. POPOVICH, JAMES P. TUTAJ, or THOMAS J. POPOVICH, contract with, hire, or otherwise retain an attorney who was admitted to practice law in the State of Wisconsin for the purpose of investigating, filing, or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

22. At no time relevant hereto were the Defendants, JAMES P. TUTAJ, or THOMAS J. POPOVICH admitted to the Circuit Court of Walworth County, Wisconsin on a *pro hac vice* basis for the purpose of filing or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

23. At no time relevant hereto were any attorneys retained or employed by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C., admitted to the Circuit Court of Walworth County, Wisconsin on a *pro hac vice* basis for the purpose of filing or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

24. On March 17, 2009, Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, and LAW OFFICES OF THOMAS J. POPOVICH filed a medical malpractice action, captioned *McDonald v. Aurora Health Care, Inc., et al.*, in the Circuit Court of Walworth County, Wisconsin, Case No. 2009 CV 000393.

25. Said complaint was filed more than 3 years after the running of the statutes of limitations applicable to both medical malpractice actions and wrongful death actions in the State of Wisconsin.

26. Said complaint was signed and filed by an attorney who was not licensed to practice law in the State of Wisconsin.

27. On July 8, 2009, a certificate of non-service with respect to Dr. Galvani was returned to the Circuit Court of Walworth County, stating that Dr. Galvani was not served with a copy of the complaint and summons for the above referenced action.

28. Between July 8, 2009 and February 16, 2010, no further efforts were made by Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, and LAW OFFICE OF THOMAS J. POPOVICH, P.C. to effectuate service upon Dr. Galvani.

29. On February 16, 2009, an order of dismissal was entered in *McDonald v. Aurora Health Care, Inc.*, with respect to Dr. Galvani, stating that Dr. Galvani would be dismissed due for a lack of service and lack of prosecution.

30. On March 9, 2010, Dr. Galvani was dismissed from said action.

31. On June 29, 2010, on hearing on the Aurora Health Center's motion to dismiss, the Circuit Court of Walworth County, Wisconsin the Court found that *McDonald v. Aurora Health Care, Inc.* shall be dismissed due to the filing of the matter by an attorney not admitted to practice law in the State of Wisconsin.

32. On July 15, 2010, an order dismissing said action was entered.

33. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., take any action to vacate or alter said dismissal orders.

34. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., notify Plaintiff, MARK MCDONALD of the dismissal.

35. At no time following dismissal of the matter did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., inform Plaintiff, MARK MCDONALD, that legal malpractice may have been committed.

36. At no time following dismissal did Defendants, JAMES P. TUTAJ, THOMAS J. POPOVICH, or LAW OFFICE OF THOMAS J. POPOVICH, P.C., advise Plaintiff, MARK MCDONALD to consult with an attorney regarding any potential malpractice.

#### **COUNT I**

##### ***(McDonald v. Law Offices of Thomas J. Popovich – Legal Malpractice)***

1 – 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count I, as though fully set forth herein.

37. At all times relevant herein, Defendant, James P. Tutaj, was an employee, agent, and/or servant of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

38. At all times relevant herein, in handling the matter of *McDonald v. Aurora Health Center, Inc., et al.*, Defendant, James P. Tutaj, was acting within the scope of his employment with Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

39. At all times relevant herein, Defendant, Thomas J. Popovich, was an owner, partner, principal, and/or shareholder of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

40. At all times relevant herein, Defendant, Thomas J. Popovich, was an employee, agent, and/or servant of Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

41. At all times relevant herein, in handling the matter of *McDonald v. Aurora Health Center, Inc., et al.*, Defendant, Thomas J. Popovich, was acting within the scope of his agency, employment, and/or servant relationship with Defendant, LAW OFFICES OF THOMAS J. POPOVICH.

42. Upon being retained by Mark McDonald, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

43. Notwithstanding said duty, Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, committed one or more of the following negligent acts/or omissions:

- a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;
- b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;
- c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;
- d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;
- e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;
- f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;
- g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;

- h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;
  - i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;
  - j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;
  - k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or
  - l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.
44. On March 17, 2011, after obtaining a printout of the court docket from the Circuit

Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald v. Aurora Health Center, Inc., et al.*, had been dismissed.

45. As a direct and proximate result of one or more of these negligent acts or omissions by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, Plaintiffs were denied their right to pursue the wrongful death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

46. As a further direct and proximate result of one or more of these negligent acts or omission by Defendant, LAW OFFICES OF THOMAS J. POPOVICH, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs were denied their right to recover significant money damages as a result of the death of Julie McDonald.

WHEREFORE, Plaintiffs, MARK MCDONALD, individually, as Administrator of the Estate of Julie McDonald, deceased; and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, COLE MCDONALD, MICAELA MCDONALD, and SYDNEY MCDONALD, prays that a judgment be entered against

Defendant, LAW OFFICES OF THOMAS J. POPOVICH, for an amount in excess of \$50,000.00, plus costs of pursuing this action, and for any further relief this Court deems appropriate and just.

**COUNT II**  
***(McDonald v. James P. Tutaj – Legal Malpractice)***

1 – 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count II, as though fully set forth herein.

37. At all times relevant herein, Defendant, JAMES P. TUTAJ, was an employee, agent, and/or servant of Defendant, Law Offices of Thomas J. Popovich.

38. At all times relevant herein, in handling the matter of *McDonald v. Aurora Health Center, Inc., et al.*, Defendant, JAMES P. TUTAJ, was acting within the scope of his employment with Defendant, Law Offices of Thomas J. Popovich.

39. Upon being retained by Mark McDonald, Defendant, JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

40. Notwithstanding said duty, Defendant, JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, committed one or more of the following negligent acts/or omissions:

- a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;
- b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;

- c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;
- d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;
- e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;
- f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;
- g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;
- h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;
- i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;
- j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;
- k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or
- l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.

41. On March 17, 2011, after obtaining a printout of the court docket from the Circuit Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald v. Aurora Health Center, Inc., et al.*, had been dismissed.

42. As a direct and proximate result of one or more of these negligent acts or omissions by JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, Plaintiffs were denied their right to pursue the wrongful death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

43. As a further direct and proximate result of one or more of these negligent acts or omission by JAMES P. TUTAJ, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs were denied their right recover significant money damages as a result of the death of Julie McDonald.

WHEREFORE, Plaintiffs, MARK MCDONALD, individually, as Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, COLE MCDONALD, MICAELA MCDONALD, and SYDNEY MCDONALD, prays that a judgment be entered against Defendant, JAMES P. TUTAJ, for an amount in excess of \$50,000.00, plus costs of pursuing this action, and for any further relief this Court deems appropriate and just.

### **COUNT III**

#### ***(McDonald v. Thomas J. Popovich – Legal Malpractice)***

1 – 36. Plaintiff repeats and re-alleges paragraphs 1 through 36 of the General Allegations, above, as and for paragraphs 1 through 36 of Count III, as though fully set forth herein.

32. At all times relevant herein, Defendant, THOMAS J. POPOVICH, was an owner, partner, principal, and/or shareholder of Defendant, Law Offices of Thomas J. Popovich.

33. At all times relevant herein, Defendant, THOMAS J. POPOVICH, was an employee, agent, and/or servant of Defendant, Law Offices of Thomas J. Popovich.

34. At all times relevant herein, in handling the matter of *McDonald v. Aurora Health Center, Inc., et al.*, Defendant, THOMAS J. POPOVICH, was acting within the scope of his employment with Defendant, Law Offices of Thomas J. Popovich.

35. Upon being retained by Mark McDonald, Defendant, THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, had a duty provide its services with the level of care, skill, training, and expertise consistent with accepted practices and standards for well qualified and reasonably careful attorneys under the same or similar circumstances.

36. Notwithstanding said duty, Defendant, THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, committed one or more of the following negligent acts/or omissions:

- a. Failed to adequately investigate the circumstances of Julie McDonald's death on November 15, 2005;
- b. Failed to timely file the wrongful death/medical malpractice action arising out of the death of Julie McDonald on November 15, 2005;
- c. Filed a wrongful death/medical malpractice action in the State of Wisconsin when it knew or should have known that its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, were not licensed to practice law in the State of Wisconsin;
- d. Failed to be admitted to the Wisconsin State Bar prior to filing said wrongful death/medical malpractice action;
- e. Failed to hire, contract, or otherwise retain an attorney licensed in Wisconsin to file and prosecute said wrongful death/medical malpractice action;
- f. Failed to be admitted *pro hac vice* to file and prosecute said wrongful death/medical malpractice action;
- g. Failed to timely and appropriately effectuate service upon Theodore Galvani after filing said wrongful death/medical malpractice action;
- h. Appeared before open court in the Circuit Court of Walworth County, Wisconsin without being admitted to the Wisconsin State Bar;
- i. Failed to inform Mark McDonald when the Theodore Galvani was dismissed from said wrongful death/medical malpractice action;
- j. Failed to inform Mark McDonald when said wrongful death/medical malpractice action was dismissed with prejudice;

- k. Failed to inform Mark McDonald that legal malpractice may have occurred in their representation of Plaintiff; and/or
  - l. Failed to advise Mark McDonald to consult with an attorney regarding any potential legal malpractice.
37. On March 17, 2011, after obtaining a printout of the court docket from the Circuit

Court of Walworth County, Wisconsin, Mark McDonald first learned that *McDonald v. Aurora Health Center, Inc., et al.*, had been dismissed.

38. As a direct and proximate result of one or more of these negligent acts or omissions by THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, Plaintiffs were denied their right to pursue the wrongful death/medical malpractice claim against all potentially culpable parties, including, without limitation, Theodore Galvani, M.D. and Aurora Health Center, Inc.

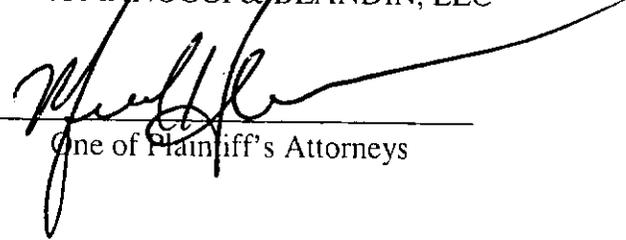
39. As a further direct and proximate result of one or more of these negligent acts or omission by THOMAS J. POPOVICH, individually and as an agent, employee, and/or servant of the Law Offices of Thomas J. Popovich, by and through its employees, agents, and/or servants, including James P. Tutaj and Thomas J. Popovich, Plaintiffs were denied their right recover significant money damages as a result of the death of Julie McDonald.

WHEREFORE, Plaintiffs, MARK MCDONALD, individually, as Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, COLE MCDONALD, MICAELA MCDONALD, and SYDNEY MCDONALD, prays that a judgment be entered against

Defendant, THOMAS J. POPOVICH, for an amount in excess of \$50,000.00, plus costs of pursuing this action, and for any further relief this Court deems appropriate and just.

Respectfully Submitted,  
ROMANUCCI & BLANDIN, LLC

By: \_\_\_\_\_



One of Plaintiff's Attorneys

Antonio M. Romanucci  
Stephan D. Blandin  
Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602  
Tel: (312) 458-1000  
Fax: (312) 458-1004  
Attorney No.: 35875

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.:

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

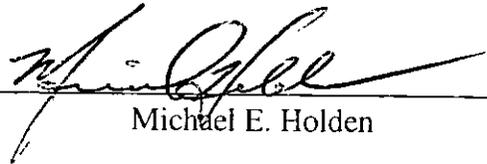
Defendants, )

**AFFIDAVIT REGARDING DAMAGES SOUGHT**

Michael E. Holden, being first duly sworn under oath, states as follows:

1. That your affiant is one of the attorneys of record for the party in this matter.
2. That the total money damages sought in this civil action exceeds \$50,000.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Michael E. Holden

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109 (1993), I certify that the statements set forth herein are true and correct.

Michael E. Holden  
ROMANUCCI & BLANDIN  
33 North LaSalle Street  
Suite 2000  
Chicago, Illinois 60602  
312/458-1000  
Atty. No.: 35875

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.:

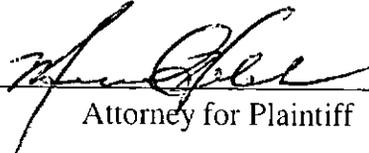
LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

**JURY DEMAND**

The undersigned demands a jury trial.

Respectfully Submitted,  
ROMANUCCI & BLANDIN, LLC

By:   
Attorney for Plaintiff

Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 N. LaSalle Street  
Suite 2000  
Chicago, Illinois 60602  
Tel.: (312) 458-1000  
Fax: (312) 458-1004  
Attorney No.: 35875

FILED-5  
12 FEB 14 11:00  
CIRCUIT COURT  
LAW DIVISION

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

3331  
3372

NOTICE OF FILING

TO: All Counsel of Record  
(No Appearances filed)

PLEASE TAKE NOTICE that on February <sup>14</sup>13, 2012 we have filed the following with the Circuit Court of Cook County, Law Division **Proof of Service for All Defendants**, copies of which are attached hereto.

ROMANUCCI & BLANDIN  
33 North LaSalle Street - Suite 2000  
Chicago, Illinois 60602  
312-458-1000  
312-458-1004 Fax  
Attorney No. 35875

PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. February 13, 2012, with postage prepaid.

*[Handwritten Signature]* 14

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

FILED-6

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

2012 MAR 15 9 41 AM  
CIRCUIT COURT OF THE CIRCUIT COURT  
LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

NOTICE OF FILING

TO: LAW OFFICES OF THOMAS J. POPOVICH, P.C.,  
JAMES P. TUTAJ, and THOMAS J. POPOVICH  
3416 W. Elm Street  
McHenry, IL 60050

PLEASE TAKE NOTICE that on **March 15, 2012 at 9:45 a.m.**, at the scheduled Case Management Conference, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Judge Kogan** or any judge sitting in his/her stead, in **Courtroom 2206** usually occupied by her in the Richard J. Daley Center, Chicago, Illinois, and shall move the court in accordance with **Plaintiff's Motion to for Default**, copies of which are attached hereto.

ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, Illinois 60602  
(312) 458-1000  
Attorney No.: 35875

3331  
2870  
3390  
3004

CERTIFICATE OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to counsel for defendant by depositing the same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. on March 1, 2012.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

FILED-6  
2012 MAR -1 AM 9:41  
CLERK OF THE CIRCUIT COURT  
LAW DIVISION  
DOBBINS BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. ) No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

**MOTION FOR DEFAULT JUDGEMENT**

NOW COME, the Plaintiffs, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, by and through their attorneys, ROMANUCCI & BLANDIN, LLC, and moves this Honorable Court for the entry of an Order of Default Judgment against the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH. In support thereof, Plaintiff states as follows:

1. This is a legal malpractice action against Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH.
2. On January 6, 2012, Plaintiff filed his Complaint at Law with the Clerk of the Circuit Court of Cook County and had Summons issued for all Defendants.
3. On January 6, 2012, Plaintiff mailed summons for service of process on all

Defendants to the McHenry County Sheriff.

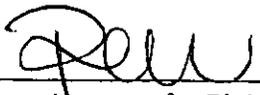
4. On January 11, 2012, December 1, 2011, McHenry County Sheriff served all Defendants with service of process.

5. On February 14, 2012, Counsel for Plaintiff filed the affidavits of service with this Court. (See Notice of Filing and Affidavits of Service, attached hereto as Exhibit A)

6. That to date, Defendants, have failed to file an appearance or answer in this matter.

WHEREFORE Plaintiffs, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, deceased, and as father of Ian McDonald, a minor, Quinlan McDonald, a minor, and Chloe McDonald, a minor, respectfully requests that this Court enter an Order of Default Judgment against the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH, and schedule this matter for a prove-up of damages and for any further relief this Court deems just.

ROMANUCCI & BLANDIN

By:   
Attorney for Plaintiff

Michael E. Holden  
Rebekah L. Williams  
ROMANUCCI & BLANDIN  
33 North LaSalle Street  
Suite 2000  
Chicago, Illinois 60602  
(312) 458-1000  
Attorney No. 35875

McDonald  
pleadings

FILED-5

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

CLERK OF CIRCUIT COURT  
LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

NOTICE OF FILING

TO: All Counsel of Record  
(No Appearances filed)

PLEASE TAKE NOTICE that on February <sup>14</sup>13, 2012 we have filed the following with the Circuit Court of Cook County, Law Division **Proof of Service for All Defendants**, copies of which are attached hereto.

ROMANUCCI & BLANDIN  
33 North LaSalle Street - Suite 2000  
Chicago, Illinois 60602  
312-458-1000  
312-458-1004 Fax  
Attorney No. 35875

PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. February <sup>14</sup>13, 2012, with postage prepaid.

REW 14

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.







Kenn Nygren, Sheriff of McHenry County, Woodstock, IL  
 2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720  
 Civil Process Proof of Service



Court Number: 2012L000196

Docket Number: SO-CIV-12-000181

Case Name: MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL

Paper Type: SUMMONS/COMPLAINT FOREIGN

Court: COOK

Person Served: TUTAJ, JAMES P

DOB:

Race:

Ethn:

Sex:

Business Name:

Additional Name Information:

Address: 3416 W ELM ST  
 MCHENRY, IL 60050

Apt/Unit:

Second Address/Work:

Substitute Service False

Name of Person Accepting Service:

Date of Birth:

Race:

Relationship:

Sex:

Ethnicity

, IL

Service Information:

Received: 01/10/2012

Status: Served

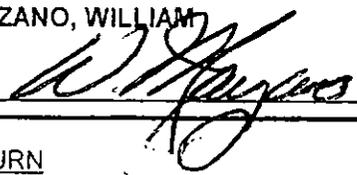
Status Date: 1/11/2012 9:30:00AM

How Served: SERVED PERSONALLY

Reason:

Comment: M/W AGE 47.

Deputy: SO6627 - MARZANO, WILLIAM

Deputy's Signature: 

FEES: SERVICE & RETURN

MLG \$15.00

8275 \$31.65

Total Fees: \$46.65



Karl Nygren, Sheriff of McHenry County, Woodstock, IL  
 2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720  
 Civil Process Proof of Service



Court Number: 2012L000196

Docket Number: SO-CIV-12-000181

Case Name: MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL

Paper Type: SUMMONS/COMPLAINT FOREIGN

Court: COOK

Person Served: , DOB: Race: Ethn: Sex:

Business Name: LAW OFFICES OF THOMA J POPOVICH PC

Additional Name Information:

Address: 64 E CRYSTAL LAKE AV Apt/Unit:

CRYSTAL LAKE, IL 60014

Second Address/Work:

Substitute Service False

Name of Person Accepting Service:

Date of Birth:

Race:

Relationship:

Sex:

Ethnicity

, IL

Service Information:

Received: 01/10/2012

Status: Served

Status Date: 1/11/2012 8:45:00AM

How Served: CORPORATE

Reason:

Comment: SERVED THRU ATTORNEY CURT REHBERG M/W AGE 47.

Deputy: SO6553 - BERO, DON

Deputy's Signature: \_\_\_\_\_

FEES: SERVICE & RETURN

8275 \$31.65

MLG \$14.00

Total Fees: \$45.65

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196 )

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

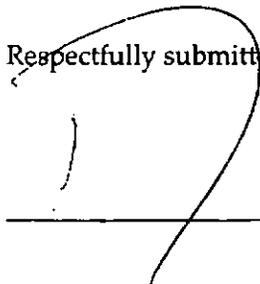
2012 MAR -8 PM 2:25  
FORGETHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

FILED-2

**APPEARANCE AND JURY DEMAND**

The undersigned, as attorney for Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, hereby enters this Appearance and requests trial by jury.

Respectfully submitted,



---

Daniel F. Konicek  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
(630) 262-9655

CLERK OF THE CIRCUIT COURT - COOK COUNTY  
00072734 Law-01 3/8/2012 2:25PM  
ATTY: 37199 019 ALQHEARD  
AD DAMNUM: \$50,000.00  
CASE NO: 2012L000196 CALENDAR: H  
COURT DATE: 0/0/0000 12:00AM  
CASE TOTAL: \$436.00  
Appearance Fee 3 \$110.00  
12 Jurors 3 \$230.00  
Automation \$15.00  
Document Storage \$15.00  
Law Library \$21.00  
Arbitration \$10.00  
Court Services \$25.00  
Children Waiting Rm \$10.00  
CHECK NO: 3197  
CHECK AMOUNT: \$436.00  
CHANGE \$0.00  
TRANSACTION TOTAL: \$436.00

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )

Defendants. )

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

2012 MAR - 8 PM 2:25

FILED-2

3331  
2871

NOTICE OF FILING

TO: Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602

**PLEASE TAKE NOTICE** that on **March 8, 2012**, we filed by First Class Mail with the Cook County Circuit Court Clerk's office our **APPEARANCE AND JURY DEMAND** on behalf of the Defendants; a copy of which is attached hereto and served upon you.

\_\_\_\_\_  
Attorney for Defendants

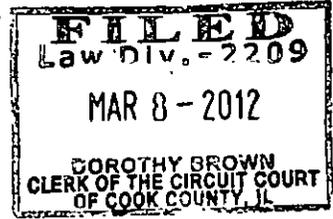
Daniel F. Konicek  
Amir R. Tahmassebi  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655

CERTIFICATE OF SERVICE

The undersigned states that the foregoing **APPEARANCE** and **JURY DEMAND** was served upon the above-listed attorney by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **March 8, 2012**, with proper postage prepaid.



IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION



MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196



LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

3303  
3372  
3390

NOTICE OF ROUTINE MOTION

TO: Michael E. Holden  
Romanucci & Blandin, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602

PLEASE TAKE NOTICE that on March 8, 2012 at 8:45 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Judge Kogan or any judge sitting in his/her stead in Courtroom 2209 or in the courtroom usually occupied by him/her at the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois, and shall then and there present the Defendants' ROUTINE MOTION; a copy of which is attached hereto and hereby served upon you.

\_\_\_\_\_  
Attorney for Defendants

Daniel F. Konicek  
KONICEK & DILTON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655

CERTIFICATE OF SERVICE

The undersigned states that the foregoing NOTICE and ROUTINE MOTION was served upon the above listed attorney of record as addressed by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on March 1, 2012, with proper postage prepaid.

\_\_\_\_\_

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION



MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

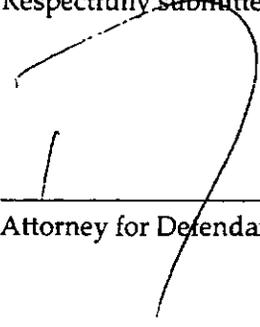
ROUTINE MOTION

NOW COMES the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, by and through their attorneys KONICEK & DILLON, P.C., hereby moves this Court to vacate any technical default heretofore entered against said Defendants and leave be given to file an Appearance and Jury Demand, *instanter*. Further, leave is requested to file a responsive pleading with twenty-one (21) days and in support thereof, states as follows:

1. The Defendants recently retained Konicek & Dillon, P.C. to represent them in this matter.
2. Konicek & Dillon, P.C. requires an additional twenty-one (21) days to file a responsive pleading to this Complaint.

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, respectfully request that this Court enter an Order allowing them twenty-one (21) days to file a responsive pleading.

Respectfully submitted,



---

Attorney for Defendants

Daniel F. Konicek  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
(630) 262-9655

CC  
E.W.

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

ROUTINE ORDER

**THIS CAUSE COMING TO BE HEARING** on the Motion of Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, by and through their attorneys, KONICEK & DILLON, P.C., due notice having been given and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that any Order of Technical Default heretofore entered against said Defendants be and hereby is waived;

4283

IT IS FURTHER ORDERED that the said Defendants be and hereby are granted leave to file their Appearance and Jury Demand, *instanter*;

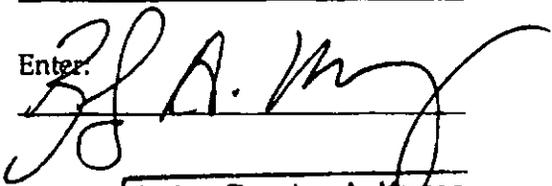
4234  
318

IT IS FURTHER ORDERED that said Defendants be and hereby granted leave to file an answer or otherwise plead to Plaintiff's Complaint at Law within 21 days of this Order, on or before March 29, 2012.

4234  
319

*CMC DATE 3-15-12 to stand*

4235

Enter: 

Daniel F. Konicek  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.

Judge Randy A. Kogan  
MAR - 8 2012  
Circuit Court - 1509



McDonald, Mark )  
Plaintiffs )

-v- Law Offices of Popovich et al )  
Defendants )

NO: 12 L 0196  
Motion Call "H" Time: 9:45 Line#: 40  
Judge Randy A. Kogan

**CASE MANAGEMENT ORDER**

**\*\* (Please check off all pertinent paragraphs and circle proper party name) \*\***

- (8230) 1 1. Category #1(18-mo. discovery) (8232)  1A. Category #2 (28 Mo. Discovery)
- (4231) 2 2. Written & (f)(1) and (f)(2) discovery to be issued by 3/29/12 or deemed waived;
- (4296) 3 3. Written & 213(f)(1) and (2) discovery to be answered by 5/29/12;
- (4218) 4 4. Oral discovery & 213(f)(1) and (2) depositions to be completed by \_\_\_\_\_;
- (4288) 5 5. Subpoenas for treating physicians' depts to be issued by \_\_\_\_\_ or deemed waived;
- (4218) 6 6. Treating physicians depositions to be completed by \_\_\_\_\_;
- (4206) 7 7. (Plaintiff) or (Defendant) or (Add. Party) shall answer 213 (f)(3) Interrogatories by \_\_\_\_\_;
- (4218) 8 8. Plaintiff's 213(f)(3) witnesses' depositions to be completed by \_\_\_\_\_;
- (4218) 9 9. Defendant's 213(f)(3) witnesses' depositions to be completed by \_\_\_\_\_;
- (4218) 10 10. Add. party's 213(f)(3) witnesses' depositions to be completed by \_\_\_\_\_;
- (4295) 11 11. All fact discovery, SCR 213(f)(1) and/or SCR 213(f)(2) discovery is closed. (Circle all applicable)
- (4619)  12 12. The matter is continued for subsequent Case Management Conference on 5/29/12

at 10:00 AM in Room 2209 for:

- (A)  Proper Service (B)  Appearance of Defendants (C)  Case Value
- (D)  Pleadings Status (E)  Discovery Status (F)  Pre-Trial/Settlement
- (G)  Mediation Status (H)  Trial Certification (I)  Other

4253 3/22/12 - IT to provide list of medical records 3/29/12 to subpoena 4258  
medical records 3/27/12 parties to propound discovery  
attached to be in all discovery to be answered by 5/29/12 4296

(4005) 13 13. Case is DWP d. (4040)  The case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009.

- (4331) 14 14. Case stricken from (4284)  Motion Stricken or (4330)  Case stricken from

CMC Call Withdrawn from Call Motion Call.

NAME: Rebekah Williams/Romanucci

ENTER:

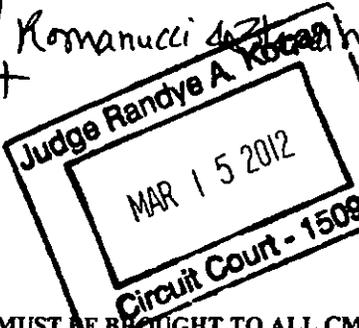
ADDRESS: 33 N LaSalle St

PHONE: 312-468-1000

ATTY ID#: 35875

ATTY FOR PARTY: IT

NOTICE:



RANDYE A. KOGAN, Associate Judge

- \* COPIES OF ALL PRIOR CMC ORDERS MUST BE BROUGHT TO ALL CMC COURT DATES BY ALL ATTORNEYS!!
- \* FAILURE OF ANY PARTY TO COMPLY WITH THIS CMC ORDER WILL BE A BASIS FOR SCR 219(C) SANCTIONS. FAILURE OF ANY PARTY TO ENFORCE THIS CMC ORDER WILL CONSTITUTE A WAIVER OF SUCH DISCOVERY BY THAT PARTY.
- \* ALL CASES ARRIVING ON THE TRIAL CALL IN ROOM 2005 MUST HAVE ALL DISCOVERY IN LINES 2 THROUGH 11 COMPLETED.
- \* A COPY OF THIS ORDER IS TO BE SENT TO EACH PARTY BY HIS/HER COUNSEL WITHIN TEN (10) DAYS OF EACH CMC COURT DATE.

