

ORIGINAL

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
DEC 17 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

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 LA 326

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

ANSWER TO COMPLAINT AT LAW

NOW COME the Defendants LAW OFFICES OF THOMAS J. POPOVICH, P.C., JAMES P. TUTAJ and THOMAS J. POPOVICH, (collectively the "Popovich Defendants") by and through their attorneys KONICEK & DILLON, P.C. and for their Answer to Plaintiff's Complaint At Law, 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).

ANSWER: The Popovich Defendants admit the allegations of Paragraph 1 of Plaintiffs' Complaint at Law.

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

ANSWER: Upon information and belief, the Popovich Defendants admit the allegations of Paragraph 2 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 3 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 4 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 5 of Plaintiffs' Complaint at Law. Further answering, the Popovich Defendants state that Attorney John A. Kornak was an attorney employed by the Law Offices of Thomas J. Popovich, P.C. and was licensed to practice law in the State of Wisconsin. Further answering, some of the attorneys at the Law Offices of Thomas J. Popovich, P.C., including attorney Thomas J. Popovich and attorney James P. Tutaj, have previously, on occasion, been admitted to practice law in Wisconsin on a *pro hac vice* basis.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 6 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 7 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 8 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.

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

ANSWER: The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 9 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.

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

ANSWER: The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 10 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.

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

ANSWER: The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 11 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.

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.

ANSWER: The Popovich Defendants have insufficient knowledge to admit or deny the allegations contained within Paragraph 12 of Plaintiffs' Complaint at Law and therefore deny the same and demand strict proof thereof.

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.

ANSWER: Paragraph 13 of Plaintiffs' Complaint at Law is a legal conclusion. Further answering, the Popovich Defendants state that upon information and belief, Mark McDonald was the surviving spouse of Julie McDonald and that Ian McDonald, Quinlan McDonald, and Chloe McDonald were Julie McDonald's surviving children at the time of Julie McDonald's death.

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.

ANSWER: The Popovich Defendants state that the retention agreement is the best evidence of the relationship between Plaintiff Mark McDonald and the Law Offices of Thomas J. Popovich, P.C., and to the extent that Paragraph 14 of Plaintiffs' Complaint at Law deviates from that agreement, the Popovich Defendants deny the same.

15. After being retained by Plaintiff, Defendants, JAMES P. TUTAJ and THOMAS J.

POPOVICH were assigned to be the handling attorneys on the file.

ANSWER: The Popovich Defendants state that the retention agreement is the best evidence of the relationship between Plaintiff Mark McDonald and Defendants, and to the extent that Paragraph 15 of Plaintiffs' Complaint at Law deviates from that agreement, the Popovich Defendants deny the same.

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.

ANSWER: Paragraph 16 of Plaintiffs' Complaint at Law is a legal conclusion. Further answering, the Popovich Defendants deny that Paragraph 16 of Plaintiffs' Complaint at Law fully and accurately describes the law in Wisconsin as it pertains to medical malpractice actions.

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.

ANSWER: Paragraph 17 of Plaintiffs' Complaint at Law is a legal conclusion. Further answering, the Popovich Defendants deny that Paragraph 17 of Plaintiffs' Complaint at Law fully and accurately describes the law in Wisconsin as it pertains to wrongful death actions.

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

ANSWER: The Popovich Defendants admit the allegations of Paragraph 18 of Plaintiffs' Complaint at Law but further answering state that Defendant James P. Tutaj has, on multiple occasions, been admitted to practice law in the State of Wisconsin on a *pro hac vice* basis.

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

ANSWER: The Popovich Defendants admit the allegations of Paragraph 19 of Plaintiffs' Complaint at Law but further answering state that Defendant Thomas J. Popovich has, on multiple occasions, been admitted to practice law in the State of Wisconsin on a *pro hac vice* basis.

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.

ANSWER: The Popovich Defendants deny the allegations of Paragraph 20 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants deny the allegations of Paragraph 21 of Plaintiffs' Complaint at Law.

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 propose of filing or prosecuting a medical malpractice action arising out of the death of Julie McDonald.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 22 of Plaintiffs' Complaint at Law as stated. Further answering, the Popovich Defendants state that Attorney John A. Kornak was an attorney employed by the Law Offices of

Thomas J. Popovich, P.C. and was licensed to practice law in the State of Wisconsin.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 23 of Plaintiffs' Complaint at Law as stated. Further answering, the Popovich Defendants state that Attorney John A. Kornak was an attorney employed by the Law Offices of Thomas J. Popovich, P.C. and was licensed to practice law in the State of Wisconsin.

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.

ANSWER: The Popovich Defendants state that the complaint is the best evidence of the document and date referenced in Paragraph 24 of Plaintiffs' Complaint at Law and to the extent Paragraph 24 of Plaintiffs' Complaint at Law deviates from that complaint, the Popovich Defendants deny the same.

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.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 25 of Plaintiffs' Amended Complaint at Law.

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

ANSWER: The Popovich Defendants deny the allegations of Paragraph 26 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants state that the certificate is the best evidence of the document and date referenced in Paragraph 27 of Plaintiffs' Complaint at Law and to the extent Paragraph 27 of Plaintiffs' Complaint at Law deviates from the certificate, the Popovich Defendants deny the same.

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.

ANSWER: The Popovich Defendants deny the allegations of Paragraph 28 of Plaintiffs' Complaint at Law. Further answering, the Popovich Defendants state that an Amended Complaint was filed and an Alias Summons was issued and served up 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.