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )



FILED-5  
2012 MAR 29 PM 4:20  
CLERK OF CIRCUIT COURT  
LAW DIVISION

NOTICE OF MOTION

TO: Michael E. Holden  
Romanucci & Blandin, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602

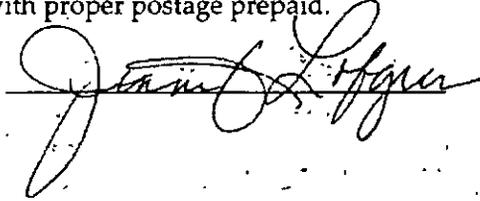
PLEASE TAKE NOTICE that on April 6<sup>th</sup>, 2012 at 9:15 a.m., or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Kogan** or any judge sitting in his/her stead in **Courtroom 2209** or in the courtroom usually occupied by him/her at the **Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois**, and shall then and there present the Defendants' MOTION TO TRANSFER PURSUANT TO FORUM NON CONVENIENS; a copy of which is attached hereto and hereby served upon you.

Amanda J. Hamilton  
Attorney for Defendants

Daniel F. Konicek  
Amir R. Tahmassebi  
Amanda J. Hamilton  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655

CERTIFICATE OF SERVICE

The undersigned states that the foregoing NOTICE and MOTION were served upon the above listed attorney of record as addressed by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on March 30, 2012, with proper postage prepaid.

A handwritten signature in cursive script, appearing to read "James L. Lofgren", written over a horizontal line.

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )



FILED  
2012 MAR 29 PM 4:20  
COURT OF CIRCUIT COURT  
LAW DIVISION

FILED-5

MOTION TO TRANSFER PURSUANT TO FORUM NON CONVENIENS

NOW COME the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, by and through their attorneys KONICEK & DILLON, P.C., hereby move this Court to enter an order transferring this matter to McHenry County pursuant to Illinois Supreme Court Rule 187 and *forum non conveniens*.

FACTS

1. Plaintiff Mark McDonald alleges he retained the Law Offices of Thomas J. Popovich, James P. Tutaj, and Thomas J. Popovich (collectively, the "Popovich Defendants") to represent him in his capacity acting as Special Administrator of the Estate of Julie McDonald to prosecute a wrongful death claim in Walworth County, Wisconsin.

2. Plaintiffs further allege that, on and before June 29, 2010, Plaintiffs were residents of Elkhorn, Wisconsin, in Walworth County. It is undisputed that the underlying wrongful

death claim, the prosecution of which forms the basis of Plaintiffs' legal malpractice claim, accrued and was filed in Walworth County, Wisconsin.

3. It is undisputed that the Popovich Defendants' principal place of business is located in McHenry, Illinois, which is located in McHenry County, Illinois. (See Exhibit A, Affidavit of James P. Tutaj).

4. It is further undisputed that any and all of the work performed by the Popovich Defendants relating to the underlying wrongful death claim was performed in McHenry County, Illinois. (See Exhibit A, Affidavit of James P. Tutaj).

#### ARGUMENT

##### **I. MCHENRY COUNTY IS THE MORE CONVENIENT FORUM FOR THIS ACTION**

5. *Forum non conveniens* is an equitable doctrine that pre-supposes the existence of more than one forum with jurisdiction over the parties and the subject matter. *Bland v. Norfolk & W. Ryag* 116 Ill.2d 217, 239 (Ill. 1987).

6. When deciding a *forum non conveniens* motion, the court should consider the convenience of the parties and the likely witnesses, the relative ease of access to documentary evidence and all of the other practical considerations that make a trial, easy, expeditious, and inexpensive. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill.2d 167, 172 (2003); *Kahn v. Enterprise Rent-A-Car*, 355 Ill.App.3d 13 (1st Dist. 2004).

7. A defendant seeking transfer is not required to show that the plaintiff's choice of forum is inconvenient; rather, transfer is allowed where the defendant's choice is the substantially more appropriate forum. *Czarnecki v. Uno-Ven Co.*, 339 Ill.App.3d 504, 508 (1st Dist. 2003).

8. Under the doctrine, a court may transfer a case or decline jurisdiction of a case because there is another forum "that can better serve the convenience of the parties and the ends of justice." *Vinson v. Allstate*, 144 Ill.2d 306, 310 (1991) (citations omitted).

9. The Illinois Supreme Court has identified both private interest and public interest factors that a Court is to consider in deciding whether to transfer based on *forum non conveniens*. *Griffith v. Mitsubishi Aircraft Inter., Inc.*, 136 Ill.2d 101, 105-106 (1990).

10. The Court is to weigh those factors and determine whether on balance, another forum would be more convenient. *See First Nat'l Bank v. Guerine*, 198 Ill.2d 511, 515 (2002).

**A. The private interest factors all favor transfer to McHenry County**

11. In Illinois, the private interest factors include (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive, for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses; and the ability to view the premises (if appropriate). *First American Bank v. Guerine*, 198 Ill.2d 511, 516 (2002).

12. In this case, McHenry County is a more convenient forum for the parties.

13. Litigating this case in Cook County would result in undue hardship and significant expense upon the Popovich Defendants, as their principal place of business is located in McHenry County, approximately 70 miles away from Cook County. (See Exhibit A, Affidavit of James P. Tutaj).

14. Upon information and belief, Plaintiffs are residents of Walworth County, Wisconsin. Cook County is approximately 65 miles farther away from Walworth County than McHenry County.

15. McHenry County would therefore be a more convenient forum for both parties, as litigating this case in McHenry County would decrease the amount of time the parties would need to spend traveling.

16. Additionally, the relative ease of access to evidence is greater in McHenry County than Cook County.

17. In order to prevail in a cause of action for attorney malpractice, the plaintiff must plead and prove 1) an attorney-client relationship that establishes a duty on the part of the attorney; 2) a negligent act or omission constituting a breach of that duty; 3) proximate cause establishing that "but for" the attorney's breach, the plaintiff would have prevailed in the underlying action; and 4) actual damages. *Preferred Personnel Services, Inc. v. Meltzer, Purtill and Stelle, LLC*, 387 Ill.App.3d 933, 939 (1st Dist. 2009). In order to establish proximate cause, the plaintiff must prove the existence of a valid underlying cause of action. *Sheppard v. Kroll*, 218 Ill.App.3d 254 (1st Dist. 1991).

18. It is well established that a legal malpractice plaintiff must plead and prove the "case-within-a-case," where the plaintiff must establish that but for the defendant's legal malpractice, the underlying case would have been resolved in the plaintiff's favor. See *Governmental Interinsurance Exchange v. Judge*, 221 Ill.2d 195, 200 (2006). Therefore, litigation of the "case within a case" is required in order to prosecute a legal malpractice claim. *Id.*

19. Here, the "case within a case" involves the prosecution of a wrongful death claim in Walworth County, Wisconsin where all of the work performed for the prosecution of the case was performed in McHenry County, Illinois.

20. Therefore, all of the testimonial, documentary, and real evidence adduced in the underlying case would be located either in Wisconsin or at the Popovich Defendants' office in McHenry County. (See Exhibit A, Affidavit of James P. Tutaj).

21. Additionally, as all of the work performed for the prosecution of the underlying case was performed in McHenry County, there is absolutely no connection between this legal malpractice case and Cook County.

22. Accordingly, all three private interest factors weigh in favor of McHenry County being a more convenient forum than Cook County, and this legal malpractice case should be transferred to McHenry County pursuant to *forum non conveniens*.

**B. The public interest factors also weigh in favor of transfer to McHenry County**

23. The public interest factors include (1) the interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already congested forums. *First American Bank v. Guerine*, 198 Ill.2d at 516.

24. In this instance, Cook County has little interest in this controversy.

25. Plaintiffs do not reside in Cook County, the Popovich Defendants' principal place of business is not in Cook County, and the underlying lawsuit which is the subject matter of this legal malpractice claim did not take place in Cook County.

26. None of the allegations contained within Plaintiffs' Complaint are alleged to have occurred in Cook County.

27. The underlying action took place in Walworth County, Wisconsin and the alleged negligent representation took place in McHenry County, Illinois. (See Exhibit A, Affidavit of James P. Tutaj).

28. Additionally, as this is not a localized Cook County controversy, it is unfair to impose the cost of trial and jury duty upon the citizens of Cook County. *Burns v. A.P. Andue*, 326 Ill. App.3d 624, 628 (5th Dist. 2001) (noting the insufficient connection with the plaintiff's chosen forum to justify imposing jury duty on the citizens of that county).

29. There is no sufficient connection with Cook County, and therefore, it is unfair to subject the citizens of Cook County to the financial and temporal costs of this matter.

30. Finally, Cook County's docket would be further burdened by the added litigation of this case.

31. Accordingly, all three public interest factors weigh in favor of McHenry County being a more convenient forum than Cook County, and this legal malpractice case should be transferred to McHenry County pursuant to *forum non conveniens*.

#### CONCLUSION

32. The public and private interest factors weigh heavily in favor of McHenry County being the more convenient forum for this case.

*WHEREFORE*, the Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, respectfully request this Honorable Court enter an order granting their Motion to Transfer pursuant to *forum non conveniens*, transfer this matter

to McHenry County, require Plaintiff to bear the costs of the transfer, and for all other relief this Court deems fair under the circumstances.

Respectfully submitted,

  
Attorneys for the Popovich Defendants

Daniel F. Konicek  
Michael P. Harrigan  
Amanda J. Hamilton  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655



Kevin Nygren, Sheriff of McHenry County, Woodstock, IL  
 2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720  
 Civil Process Proof of Service



Court Number 2012L000196

Docket Number: SO-CIV-12-000181

Case Name MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL

Paper Type. SUMMONS/COMPLAINT FOREIGN

Court: COOK

Person Served TUTAJ, JAMES P

DOB:

Race

Ethn.

Sex

Business Name

Additional Name Information:

Address: 3416 W ELM ST  
 MCHENRY, IL 60050

Apt/Unit.

Second Address/Work

2104

FILED-1  
 12 MAR 30 AM 11:27  
 CIRCUIT COURT OF COOK  
 COUNTY, ILLINOIS  
 LAW DIVISION  
 CLOTHY BROWN  
 CLERK

<u>Substitute Service</u> False					
Name of Person Accepting Service					
Date of Birth:	Race	Relationship:	Sex:	Ethnicity	
, IL					

Service Information:

Date Received: 01/10/2012

Status: Served

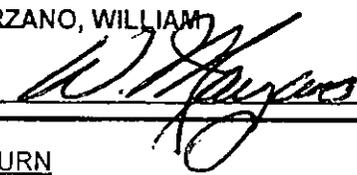
Status Date 1/11/2012 9:30:00AM

How Served: SERVED PERSONALLY

Reason

Comment M/W AGE 47.

Deputy: SO6627 - MARZANO, WILLIAM

Deputy's Signature: 

FEES, SERVICE & RETURN

MLG	\$15.00
8275	\$31.65
<b>Total Fees</b>	<b>\$46.65</b>



Court Number 2012L000196

Docket Number. SO-CIV-12-000181

Case Name. MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL

Paper Type. SUMMONS/COMPLAINT FOREIGN

Court: COOK

Person Served: POPOVICH, THOMAS J

DOB.

Race

Ethn

Sex:

Business Name

Additional Name Information:

Address 3416 W ELM ST  
 MCHENRY, IL 60050

Apt/Unit:

Second Address/Work

1012

MORRIS EPPSON  
CLERK

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
LAW DIVISION

12 MAR 30 AM 11:27

FILED-1

Substitute Service False

Name of Person Accepting Service

Date of Birth.

Race

Relationship.

Sex.

Ethnicity

, IL

Service Information

Date Received. 01/10/2012

Status: Served

Status Date 1/11/2012 9:30:00AM

How Served SERVED PERSONALLY

Reason:

Comment: M/W AGE 47.

Deputy: SO6627 - MARZANO, WILLIAM

Deputy's Signature: \_\_\_\_\_

FEES SERVICE & RETURN

8275	\$31.65
MLG	\$15.00
<hr/>	
Total Fees	\$46.65



Kevin Nygren, Sheriff of McHenry County, Woodstock, IL  
 2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720  
 Civil Process Proof of Service



Court Number 2012L000196

Docket Number: SO-CIV-12-000181

Case Name MCDONALD, MARK ET AL VS LAW OFFICES OF THOMAS J POPOVICH PC ET AL

Paper Type: SUMMONS/COMPLAINT FOREIGN

Court: COOK

Person Served

DOB Race Ethn Sex

Business Name: LAW OFFICES OF THOMAS J POPOVICH PC

Additional Name Information:

Address 64 E CRYSTAL LAKE AV Apt/Unit.

CRYSTAL LAKE, IL 60014

Second Address/Work.

*Handwritten initials*

DOROTHY ERGOWIN  
CLERK

12 MAR 30 AM 11:27  
CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
LAW DIVISION

FILED-1

Substitute Service False

Name of Person Accepting Service

Relationship:

Date of Birth.

Race

Sex:

Ethnicity

, IL

Service Information:

Date Received: 01/10/2012

Status Served

Status Date 1/11/2012 8:45:00AM

How Served: CORPORATE

Reason:

Comment SERVED THRU ATTORNEY CURT REHBERG M/W AGE 47.

Deputy SO6553 - BERO, DON

Deputy's Signature

*Handwritten signature of Don Bero*

FEES: SERVICE & RETURN

8275 \$31.65

MLG \$14 00

Total Fees: \$45.65

FILED

2012 APR -3 PM 3:57

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
LAW DIVISION

DOROTHY BROWN  
CLERK

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

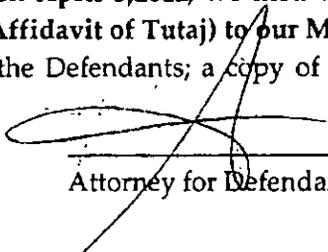
LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

3331  
287  
3004

**NOTICE OF FILING**

TO: Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602

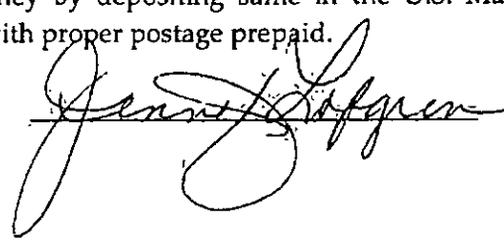
PLEASE TAKE NOTICE that on April 3, 2012, we filed with the Cook County Circuit Court Clerk's office our Exhibit "A" (Affidavit of Tutaj) to our Motion to Transfer pursuant to *Forum Non Conveniens* on behalf of the Defendants; a copy of which is attached hereto and served upon you.

  
\_\_\_\_\_  
Attorney for Defendants

Daniel F. Konicek  
Amir R. Tahmassebi  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655

**CERTIFICATE OF SERVICE**

The undersigned states that the foregoing Notice and Exhibit "A" - Affidavit of Tutaj was served upon the above-listed attorney by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on April 3, 2012, with proper postage prepaid.

  
\_\_\_\_\_  
Jennifer J. Jager

FILED

'2 APR -3 PM 3:57

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

CLERK

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quirlin McDonald, and )  
Chloe McDonald, minor children. )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

AFFIDAVIT OF JAMES P. TUTAJ IN SUPPORT OF  
DEFENDANTS' MOTION TO TRANSFER PURSUANT TO FORUM NON CONVENIENS

I, James P. Tutaj, submit my sworn affidavit and state that:

1. I am an attorney licensed to practice law and I have personal knowledge of the facts contained herein.
2. I am an attorney at the Law Offices of Thomas J. Popovich, and our principal law office is located at 3416 West Elm Street in McHenry, in McHenry County, Illinois.
3. Mark McDonald came to my office in McHenry County to retain me to represent the Estate of Julie McDonald in pursuing a wrongful death claim. Mark McDonald and I negotiated and executed the engagement agreement in my office in McHenry County, Illinois. All face-to-face discussions concerning the wrongful death claim occurred either in Walworth County, Wisconsin or in McHenry County, Illinois.

Exhibit  
A

4. All of the work performed by me, Thomas J. Popovich, or by the Law Offices of Thomas J. Popovich pertaining to the underlying wrongful death claim was performed in McHenry County, Illinois.

5. The underlying wrongful death case was filed and litigated in Walworth County, Wisconsin.

6. All of the testimonial, documentary, and real evidence pertaining to the underlying wrongful death claim is located either in Walworth County, Wisconsin or in McHenry County, Illinois.

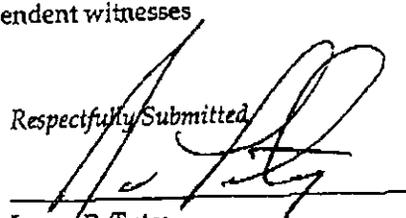
7. All of the potential fact witnesses for the underlying wrongful death claim and for this legal malpractice claim are located either in Walworth County, Wisconsin or in McHenry County, Illinois.

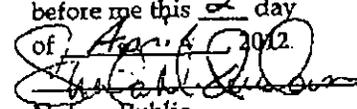
8. McHenry County is a more convenient forum for this legal malpractice case.

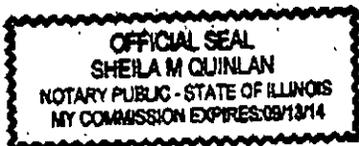
9. Litigating this case in Cook County would result in undue hardship and significant expense upon the defendants and independent witnesses

*Further affiant sayeth naught...*

Respectfully Submitted,

  
James P. Tutaj

Subscribed and sworn to  
before me this 2 day  
of April, 2012.  
  
Notary Public



35875

FILED-3

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

**PLAINTIFFS' SCR 213(f)(1),(2), and (3) INTERROGATORIES  
DIRECTED TO ALL DEFENDANTS**

3080

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through is attorneys, ROMANUCCI & BLANDIN, LLC, and pursuant to Illinois Supreme Court Rule 213(f), propounds the following interrogatories to be answered by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, individually, within 28 days:

1. As to "lay witnesses" as defined by Illinois Supreme Court Rule 213(f)(1):
  - a. Furnish the identity and address of each lay witness who will testify at trial and state the subjects the fact testimony expected to be elicited from each lay witness at trial; and
  - b. Please also set forth the subjects of any lay opinion testimony you expect to elicit from each lay witness identified in 1(a) above.

**ANSWER:**

2. As to “independent expert witnesses” as defined by Illinois Supreme Court Rule 213(f)(2):
  - a. Furnish the identity and address of each independent expert witness who will testify at trial and state the subjects on which the independent expert witness will testify at trial; and
  - b. Please also state the opinions you expect to elicit at trial from each independent expert witness identified in 2(a) above.

**ANSWER:**

3. As to “controlled expert witnesses” as defined by Illinois Supreme Court Rule 213(f)(3):
  - a. Furnish the identity and address of each controlled expert witness who will testify at trial and also state whether such witness is the party, the party’s current employee or the party’s retained expert; and
  - b. For each controlled expert witness identified in 3(a) above, please state or provide the following:
    - i. The subject matter on which the witness is expected to testify at trial;
    - ii. The conclusions and opinions of the witness and the bases for each such conclusion or opinion;
    - iii. The qualifications of the witness, including a curriculum vita and/or resume, if any; and
    - iv. any reports of the witnesses regarding this case.

**ANSWER:**

The requesting plaintiff(s) also call(s) upon the person(s) to whom these interrogatories are directed to seasonably supplement the answers to interrogatories as additional information becomes available in accordance with Supreme Court Rule 213(i).

Respectfully Submitted,  
ROMANUCCI & BLANDIN, LLC

By: \_\_\_\_\_



Attorney for Plaintiffs

Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 N. LaSalle St.  
Suite 2000  
Chicago, IL 60602  
Tel: (312) 458-1000  
Fax: (312) 458-1004  
Attorney No.: 35875

35875

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

2012 APR -5 AM 10:43

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

Plaintiff, )

v. )

No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

**PLAINTIFF'S REQUEST TO PRODUCE TO ALL DEFENDANTS**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special  
Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin  
McDonald, and Chloe McDonald, minor children, by and through his attorneys, ROMANUCCI  
& BLANDIN, LLC, and, pursuant to Illinois Supreme Court Rule 214, propounds the following  
Requests to Produce to Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C.,  
JAMES P. TUTAJ, and THOMAS J. POPOVICH, to be answered within twenty-eight (28) days:

3342

1. The statement of any party, which is in the possession or control of some person or entity other than himself or his attorney or insurer.
2. The statement of any other witness or person having knowledge of any facts relevant to the occurrence complained of in this lawsuit, or the injuries and damages alleged.
3. The statement of any witness or person having knowledge of any facts relevant to the facts and circumstances of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, or the injuries and damages alleged therein.
4. Any and all medical records in your possession regarding the Julie McDonald including, but not limited to, the treatment of Julie McDonald rendered by any defendant in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, including medical records, medical reports, x-rays, laboratory reports, test results, progress notes, nurses' notes,

physicians' notes, work sheets, clinic sheets, flow chart and any and all other records of any kind and sort.

5. Any and all texts, medical literature, journals, articles, authoritative writing or similar matters upon which you intended to use or rely upon in your prosecution of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, or that the defendants relied in defense of the allegations made therein.

6. All photographs, slides, motion pictures or video tapes taken of Julie McDonald either prior to, during or subsequent to the treatment complained of in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

7. Complete, unedited, and unabridged copies of any and all accident, incident and/or investigative reports, records or memoranda prepared in conjunction with or as a result of the occurrence set forth in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

8. Any and all accident reports, investigative reports, inspection reports and/or e-mail transcriptions, computer generated materials pertaining to the injuries sustained by Julie McDonald, Mark McDonald, and/or their family, containing factual material concerning the date of the occurrence which was the subject matter of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

9. A list giving the names, addresses, and specialties of all expert witnesses and/or consultants you retained or consulted in your investigation or prosecution of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

10. A list giving the names, addresses and specialties of all expert witnesses (other than non-treating, purely consultant experts who are not to testify at trial), you intend to rely upon in this matter, omitting all persons already listed above.

11. Copies of any and all reports from any experts regarding or relating to the subject matter of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

12. Copies of any and all reports from any experts regarding or relating to the subject matter of this litigation.

13. A complete curriculum vitae for the defendant physicians in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, including professional education, professional teaching experience, professional work experience and professional publications.

14. Any and all reports, memorandum, files, statements, interview reports, interviews, tape recorded reports or other materials taken or obtained by the risk management department or by agents, independent contractors or employees on behalf of the risk management department of any persons, individuals, employees, and/or non-employees regarding the incident which was the subject of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

15. Any and all reports, memorandum, files, statements, interview reports, interviews, tape recorded reports or other materials taken or obtained by the defendants or by agents, independent contractors or employees on behalf of the defendants of any persons, individuals, employees, and/or non-employees regarding the incident which is the subject of this litigation.

16. Any and all insurance policies and/or agreements, both primary and excess, any and all insurance certificates which provide coverage relative to this case, or provide the policy limits for all policies and/or agreements both primary and excess that were in effect on the date of the occurrence.

17. It is further requested that each party and/or its attorney in compliance with this request for production shall furnish an affidavit stating whether the production is complete in accordance with this request as provided in Illinois Supreme Court Rule 214.

18. The full and complete file relative to *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, maintained by defendants, including without limitation, client agreement, attorney notes, contracts, correspondence, interview notes, investigation documents, pleadings, discovery, research performed, expert reports, medical records of Julie McDonald, medical bills of Julie McDonald, invoices, deposition transcripts, reports of proceedings, and/or any other document kept in the regular course of business regarding your representation of Mark McDonald with regard to *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

19. Any and all documents regarding any disciplinary proceedings commenced against Thomas J. Popovich or James P. Tutaj.

20. Any and all calendar or diary entries regarding *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393 made at any time during the course of your representation of Mark McDonald.

21. Any and all lists, documents, calendars, or other document used by you to track statutes of limitation for cases you have undertaken which reflect *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

22. Any and all lists, documents, calendars, or other document used by you to track service of defendants on cases filed by you which reflect *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

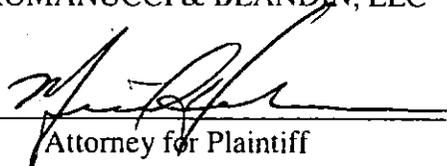
If any documents requested are no longer in existence, state whether it (a) is missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) has been otherwise disposed of, and in each instance explain the circumstances surrounding the reason for and manner of such disposition and state the date or approximate date thereof.

If any document called for in this request has been destroyed intentionally at any time during the past ten years, such document should be identified and the reasons and date of its destruction noted.

If any document called for in this request are not produced because of claim of privilege, work product or trade secret, those documents should be fully described along with a statement of why they are not being produced.

Respectfully Submitted,  
ROMANUCCI & BLANDIN, LLC

By: \_\_\_\_\_



Attorney for Plaintiff

Stephan D. Blandin  
Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 N. LaSalle St.; Suite 2000  
Chicago, IL 60602  
Tel: (312) 458-1000  
Fax: (312) 458-1004  
Attorney No.: 35875

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, individually, as  
Special Administrator of the Estate of Julie  
McDonald, and as father of Ian McDonald,  
Quinlin McDonald, and Chloe McDonald,  
minor children,

Plaintiff,

v.

LAW OFFICES OF THOMAS J.  
POPOVICH, P.C., JAMES P. TUTAJ, and  
THOMAS J. POPOVICH,

Defendants,

2012 APR -5 AM 10:42

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

No.: 12 L 00196

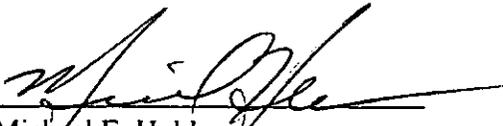


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NOTICE OF FILING

TO: Daniel F Konicek  
Konicek & Dillon, P.C.  
21 W. State Street  
Geneva, IL 60134

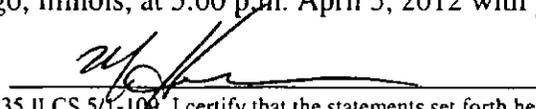
PLEASE TAKE NOTICE that on April 5, 2012, we have filed the following with the Circuit Court of Cook County, Law Division **Plaintiff's Interrogatories to Defendants, Plaintiff's Requests to Produce to Defendants, and Plaintiff's 213(f) Interrogatories to Defendants**, copies of which are attached hereto.

  
Michael E. Holden  
ROMANUCCI & BLANDIN  
33 North LaSalle Street - Suite 2000  
Chicago, Illinois 60602  
312-458-1000  
312-458-1004 Fax  
Attorney No. 35875

PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. April 5, 2012 with postage prepaid.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.



DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

FILED-3  
2012 APR -5 10:10  
DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

**INTERROGATORIES TO DEFENDANTS,  
LAW OFFICES OF THOMAS J. POPOVICH, P.C., THOMAS J. POPOVICH AND  
JAMES P. TUTAJ**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through is attorneys, ROMANUCCI & BLANDIN, LLC, and pursuant to Illinois Supreme Court Rule 213, propounds the following interrogatories to be answered by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, individually, within 28 days:

Definitions

When used in these Interrogatories, the following terms or any synonym therefore are intended to and shall be interpreted as indicated:

“**Person**” means any natural person, firm, corporation, partnership, joint venture or other form of business entity;

“**Identify**” and to state the “**identity of**”, when referring to an individual **person**, means to state the name, current address, telephone number, place of employment or last known place of employment of the person about whom the information is sought.