ANSWER: The Popovich Defendants state that the order is the best evidence of the document and date referenced in Paragraph 29 of Plaintiffs' Complaint at Law and to the extent Paragraph 29 of Plaintiffs' Complaint at Law deviates from the order, the Popovich Defendants deny the same.

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

ANSWER: The Popovich Defendants state that the order is the best evidence of the document and date referenced in Paragraph 30 of Plaintiffs' Complaint at Law and to the extent Paragraph 30 of Plaintiffs' Complaint at Law deviates from the order, the Popovich Defendants deny the same.

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.

ANSWER: The Popovich Defendants state that the order is the best evidence of the dismissal and date referenced in Paragraph 31 of Plaintiffs' Complaint at Law and to the extent Paragraph 31 of Plaintiffs' Complaint at Law deviates from the order, the Popovich Defendants deny the same.

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

ANSWER: The Popovich Defendants state that the order is the best evidence of the document and date referenced in Paragraph 32 of Plaintiffs' Complaint at Law and to the extent Paragraph 32 of Plaintiffs' Complaint at Law deviates from the order, the Popovich Defendants deny the same.

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.

ANSWER: The Popovich Defendants deny the allegations contained in Paragraph 33 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants deny the allegations contained in Paragraph 34 of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit that they did not "inform Plaintiff, Mark McDonald, that legal malpractice may have been committed" and, further answering, specifically deny that legal malpractice was 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.

ANSWER: The Popovich Defendants admit that they did not "advise Plaintiff Mark McDonald to consult with an attorney regarding any potential malpractice" and, further answering, specifically deny that legal malpractice was committed.

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.

ANSWER: The Popovich Defendants incorporate and adopt their Answers to Paragraphs 1-36 of the General Allegations of Plaintiffs' Complaint at Law as and for their Answer to Paragraphs 1-36 of Count I of Plaintiffs' Complaint at Law 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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 37 of Count I of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 38 of Count I of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 39 of Count I of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 40 of Count I of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 41 of Count I of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants deny that Paragraph 42 of Count I of Plaintiffs' Complaint at Law fully and accurately sets forth the duties imposed by an attorney-client relationship, deny that Paragraph 42 of Count I of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for

attorneys practicing in Illinois, and deny that Paragraph 42 of Count I of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois. Further answering, the Popovich Defendants admit that they owed Plaintiff Mark McDonald a duty of care.

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.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 43 of Count I of Plaintiffs' Complaint at Law, including each and every allegation contained in subparagraphs "a" through "l," inclusive.

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.

ANSWER: The Popovich Defendants are without sufficient knowledge to admit or deny the date and the manner in which Plaintiff Mark McDonald "first learned" of the dismissal order and therefore the Popovich Defendants deny the allegations contained within Paragraph 44 of Count I of Plaintiffs' Complaint at Law and demand strict proof thereof.

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.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 45 of Count I of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 46 of Count I of Plaintiffs' Complaint at Law.

WHEREFORE, The Popovich Defendants deny that Plaintiffs are entitled to any relief whatsoever and respectfully request this Court enter judgment in their favor and award them any such further relief this Court deems 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.

ANSWER: The Popovich Defendants incorporate and adopt their Answers to Paragraphs 1-36 of the General Allegations of Plaintiffs' Complaint at Law as and for their Answer to Paragraphs 1-36 of Count II of Plaintiffs' Complaint at Law 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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 37 of Count II of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 38 of Count II of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants deny that Paragraph 39 of Count II of Plaintiffs' Complaint at Law fully and accurately sets forth the duties imposed by an attorney-client relationship, deny that Paragraph 39 of Count II of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois, and deny that Paragraph 39 of Count II of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois. Further answering, the Popovich Defendants admit that they owed Plaintiff Mark McDonald a duty of care.

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.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 40 of Count II of Plaintiffs' Complaint at Law, including each and every allegation contained in subparagraphs "a" through "l," inclusive.

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.

ANSWER: The Popovich Defendants are without sufficient knowledge to admit or deny the date and the manner in which Plaintiff Mark McDonald "first learned" of the dismissal order and therefore the Popovich Defendants deny the allegations contained within Paragraph 41 of Count II of Plaintiffs' Complaint at Law and demand strict proof thereof.

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.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 42 of Count II of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 43 of Count II of Plaintiffs' Complaint at Law.

WHEREFORE, The Popovich Defendants deny that Plaintiffs are entitled to any relief whatsoever and respectfully request this Court enter judgment in their favor and award them any such further relief this Court deems 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.

ANSWER: The Popovich Defendants incorporate and adopt their Answers to Paragraphs 1-36 of the General Allegations of Plaintiffs' Complaint at Law as and for their Answer to Paragraphs 1-36 of Count III of Plaintiffs' Complaint at Law 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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 32 of Count III of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 33 of Count III of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants admit the allegations of Paragraph 34 of Count III of Plaintiffs' Complaint at Law.

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.

ANSWER: The Popovich Defendants deny that Paragraph 35 of Count III of Plaintiffs' Complaint at Law fully and accurately sets forth the duties imposed by an attorney-client relationship, deny that Paragraph 35 of Count III of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois, and deny that Paragraph 35 of Count III of Plaintiffs' Complaint at law fully and accurately sets forth the standard of care for attorneys practicing in Illinois. Further answering, the Popovich Defendants admit that they owed Plaintiff