**“Identify”** and to state the **“identity of”**, when referring to a **document**, means to state the following information relative to each document:

1. Its date;
2. Its title, if it has one;
3. All identifying numbers, if any;
4. All other identifying or categorizing designations and a brief description of it (such as letter, memorandum, manuscript, notes, etc.);
5. Its subject matter;
6. The identity of each person who wrote, signed initialed, dictated or otherwise participated in the preparation of the document;
7. The identity of the person who is in custody or control of the document;
8. Any other designation necessary to sufficiently identify the document so that a copy of it may be ordered or obtained from the person in possession or control of the document.

**“Document”** As used herein, the term “document” is synonymous in meaning and equal in scope to the usage of this term in Supreme Court Rule 201(b), including, without limitation, electronic or computerized data compilations or any information that is fixed in a tangible form or stored in a medium from which it can be retrieved and examined. A draft or non-identical copy is a separate document within the meaning of this term. “Document” also includes and refers to any file or any container holding or which once held any documents, as well as to any writing or printing which might appear on such file or container.

**“You”** and **“Defendant”** shall mean the defendant answering these interrogatories, including Defendants, Law Offices of Thomas J. Popovich, P.C., James P. Tutaj, and/or Thomas J. Popovich. And also shall embrace and include in addition to Defendants, and Defendants’ insurance carriers and attorneys, all agents, servants, employees, or representatives of Defendants, private investigators or other who are in possession of or may have obtained information for or on behalf of Defendants.

**“Witness”** shall embrace and include any person, whether discovered in the course of investigation, preparation for trial, or otherwise, who has, or claims to have, any knowledge of any relevant fact or issue with respect to this lawsuit whether such witness is considered to be an eye witness, liability witness, medical witness, vocational rehabilitation witness, damages witness, expert witness, or some other type of witness.

Interrogatories

1. State the name, address, and capacity of the person answering these interrogatories.

**ANSWER:**

2. Were you named or covered under any policy or policies of liability insurance, including umbrella and excess liability coverage, at the time of the care and treatment at issue in this matter? If so, state for each policy:

- a. The name and address of the insurance company holding such policy;
- b. The policy number;
- c. The effective policy period;
- d. The maximum liability limits for each person and each occurrence, including umbrella and excess liability coverage; and
- e. The name insured(s) under the policy.

**ANSWER:**

3. Set forth the details of your education and postgraduate training, including the names and addresses of all undergraduate and graduate schools attended, the dates of graduation, and the degree(s) received (in lieu of a written response to this interrogatory, a current resume and/or CV, including the responsive information, may be provided).

**ANSWER:**

4. Set forth each of the states, provinces, and foreign countries in which you are presently, or ever have been professionally licensed to practice law. As to each, state:

- a. The inclusive dates of licensure;
- b. The license or bar number; and
- c. If such license is no longer active, the date and reason for termination of such license.

**ANSWER:**

5. Has your license(s) to practice law in any state, province, or foreign country ever been suspended or revoked for any reason, or has any disciplinary action ever been taken against you in reference to you license? If so, the specific disciplinary action taken against you, the date of any such suspension, revocation, or disciplinary action, the reason for the suspension, revocation, or disciplinary action, the period of time for which the suspension, revocation, or disciplinary action was effective, and the name and address of the disciplinary entity taking such action.

**ANSWER:**

6. With respect to the Law Offices of Thomas J. Popovich, state:
- a. The address and telephone number of each location at which the Law Offices of Thomas J. Popovich presently maintains an office or has maintained an office in the last 10 years;
  - b. A description of the functions carried out at each office or other place of business; and
  - c. The nature of the Law Office of Thomas J. Popovich's principal area of practice and the period in which it has conduct that business.

**ANSWER:**

7. State whether the Mark McDonald and/or his family was recommended and/or referred to you, and, if so, state by whom.

**ANSWER:**

8. State whether you or the Law Offices of Thomas J. Popovich undertook to provide legal representation to Mark McDonald regarding a medical malpractice/wrongful death action arising out of the death of Julie McDonald. If so, state the date you were retained, the nature of such representation, whether there exists a written contract or agreement reflecting such retention, and the date such representation terminated.

**ANSWER:**

9. State the names and address of each individual who participated in the investigation, evaluation, preparation, and handling of any aspect of any claim of the Plaintiff, including all: attorneys and former attorneys; secretaries and former secretaries; paralegals and former paralegals; law clerks and former law clerks; and any other individuals who in any way participated in the handling of this case on behalf of the Plaintiff, or on behalf of you and/or your law firm. Additionally, for each individual identified state whether the individual is currently employed by you, and, if not, provide a last known address.

**ANSWER:**

10. State the time, date, and place of each meeting between you and Mark McDonald, and for each, state:

- a. The subject matter discussed;
- b. The sum and substance of all conversations; and
- c. The dates of all correspondence that mentions any meeting, attaching copies of all such correspondence.

**ANSWER:**

11. State whether any formal legal action was filed on behalf of Mark McDonald by you, and state:

- a. The caption and case number of the action;
- b. The names and firm names of all attorneys who provided legal services for those actions;
- c. The dates and substance of all correspondence between you and the Plaintiff;
- d. The substance of all conversations, whether in person or by telephone, giving the dates and times of the conversations; and
- e. The title and date of all pleadings for each legal action.

**ANSWER:**

12. Did any other attorney take over the case from you? If so, state:
- a. The name of the attorney;
  - b. The date that the attorney took over the case;
  - c. The circumstances under which the attorney took over the case;
  - d. The outcome, including dates of take over, and conclusion of the case; and
  - e. Whether the case was settled, discontinued, or dismissed.

**ANSWER:**

13. State as to each occasion when you or any employee of the Law Office of Thomas J. Popovich, P.C., had any conversation with Mark McDonald that related in any way to the subject matter of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, including:

- a. The date, time, and place of the conversation;
- b. The substance of each conversation, indicating who said what; and
- c. The identity of any witness to the conversation.

**ANSWER:**

14. State as to each occasion you or any employee of the Law Office of Thomas J. Popovich, P.C., had any conversation with a defendant or any person claiming to represent a defendant, including insurance companies and attorneys, in *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, against which a claim was filed on behalf of Mark McDonald, including in your answer:

- a. The name and address of the person with whom the conversation took place;
- b. The date and time of day of the conversation;
- c. The place or location where the conversation took place;
- d. The substance of the conversation, including who said what; and
- e. The identity of any witness to the conversation.

**ANSWER:**

15. Are you in possession of the full and complete file, including all correspondence, investigation, discovery documents, pleadings, court orders, contracts, powers of attorney, authorizations, attorney notes, deposition transcripts, reports of proceedings, research performed, invoices, medical records, medical bills, and/or any other document kept in the regular course of business regarding your representation of Mark McDonald with regard to *McDonald v. Aurora Health Care, Inc.*? If not, state what part of file you claim is no longer in your possession, the reason any part of the file is no longer in your possession, the date you first discovered it to no longer be in your possession, the name and address of the person or entity currently in possession of said file, and, if lost or misplaced, state what efforts you have made to locate it.

**ANSWER:**

16. State whether you or anyone from the Law Offices of Thomas J. Popovich ever informed Mark McDonald of the dismissal of *McDonald v. Aurora Health Care, Inc.* If so, state:

- a. The date of such notification;
- b. The method of such notification, i.e., whether in-person, by telephone, by letter, etc.;
- c. The names of any person claiming to have made such notification;
- d. What was said to or written to Mark McDonald regarding such dismissal; and
- e. The names of any persons who claim to have been present during such notification.

**ANSWER:**

17. State whether you or anyone from the Law Offices of Thomas J. Popovich ever advised Mark McDonald that you or the Law Offices of Thomas J. Popovich may have committed professional malpractice and/or that Mark McDonald should seek other counsel with regard to any claims he may have against you or the Law Offices of Thomas J. Popovich. If so, state:

- a. The date of such notification;

- b. The method of such notification, i.e., whether in-person, by telephone, by letter, etc.;
- c. The names of any person claiming to have made such notification;
- d. What was said to or written to Mark McDonald regarding such dismissal; and
- e. The names of any persons who claim to have been present during such notification.

**ANSWER:**

18. State whether you were licensed in the State of Wisconsin at the time you represented Mark McDonald with regard to *McDonald v. Aurora Health Care, Inc., et al.* If yes, state the date you were first licensed to practice law in the State of Wisconsin, your license number, and whether such license has ever been suspended or revoked. If no, state whether you retained local counsel to assist in prosecuting *McDonald v. Aurora Health Care, Inc., et al.*, and provide the name and address of any local counsel you retained.

**ANSWER:**

19. State whether you or any attorney from the Law Offices of Thomas J. Popovich ever applied for or were ever admitted *pro hac vice* by the Supreme Court of Wisconsin and/or the Circuit Court of Walworth County, Wisconsin for purposes of prosecuting *McDonald v. Aurora Health Care, Inc., et al.* If so, state the name of each attorney so admitted and the date of such application or admission.

**ANSWER:**

20. State whether you claim to have filed *McDonald v. Aurora Health Care, Inc., et al.*, within the applicable statute of limitations. If yes, state the reason you claim such filing was within the statute of limitations for said claim, and provide the citation to any legal authority you believe supports any such claim.

**ANSWER:**

21. State whether you placed summons for service with regard to each Defendant named in *McDonald v. Aurora Health Care, Inc., et al.* For each, state:

- a. The name and address of the person you sought to be served for each defendant;
- b. The agency or entity with whom service was placed;
- c. Whether each defendant was served with summons;
- d. The date each you claim each defendant was served with summons; and
- e. Whether you obtained an alias summons for any defendant.

**ANSWER:**

22. State whether you obtained any information concerning Julie McDonald's medical history and treatment, and, if so, state:

- a. Whether you obtained the information from plaintiffs;
- b. Whether you obtained information from a person other than the plaintiffs, and, if so, the name, address and relationship to the plaintiffs of each person;
- c. The date and place the information was obtained;
- d. Whether you made any record of the information, and, if so, identify each record made; and
- e. Whether you received any actual medical records, and, if so, identify the records and from whom each record was obtained.

**ANSWER:**

23. State whether you subpoenaed any records concerning plaintiff's injury which was the subject matter of your representation and state:

- a. Who was subpoenaed;
- b. The records or documents specified in the subpoena;
- c. The date the subpoena was served;
- d. The date the subpoena was complied with; and

- e. Specifically, what documents and/or records were obtained, and attach a copy of them.

**ANSWER:**

24. List the names and addresses of all individuals who participated in, witnessed, or have knowledge of the care and treatment of Julie McDonald with regard to the allegations in the case of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393.

**ANSWER:**

25. State whether you have obtained a statement from any person, firm or corporation, or their agents, servants, representatives or employees, relevant to *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, and, if so, state:

- a. The date the statement was obtained;
- b. The name and current address of the person who gave the statement;
- c. If written, whether the statement was signed by that person;
- d. If oral, the name and current address of the person who obtained the statement;
- e. If recorded, the name and address of the present custodian of the recording;
- f. The identity of and attach true and exact copies of each statement; and
- g. The substance of all oral or recorded statements, and attach a transcript of each recorded statement.

**ANSWER:**

26. Set forth the nature of any other damages or losses originally claimed to have been suffered by Mark McDonald and/or his family in the case of *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, and for each damage or loss, set forth the following:

- a. Its monetary value as determined by you;
- b. How the monetary figure was arrived at and/or computed; and

- c. What testimony and/or evidentiary item you intended to rely upon at trial to prove the damages and/or losses.

**ANSWER:**

27. State the manner in which you intended to prove at trial the negligence of the prior defendant and provide:

- a. If proof was to be offered by testimony, the name(s) and address(es) of the witness(es), state the substance of the witness(es)' anticipated or actual testimony, and whether the witness(es) testified at trial; and
- b. If proof was intended to be offered in any other manner, i.e., documents, records, memoranda, etc., identify and attach each document, record or memoranda.

**ANSWER:**

28. For each document withheld from production (in reference to the request for production of documents served at the same time as these interrogatories) on the grounds of alleged attorney/client or work product privilege, identify:

- a. The type of privilege claimed;
- b. The person(s) who prepared the document;
- c. The place, date, and manner of recording or otherwise preparing the document;
- d. The recipient(s) of the document;
- e. The basis for the claim of privilege; and
- f. The portions of the document as to which privilege is claimed.

**ANSWER:**

29. State whether you have obtained a statement from any person, firm or corporation, or their agents, servants, representatives or employees, relevant to the subject matter of this litigation, and, if so, state:

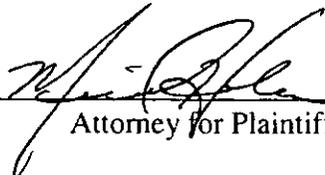
- a. The date the statement was obtained;
- b. The name and current address of the person who gave the statement;
- c. If written, whether the statement was signed by that person;
- d. If oral, the name and current address of the person who obtained the statement;
- e. If recorded, the name and address of the present custodian of the recording;
- f. The identity of and attach true and exact copies of each statement; and
- g. The substance of all oral or recorded statements, and attach a transcript of each recorded statement.

**ANSWER:**

30. State the full name, address, date of birth, title, and position of each person (other than those heretofore listed) who has knowledge of any of the facts and circumstances, injuries, or damages regarding either *McDonald v. Aurora Health Care, Inc., et al.*, Court No. 2009 CV 000393, or this cause of action.

**ANSWER:**

Respectfully Submitted,  
ROMANUCCI & BLANDIN, LLC

By:   
Attorney for Plaintiff

Stephan D. Blandin  
Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 N. LaSalle St.; Suite 2000  
Chicago, IL 60602  
Tel: (312) 458-1000  
Fax: (312) 458-1004  
Attorney No.: 35875

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

FILED  
2012 APR -5 AM 10:43

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

MARK MCDONALD, individually, as  
Special Administrator of the Estate of Julie  
McDonald, and as father of Ian McDonald,  
Quinlin McDonald, and Chloe McDonald,  
minor children,

Plaintiff,

v.

No.: 12 L 00196



LAW OFFICES OF THOMAS J.  
POPOVICH, P.C., JAMES P. TUTAJ, and  
THOMAS J. POPOVICH,

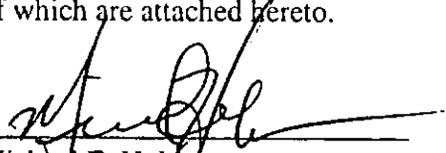
Defendants,

3331  
3372  
3378

NOTICE OF FILING

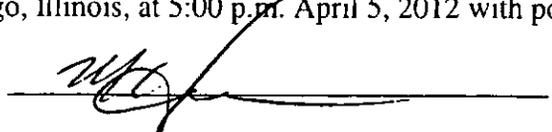
TO: Daniel F Konicek  
Konicek & Dillon, P.C.  
21 W. State Street  
Geneva, IL 60134

PLEASE TAKE NOTICE that on **April 5, 2012**, we have filed the following with the Circuit Court of Cook County, Law Division **Plaintiff's Requests to Admit to Defendants**, copies of which are attached hereto.

  
Michael E. Holden  
ROMANUCCI & BLANDIN  
33 North LaSalle Street - Suite 2000  
Chicago, Illinois 60602  
312-458-1000  
312-458-1004 Fax  
Attorney No. 35875

PROOF OF SERVICE

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, at 5:00 p.m. April 5, 2012 with postage prepaid.



[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

FILED-3

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT 43

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

**REQUESTS TO ADMIT DIRECTED TO DEFENDANTS,  
LAW OFFICES OF THOMAS J. POPOVICH, P.C., THOMAS J. POPOVICH AND  
JAMES P. TUTAJ**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through is attorneys, ROMANUCCI & BLANDIN, LLC, and pursuant to Illinois Supreme Court Rule 216, propounds the following Requests to Admit to be answered by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ, and THOMAS J. POPOVICH, individually, within 28 days. **WARNING: If you fail to serve the response required by Rule 216 within 28 days after you are served with this paper, all the facts set forth in the requests will be deemed true and all the documents in the requests will be deemed genuine.**

**REQUEST NO. 1:** Admit or deny that Julie McDonald died on November 16, 2005.

**RESPONSE:**

**REQUEST NO. 2:** Admit or deny that any cause of action arising out of medical malpractice and/or wrongful death against Dr. Galvani and/or Auroa Health Care, Inc. accrued on November 16, 2005.

**RESPONSE:**

**REQUEST NO. 3:** Admit or deny that Wisconsin procedural and substantive law applied to any claim arising out of the death of Julie McDonald.

**RESPONSE:**

**REQUEST NO. 4:** Admit or deny that the statute of limitations for a medical malpractice cause of action in the State of Wisconsin is 3 years from the date the injured party knew or should have known of the negligence.

**RESPONSE:**

**REQUEST NO. 5:** Admit or deny that statute of limitations for a wrongful death cause of action in the State of Wisconsin is 3 years from the date of the injured person's death.

**RESPONSE:**

**REQUEST NO. 6:** Admit or deny that the medical malpractice statute of limitations relative to any claim for medical malpractice resulting in the death of Julie McDonald began to run on November 15, 2005.

**RESPONSE:**

**REQUEST NO. 7:** Admit or deny that the wrongful death statute of limitations relative to any claim for wrongful death arising out of the death of Julie McDonald began to run on November 15, 2005.

**RESPONSE:**

**REQUEST NO. 8:** Admit or deny that *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393, was filed on March 17, 2009.

**RESPONSE:**

**REQUEST NO. 9:** Admit or deny that *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393 was filed after the statute of limitations for wrongful death or medical malpractice in the State of Wisconsin had expired.

**RESPONSE:**

**REQUEST NO. 10:** Admit or deny that James P. Tutaj was the attorney who signed the complaint in *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393 which was filed in the Circuit Court of Walworth County, Wisconsin.

**RESPONSE:**

**REQUEST NO. 11:** Admit or deny that James P. Tutaj was not licensed to practice law in the State of Wisconsin prior to March 17, 2009.

**RESPONSE:**

**REQUEST NO. 12:** Admit or deny that Thomas J. Popovich was not licensed to practice law in the State of Wisconsin prior to March 17, 2009.

**RESPONSE:**

**REQUEST NO. 13:** Admit or deny that neither Thomas J. Popovich or James P. Tutaj were admitted *pro hac vice* in the State of Wisconsin for the purposes of filing or prosecuting *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393.

**RESPONSE:**

**REQUEST NO. 14:** Admit or deny that, following filing of *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393, service on Theodore Galvini, M.D., was not completed until February 25, 2010.

**RESPONSE:**

**REQUEST NO. 15:** Admit or deny that *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393 was dismissed as to Theodore Galvni for lack of service on Dr. Galvini.

**RESPONSE:**

**REQUEST NO. 16:** Admit or deny that *McDonald v. Aurora Health Care, Inc., et al.*, Case No. 2009 CV 000393 was dismissed on June 26, 2010 due to James Tutaj not being admitted in the State of Wisconsin.

**RESPONSE:**

Respectfully Submitted,  
ROMANUCCI & BLANDIN, LLC

By: \_\_\_\_\_

  
One of Plaintiff's Attorneys

Antonio M. Romanucci  
Stephan D. Blandin  
Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602  
Tel: (312) 458-1000  
Fax: (312) 458-1004  
Attorney No.: 35875

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

7

CC  
E.W.

McDONALD

v.

No. 12 L 196

LAW OFFICES OF POPOVICH & c.

ORDER

MATTER COMING BEFORE THE COURT FOR PRESENTATION OF DEFENDANTS' MOTION TO TRANSFER PURSUANT TO FORUM NON CONVENIENS, PLAINTIFF HAVING NOT RECEIVED THE EXHIBITS CITED THEREIN, IT IS HEREBY ORDERED:

① DEFENDANTS' MOTION IS ENTERED AND CONTINUED TO APRIL 20, 2012 AT 9:00 AM FOR ENTRY OF A BRIEFING AND/OR DISCOVERY SCHEDULE ON THE MOTION. 6007  
4619

② DEFENDANTS TO PROVIDE PLAINTIFF WITH EXHIBITS CITED IN THEIR MOTION. FORTHWITH 11253

Atty. No.: 37199

Name: M. Corsi

Atty. for: DEFENDANTS

Address: 21 WEST STATE ST

City/State/Zip: GENOA IL 60134

Telephone: (630) 262-9655

Judge Randy A. Kocan  
ENTERED: APR - 6 2012  
Circuit Court - 1509

Dated: \_\_\_\_\_

*R.A. Kocan*  
Judge

Judge's N

CONTESTED MOTION BRIEFING ORDER – "H"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION



McDONALD

Plaintiff(s)

NO: 12 L 196

"H" Judge Randy A. Kogan

LAW OFFICES OF POROVICH, et al.

Defendant(s)

ORDER

This cause coming on for entry of a briefing schedule on the Motion of Defendants, for 2-615 Dismissal, 2-619 Dismissal, Rule 103(b) Dismissal, In Camera Inspection, 2-1005 Summary Judgment, or X Other Motion (TRANSFER BASED ON FORUM NON CONVENIENS),

IT IS HEREBY ORDERED AS FOLLOWS:

(4231) 1. The Response of PLAINTIFF is due on 5/18/12

(4231) 2. The Reply of DEFENDANTS is due on 6/8/12

(4217/4619) 3. The case is set for Status & CMC on 6/18/12 at 11:00 AM;

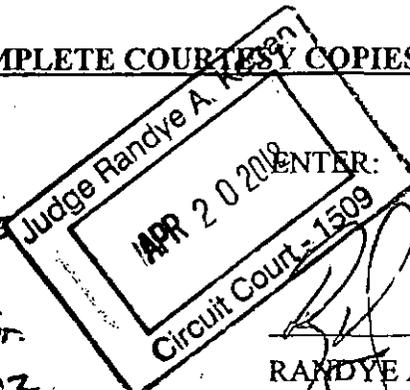
(6271) 4. All courtesy copies, briefs, pleadings, full transcripts of depositions, and exhibits will be submitted on the Status date only, and will be in compliance with the applicable Motion Judges' Rules;

(6280) 5. Materials submitted after a ruling date is scheduled will not be accepted nor considered in the ruling;

(6285) 6. Other: \_\_\_\_\_

\*\*MOTIONS WITH INCOMPLETE COURTESY COPIES WILL BE DENIED\*\*

Atty No: 35875  
Atty Name: M. Holden / R. S.  
Atty For: IT  
Address: 33 N. LA SALLE ST.  
City: CHICAGO, IL 60602  
Telephone: 312-253-6022



[Signature]  
RANDYE A. KOGAN  
ASSOCIATE JUDGE NO.

FILED-3

2012 APR 27 PM 3:22  
JUDITH BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

CC  
S.P.

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

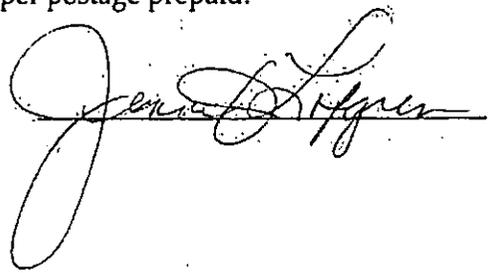
LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

3321

NOTICE OF MAILING/  
CERTIFICATE OF SERVICE

TO: Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602

The undersigned states that a copy of Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH's ANSWERS TO PLAINTIFF'S REQUESTS TO ADMIT were served upon the above listed attorney, together with this CERTIFICATE OF SERVICE, depositing same in the U.S. Mail located at Geneva, Illinois 60134, on April 27, 2012, with proper postage prepaid.



Daniel F. Konicek  
Michael J. Corsi  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

ORIGINAL

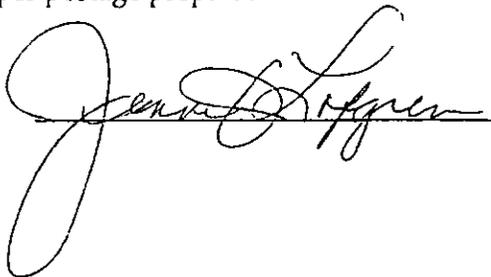
3321  
2871

FILED-6  
APR 27 2012  
COURT CLERK

NOTICE OF MAILING/  
CERTIFICATE OF SERVICE

TO: Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602

The undersigned states that a copy of Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH's **ANSWERS TO PLAINTIFF'S REQUESTS TO ADMIT** were served upon the above listed attorney, together with this **CERTIFICATE OF SERVICE**, depositing same in the U.S. Mail located at Geneva, Illinois 60134, on **April 27, 2012**, with proper postage prepaid.



Daniel F. Konicek  
Michael J. Corsi  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

FILED-1  
2012 MAY 22 PM 4:20

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

CL  
M.O.D.

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

No.: 12 L 00196

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

3331  
3372  
2810  
3298

**NOTICE OF FILING**

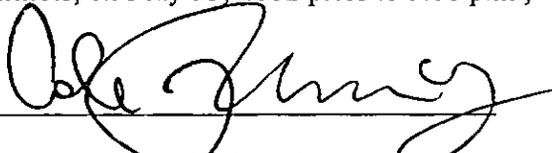
To: Konicek & Dillon, P.C.  
21 W. State St.  
Geneva, IL 60134  
603.262.9655

PLEASE TAKE NOTICE that on May 22, 2012 we have filed the following with the Circuit Court of Cook County, Law Division, **Plaintiff's Response Defendant's Motion to Transfer Pursuant to Forum Non Conveniens** copies of which are attached hereto.

ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street - Suite 2000  
Chicago, Illinois 60602  
312-458-1000  
312-458-1004 Fax  
Attorney No. 35875

**PROOF OF SERVICE**

I, the undersigned, on oath, subject to penalty of perjury, state that I served this notice by mailing a copy to all parties shown above at their respective addresses by depositing same in the U.S. Mail at 33 North LaSalle Street, Chicago, Illinois, on May 23, 2012 prior to 5:00 p.m., with postage prepaid.



[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

FILED-1

MARK MCDONALD, individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian McDonald, )  
Quinlin McDonald, and Chloe McDonald, )  
minor children, )

Plaintiff, )

v. )

LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., JAMES P. TUTAJ, and )  
THOMAS J. POPOVICH, )

Defendants, )

2012 MAY 22 PM 4:21

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

No.: 12 L 00196



**PLAINTIFF'S COMBINED RESPONSE TO DEFENDANTS'  
MOTION TO TRANSFER BASED ON FORUM NON CONVENIENS**

NOW COMES the Plaintiff, MARK MCDONALD, individually, as Special Administrator of the Estate of Julie McDonald, and as father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children, by and through his attorneys, ROMANUCCI & BLANDIN, LLC., and as his response to the Motion to Transfer Pursuant to *Forum Non Conveniens* filed by Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, states as follows:

**FACTS**

1. This is a legal malpractice action against Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES TUTAJ, and THOMAS J. POPOVICH.
2. Plaintiff, MARK MCDONALD, retained the Law Offices of Thomas J. Popovich, James P. Tutaj, and Thomas J. Popovich to represent him in his capacity acting as Special Administrator of the Estate of Julie McDonald to prosecute a wrongful death claim in Walworth County, Wisconsin.
3. At all times relevant hereto, Defendants maintained an office at 212 W. Washington

St., Suite 808 in the City of Chicago, Cook County, Illinois and/or at 849 N. Franklin St., Suite 1409 in the City of Chicago, Cook County, Illinois.

4. The basis of this Legal Malpractice claim accrued from the underlying wrongful death claim. On November 15, 2005 Julie McDonald presented to Aurora Health Center in the City of Lake Geneva, Walworth County, Wisconsin, with a fever of 102.5 and was treated by Dr. Theodore Galvani. On that date, Dr. Galvani diagnosed Julie McDonald with strep throat and prescribed antibiotics, commonly known as Levaquin 750 mg. After taking the prescribed dose of Levaquin Julie McDonald went into anaphylactic shock and died. On November 16, 2005, an autopsy revealed that Julie McDonald died a Levaquin-induced anaphylactic shock.

5. Prior to November of 2008, Plaintiff, Mark McDonald hired Defendant, LAW OFFICES OF THOMAS J. POPOVICH, P.C. to investigate and prosecute a medical malpractice case against Dr. Theodore Galvani and Aurora Health Center. After being retained by Plaintiff, Defendants, JAMES P. TUTAJ and THOMAS J. POPOVICH, were assigned to be the handling attorneys on the file. At no relevant time were Defendants, JAMES P. TUTAJ nor THOMAS J. POPOVICH licensed to practice law in the State of Wisconsin. Nor were the Defendants admitted to practice law on a *pro hac vice* basis. And, Defendants filed the law suit three (3) years after the running of the statute of limitations applicable to both medical malpractice actions and wrongful death actions in the State of Wisconsin. In the end, the suit was dismissed for lack of service on Dr. Galvani.

#### STANDARD

6. The doctrine of *forum non conveniens* is an equitable doctrine founded in considerations of fundamental fairness and sensible and effective judicial administration. *Woodward v. Bridgestone/Firestone, Inc.*, 368 Ill.App.3d 827, 831 (5<sup>th</sup> Dist. 2006) (citing *First American Bank v. Guerine*, 198 Ill.2d 511, 515 (2002)). It effectively allows a trial court to decline jurisdiction and direct the suit to an alternate forum with jurisdiction when litigating in the forum would better serve

the convenience of the parties and ends of justice. *Certain Underwriters of Lloyd's London v. Illinois Cent. R. Co.*, 329 Ill.App.3d 189 (2d Dist. 2002.)

7. When the issue of intrastate *forum non conveniens* arises, the focus of the trial court is on whether the case is being litigated in the most convenient county. *Lambert v. Goodyear Tire and Rubber*, 332 Ill.App.3d 373, 378 (1<sup>st</sup> Dist. 2002). The same considerations of convenience and fairness apply equally in deciding the issue of forum for a dismissal motion based on interstate *forum non conveniens* or a transfer motion based on intrastate *forum non conveniens*. *Torres v. Walsh*, 98 Ill.2d 338, 348 (1983).

8. When ruling on a *forum non conveniens* motion, the trial court must weigh a variety of private and public interest factors. *First American Bank v. Guerine*, 198 Ill.2d 511, 516 (2002).

9. The private interest factors include: (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; (3) the availability of compulsory process to secure attendance of unwilling witnesses; (4) the cost to obtain the attendance of willing witnesses; and (5) the possibility of viewing the premises, if appropriate; and all other practical problems that make a trial of a case easy, expeditious, and inexpensive. *Dawdy v. Union Pacific R.R.*, 207 Ill.2d 167, 172 (2003).

10. The relevant public interest factors include: (1) the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; (2) the unfairness of imposing jury duty upon residents of a county with no connection to the litigation; and (3) and the interest in having local controversies decided locally. *Id.* at 173. Court congestion, however, is a "relatively insignificant factor." *Brown v. Cottrell, Inc.*, 374 Ill.App.3d 525, 534 (5<sup>th</sup> Dist. 2007).

11. A further consideration is the forum which the plaintiff has chose to file the complaint. A plaintiff's right to select the forum is a substantial one that should rarely be disturbed unless there are public and private factors that weigh strongly in favor of transfer or dismissal. *Id.* at

517 (emphasis added). The trial court must weigh the totality of the circumstances of the case and determine whether the defendant has proven that the balance of factors strongly favors transfer or dismissal. *First American Bank*, 198 Ill.2d at 518 (emphasis added).

### ARGUMENT

12. In the case at bar, Defendants cannot show that the balance of factors strongly favors transfer. As such, Defendants' Motions should be denied.

13. Although Cook County is not Plaintiff's home forum, Defendants have significant ties to Cook County, and the plaintiff's right to select the forum is a substantial one that should rarely be disturbed. *First American Bank*, 198 Ill.2d at 517. At all relevant times, Defendants maintained a law office at 212 W. Washington St., Suite 808 in the City of Chicago, Cook County, Illinois and/or at 849 N. Franklin St., Suite 1409 in the City of Chicago, Cook County, Illinois

14. Further, as to the remaining private factors, which include: the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain the attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical problems that make a trial of a case easy, expeditious, and inexpensive, Defendant cannot show that they strongly favor dismissal. Dr. Galvani, the Defendant in McDonald's underlying medical malpractice/ wrongful death case maintains an office in Lake County, Illinois. Lake County is no closer to McHenry County than it is Cook County. As such, McHenry County is not a substantially more appropriate forum, and the case should remain in Cook County.

15. Defendant states that all of the work performed for the prosecution of the underlying case was performed in McHenry County, and that there is no connection between the underlying malpractice case and Cook County. However, the vast majority of the evidence in this matter will be documentary evidence which will be copied and provided in written discovery. The fact that the documentary evidence is currently located in McHenry County has little if any bearing on the issue

of convenience as the documents are readily portable. Likewise, there is absolutely no evidence that is exclusive to McHenry County other than potential witnesses who can be accommodated to ensure their attendance at trial. Further, the record suggests that there is a connection to Cook County, because at the time Plaintiff retained Defendants' legal services, Defendant had an office in Cook County. As such, McHenry had no more connection with the legal malpractice case than Cook County, and thus McHenry County is not a substantially more appropriate forum.

16. As to the public factors, Defendants cannot show that the public factors weigh strongly in favor of transfer. While, the Defendant correctly states that the underlying medical malpractice occurred in Walworth County, Wisconsin, the legal malpractice was committed by attorneys who practice both in Cook and McHenry counties. Assumingly, both McHenry and Cook counties have an interest in the controversy. It is implausible, if not disingenuous, to suggest that the residents of Cook County don't have a real and genuine interest in ensuring attorneys who practice in Cook County do not commit malpractice in the handling of their cases. Because of this interest, it is not unfair to impose the expense of trial and burden of jury duty on Cook County residents in this case. Again, the evidence shows that McHenry is not a substantially more appropriate forum for the litigation.

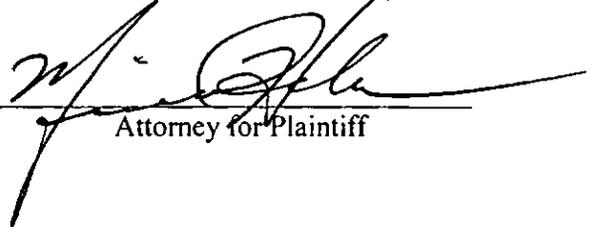
17. In regard to the administrative aspects of litigation in Cook County, as compared with litigation in McHenry County, there is no disputing that Cook County has substantially more cases filed than does McHenry County. However, Defendants do not provide any data to suggest that a case take substantially longer to reach resolution in Cook County than it does in McHenry County. The sheer volume of cases alone does not establish this. Further, as numerous courts have stated, court congestion, however, is a "relatively insignificant factor," particularly where the defendant fails to demonstrate that its proposed forum can resolve the case more quickly. *Brown*, 374 Ill.App.3d at 534; *First American Bank*, 198 Ill.2d at 516.

18. Defendants cannot show that the public and private interest factors, when viewed in the totality of the circumstances weigh strongly in favor of transfer. Unless the public and private interest factors weight heavily in favor of a transfer or dismissal, a forum non conveniens motion should be denied. *Brown*, 374 Ill.App.3d at 529. As such, Defendants' Motions should be denied.

WHEREFORE, Plaintiff, MARK MCDONALD, respectfully requests that this Honorable Court enter an order denying the Motions to Transfer Based on Forum Non Conveniens filed by Defendants, LAW OFFICE OF THOMAS J. POPOVICH, P.C., JAMES P.TUTAJ, and THOMAS J. POPOVICH, and for any further relief that this Court deems appropriate and just.

Respectfully Submitted,  
ROMANUCCI & BLANDIN, LLC

By:



Attorney for Plaintiff

Stephan D. Blandin  
Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 N. LaSalle St.  
Suite 2000  
Chicago, IL 60602  
Tel: 312-458-1000  
Fax: 312-458-1004  
Attorney No.: 35875



MCDONALD

Plaintiffs

-v-

LAW OFFICE

Defendants

NO: 12 L 196

Motion Call "H" Time: \_\_\_\_\_ Line#: \_\_\_\_\_

Judge Randye A. Kogan

CASE MANAGEMENT ORDER

\*\* (Please check off all pertinent paragraphs and circle proper party name) \*\*

- (8230) \_\_\_\_\_ 1. Category #1(18-mo. discovery) (8232) \_\_\_\_\_ 1A. Category #2 (28 Mo. Discovery)
- (4231) \_\_\_\_\_ 2. Written & (f)(1) and (f)(2) discovery to be issued by \_\_\_\_\_ or deemed waived;
- (4296) \_\_\_\_\_ 3. Written & 213(f)(1) and (2) discovery to be answered by \_\_\_\_\_;
- (4218) \_\_\_\_\_ 4. Oral discovery & 213(f)(1) and (2) depositions to be completed by \_\_\_\_\_;
- (4288) \_\_\_\_\_ 5. Subpoenas for treating physicians' depts to be issued by \_\_\_\_\_ or deemed waived;
- (4218) \_\_\_\_\_ 6. Treating physicians depositions to be completed by \_\_\_\_\_;
- (4206) \_\_\_\_\_ 7. (Plaintiff) or (Defendant) or (Add. Party) shall answer 213 (f)(3) Interrogatories by \_\_\_\_\_;
- (4218) \_\_\_\_\_ 8. Plaintiff's 213(f)(3) witnesses' depositions to be completed by \_\_\_\_\_;
- (4218) \_\_\_\_\_ 9. Defendant's 213(f)(3) witnesses' depositions to be completed by \_\_\_\_\_;
- (4218) \_\_\_\_\_ 10. Add. party's 213(f)(3) witnesses' depositions to be completed by \_\_\_\_\_;
- (4295) \_\_\_\_\_ 11. All fact discovery, SCR 213(f)(1) and/or SCR 213(f)(2) discovery is closed. (Circle all applicable)
- (4619) \_\_\_\_\_ 12. The matter is continued for subsequent Case Management Conference on \_\_\_\_\_

at \_\_\_\_\_ AM/PM in Room 2209 for:

- (A) \_\_\_\_\_ Proper Service    (B) \_\_\_\_\_ Appearance of Defendants    (C) \_\_\_\_\_ Case Value
- (D) \_\_\_\_\_ Pleadings Status    (E) \_\_\_\_\_ Discovery Status    (F) \_\_\_\_\_ Pre-Trial/Settlement
- (G) \_\_\_\_\_ Mediation Status    (H) \_\_\_\_\_ Trial Certification    (I) \_\_\_\_\_ Other

6-18-12 11:00 to stand 4335

(4005) \_\_\_\_\_ 13. Case is DWP'd. (4040) \_\_\_\_\_ The case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009.

(4331) \_\_\_\_\_ 14. Case stricken from CMC Call (4284) \_\_\_\_\_ Motion Stricken or Withdrawn from Call (4330) \_\_\_\_\_ Case stricken from Motion Call.

NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 PHONE: \_\_\_\_\_  
 ATTY ID#: \_\_\_\_\_  
 ATTY FOR PARTY: \_\_\_\_\_

ENTER:

Randye A. Kogan  
 RANDYE A. KOGAN, Associate Judge

Associate Judge Randye A. Kogan  
 MAY 29 2012  
 Circuit Court - 1509

NOTICE:

- \* COPIES OF ALL PRIOR CMC ORDERS MUST BE BROUGHT TO ALL CMC COURT DATES BY ALL ATTORNEYS!!
- \* FAILURE OF ANY PARTY TO COMPLY WITH THIS CMC ORDER WILL BE A BASIS FOR SCR 219(C) SANCTIONS. FAILURE OF ANY PARTY TO ENFORCE THIS CMC ORDER WILL CONSTITUTE A WAIVER OF SUCH DISCOVERY BY THAT PARTY.
- \* ALL CASES ARRIVING ON THE TRIAL CALL IN ROOM 2005 MUST HAVE ALL DISCOVERY IN LINES 2 THROUGH 11 COMPLETED.
- \* A COPY OF THIS ORDER IS TO BE SENT TO EACH PARTY BY HIS/HER COUNSEL WITHIN TEN (10) DAYS OF EACH CMC COURT DATE.

COUNTY DEPARTMENT-LAW DIVISION



McDonald  
Plaintiffs

-v-  
Law Offices of Popovich, et al  
Defendants

NO: 12L096  
Motion Call "H" Time: 10:00 Line# 91  
Judge Randyc A. Kogan

CASE MANAGEMENT ORDER

\*\* (Please check off all pertinent paragraphs and circle proper party name) \*\*

- (8230) \_\_\_ 1. Category #1(18-mo. discovery) (8232)\_\_\_ 1A. Category #2 (28 Mo. Discovery)
- (4231) \_\_\_ 2. Written & (f)(1) and (f)(2) discovery to be issued by \_\_\_\_\_ or deemed waived;
- (4296) \_\_\_ 3. Written & 213(f)(1) and (2) discovery to be answered by \_\_\_\_\_;
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- (4288) \_\_\_ 5. Subpoenas for treating physicians' depts to be issued by \_\_\_\_\_ or deemed waived;
- (4218) \_\_\_ 6. Treating physicians depositions to be completed by \_\_\_\_\_;
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- (4218) \_\_\_ 9. Defendant's 213(f)(3) witnesses' depositions to be completed by \_\_\_\_\_;
- (4218) \_\_\_ 10. Add. party's 213(f)(3) witnesses' depositions to be completed by \_\_\_\_\_;
- (4295) \_\_\_ 11. All fact discovery, SCR 213(f)(1) and/or SCR 213(f)(2) discovery is closed. (Circle all applicable)
- (4619) X 12. The matter is continued for subsequent Case Management Conference on 6/18/12  
at 11:00 (A) AM/PM in Room 2209 for:

- (A) \_\_\_ Proper Service (B) \_\_\_ Appearance of Defendants (C) \_\_\_ Case Value
- (D) \_\_\_ Pleadings Status (E) \_\_\_ Discovery Status (F) \_\_\_ Pre-Trial/Settlement
- (G) \_\_\_ Mediation Status (H) \_\_\_ Trial Certification (I) \_\_\_ Other 6007

Matter continued to 6/18/12; Evr Clerk status on Defendant's motion to transfer pursuant to non-compliance

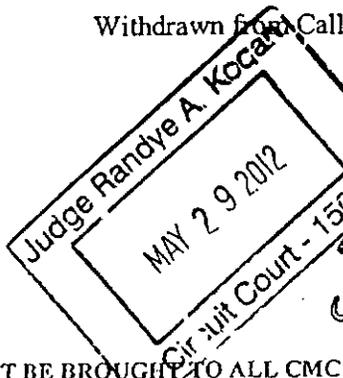
- (4005) \_\_\_ 13. Case is DWP'd. (4040) \_\_\_ The case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009.
- (4331) \_\_\_ 14. Case stricken from (4284) \_\_\_ Motion Stricken or (4330) \_\_\_ Case stricken from

CMC Call

Withdrawn from Call

Motion Call.

NAME: Cole Munoz / R+B Law  
ADDRESS: 33 N. LaSalle #2000  
PHONE: 312-458-1000  
ATTY ID#: 35875  
ATTY FOR PARTY: gt



ENTER:

[Signature]  
RANDY A. KOGAN, Associate Judge

NOTICE:

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37199

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

FILED-4

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

2012 JUN 15 PM 2:23  
DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

vs. )

No. 12 L 000196

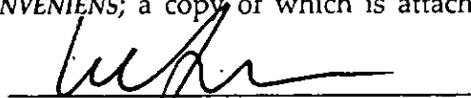
LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

3331  
2871  
3298  
3004

NOTICE OF FILING

TO: Michael E. Holden  
ROMANUCCI & BLANDIN, LLC  
33 North LaSalle Street  
Suite 2000  
Chicago, IL 60602

PLEASE TAKE NOTICE that on June 15, 2012, we filed with the Cook County Circuit Court Clerk's office DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO TRANSFER PURSUANT TO FORUM NON CONVENIENS; a copy of which is attached hereto and served upon you.

  
Attorney for Defendants

Daniel F. Konicek  
Amir R. Tahmassebi  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655

CERTIFICATE OF SERVICE

The undersigned states that the foregoing NOTICE and REPLY was served upon the above listed attorney by depositing same in the U.S. Mail located at Geneva, Illinois 60134, on June 15, 2012, with proper postage prepaid.

  
\_\_\_\_\_

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

FILED-4  
2012 JUN 15 PM 2:23  
DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quinlin McDonald, and )  
Chloe McDonald, minor children, )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

**DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO  
TRANSFER PURSUANT TO FORUM NON CONVENIENS**

NOW COME Defendants, LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ AND THOMAS J. POPOVICH, by and through their attorneys KONICEK & DILLON, P.C., submit this Reply Memorandum in Support of Their Motion to Transfer on the basis of *Forum Non Conveniens*.

**ARGUMENT**

1. Plaintiff admits that Cook County is not the Plaintiff's home forum and that Plaintiff is not a resident of Cook County. When the plaintiff is foreign, assumption that his or her choice is convenient is much less reasonable, for purposes of applying the doctrine of forum non conveniens; because the central purpose of any forum non conveniens inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill.2d 167 (Ill. Sup. Ct. 2003). As such, when performing the balance of convenience and Plaintiff's choice, this should be taken into consideration.

2. Plaintiff admits that the office of Dr. Galvani; the defendant in McDonald's underlying medical malpractice/wrongful death case, maintains an office in Lake County, Illinois. In addition, Plaintiff wrongfully claims that Lake County is no closer to McHenry County than Cook County. This statement is simply untrue and can be proven wrong by any cursory view of a map depicting the Counties in Illinois. Additionally, the Cook County Courts are also farther from Lake County than the Courts are in McHenry County.

3. Plaintiff admits that the vast majority of the documentary evidence will be in McHenry County. It is substantially inconvenient to all Parties involved to transfer large quantities of original documents across Counties. This would only serve to inconvenience the involved Parties and obstruct the pursuit of justice.

4. Plaintiff repeatedly and incorrectly applies the rules of establishing jurisdiction in Cook County to those of *Forum Non Conveniens*. Plaintiff's claim that at the time of the underlying medical malpractice/wrongful death case, Defendants' had an office in Cook County which is irrelevant because it is undisputed that any and all of the work performed by the Popovich Defendants relating to the underlying medical malpractice/wrongful death claim was performed in McHenry County, Illinois. (See Exhibit A, Affidavit of James P. Tutaj) While the existence of the Cook County office may provide a grounds for a Court to exercise jurisdiction over the matter, that is not the question when addressing an issue related to forum non conveniens. Pursuant to the doctrine of forum non conveniens, a Court may decline to exercise jurisdiction over a case properly before it, whenever it appears that there is another forum that can better serve the convenience of litigants and promote ends of justice. *Lambert v. Goodyear*

*Tire and Rubber Co.*, 332 Ill.App.3d 373 (2002). In *Lambert*, this matter is in McHenry County not Cook County.

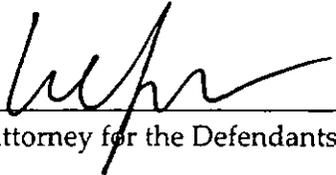
5. Plaintiff attempts to discredit the importance of court congestion, but fails to establish the secondary element involved in the analysis. Although the court's state that court congestion alone is not significant in determining proper forum, they cite that it is indeed "Appropriate to consider the congested conditions of the docket in the plaintiff's chosen forum." *Dawdy v. Union Pacific R.R. Co.*, 207 Ill.2d at 181 (2006). Furthermore, the First District Appellate Court in both *Allee v. Myers*, 349 Ill.App.3d 596 (2004) and *Kahn v. Enterprise Rent-A-Car Co.*, 355 Ill.App.3d 13 (2004), stated that the congestion of the Cook County Court "Is a great concern" in reversing the circuit courts' denial of motions to transfer those particular cases from Cook County (*Allee*, 812 N.E.2d at 533; *Kahn*, 822 N.E.2d at 106).

6. Significantly, Plaintiff has offered no additional support for their response in the form of affidavits, interrogatory answers, or other documents. The record before this Court compels transfer.

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH P.C., JAMES P. TUTAJ AND THOMAS J. POPOVICH, respectfully request this Honorable Court to grant their Motion to Transfer on the basis of *Forum Non Conveniens*.

Daniel F. Konicek  
Amir R. Tahmassebi  
Lucas Sun  
KONICEK & DILLON, P.C.  
Firm No. 37199  
21 W. State St.  
Geneva, IL 60134  
630.262.9655

Respectfully submitted,

  
\_\_\_\_\_  
Attorney for the Defendants

FILED

2012 APR -3 PM 3:57

CIRCUIT COURT OF COOK COUNTY

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION

MARK MCDONALD, Individually, as )  
Special Administrator of the Estate of Julie )  
McDonald, and as father of Ian )  
McDonald, Quirlin McDonald, and )  
Chloe McDonald, minor children. )  
Plaintiff, )

vs. )

No. 12 L 000196

LAW OFFICES OF THOMAS J. POPOVICH )  
P.C., JAMES P. TUTAJ and THOMAS J. )  
POPOVICH, )  
Defendants. )

AFFIDAVIT OF JAMES P. TUTAJ IN SUPPORT OF  
DEFENDANTS' MOTION TO TRANSFER PURSUANT TO FORUM NON CONVENIENS

I, James P. Tutaj, submit my sworn affidavit and state that:

1. I am an attorney licensed to practice law and I have personal knowledge of the facts contained herein.

2. I am an attorney at the Law Offices of Thomas J. Popovich, and our principal law office is located at 3416 West Elm Street in McHenry, in McHenry County, Illinois.

3. Mark McDonald came to my office in McHenry County to retain me to represent the Estate of Julie McDonald in pursuing a wrongful death claim. Mark McDonald and I negotiated and executed the engagement agreement in my office in McHenry County, Illinois.

All face-to-face discussions concerning the wrongful death claim occurred either in Walworth County, Wisconsin or in McHenry County, Illinois.

Exhibit  
A

4. All of the work performed by me, Thomas J. Popovich, or by the Law Offices of Thomas J. Popovich pertaining to the underlying wrongful death claim was performed in McHenry County, Illinois.

5. The underlying wrongful death case was filed and litigated in Walworth County, Wisconsin.

6. All of the testimonial, documentary, and real evidence pertaining to the underlying wrongful death claim is located either in Walworth County, Wisconsin or in McHenry County, Illinois.

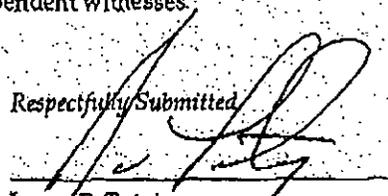
7. All of the potential fact witnesses for the underlying wrongful death claim and for this legal malpractice claim are located either in Walworth County, Wisconsin or in McHenry County, Illinois.

8. McHenry County is a more convenient forum for this legal malpractice case.

9. Litigating this case in Cook County would result in undue hardship and significant expense upon the defendants and independent witnesses.

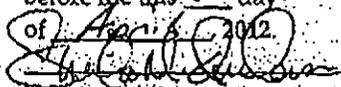
Further affiant sayeth naught...

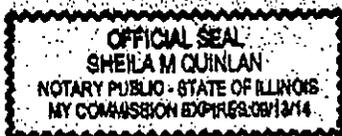
Respectfully Submitted

  
James P. Tutaj

Subscribed and sworn to  
before me this 2 day

of April, 2012

  
Notary Public



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS



McDonald

v.

Law Offices of Popovich

No. 12 L196

ORDER

In accordance with the rules, clerk status reset for July 2nd @ 11:00 am for movant to provide a complete set of courtesy copies to the court

4619  
4253

Atty. No.: 37199

Name: Lucas Sun

Atty. for: Defendant

Address: 21 W. State

City/State/Zip: Geneva IL

Telephone: 630 262 9655

(F) 630 262 9659

Associate Judge Randy A. Kogan

ENTERED:

JUN 18 2012

Circuit Court - 1509

Dated:

*Randy A. Kogan*

Judge

Judge's No

RULING DATE ORDER - "H"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION



)  
)  
McDonald  
)  
Plaintiff(s)  
)  
Popovich  
)  
Defendant(s)  
)  
)

NO: 12 L196  
Calendar "H"  
Judge Randy A. Kogan

ORDER

This cause coming before this Court for ruling on the Motion(s) of Forum  
non conveniens  
for \_\_\_ 2-615 Dismissal, \_\_\_ 2-619 Dismissal, \_\_\_ 2-1005 Summary Judgment,  
or \_\_\_ Other Motion ( \_\_\_\_\_ ),

the Movant representing that all courtesy copies, briefs, pleadings, full transcripts of  
depositions, and exhibits, in compliance with the applicable Motion Judges' Rules, have  
been submitted to this Court.

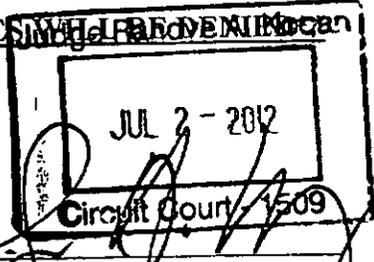
**IT IS HEREBY ORDERED:**

(4217) (4619) The above-captioned matter is set for oral ruling and case  
management on August 6 at 11:30A.M.

**\*\*MOTIONS WITH INCOMPLETE COURTESY COPIES WILL BE DENIED\*\***

Atty No: 37499  
Atty Name: Lucas Sm  
Atty For: Defendant  
Address: 21 W. State  
City: Geneva  
Telephone: 6302629655

ENTER:



Randy A. Kogan  
RANDY A. KOGAN  
ASSOCIATE JUDGE NO.

Order

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

McDonald, et. al.

v.

Popovich, et. al.

No. 12 L 196

ORDER

This matter coming before the Court for defendants motion to transfer based on forum non conveniens, IT IS SO ORDERED:

1. The Court having read all the submissions and weighed both the public and private interest factors determines that transfer of this matter to McHenry County, Illinois is appropriate

2. This case is dismissed and transferred by the Clerk to McHenry County for further proceedings.

Atty. No.: 37199

Name: Amir Tahmassibi

Atty. for: Defendants

Address: 21 W. State St.

City/State/Zip: Geneva, IL 60137

Telephone: (630) 262 9655

3. The Clerk of the Court, Circuit Court of Cook County

ENTERED:

is Ordered to transfer this case to McHenry County

Dated:

[Signature]

Associate Judge Randy A. Kogan

Judge

Judge's No

AUG 06 2012

Circuit Court - 1509

STATE OF ILLINOIS ) ss  
COUNTY OF COOK )

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, in and for the State of Illinois, and the keeper of the Records, files and sea thereof, do hereby certify the above and Foregoing to be true, perfect and complete transcript of record as per Order entered August 6, 2012 transferring this cause from the Circuit Court of Cook County, Illinois, to the Circuit Court of McHenry County, Illinois in a certain cause now pending in said Court, McDonald Mark The Plaintiff and Law Offices of Thomas Popovich P.C. the Defendants

IN WITNESS WHEREOF, I have hereunto set my hand,  
And affixed the seal of said Court, in said County,  
September 19, 2012

**DOROTHY BROWN**

\_\_\_\_\_  
Clerk of the Circuit Court, Court of Cook County

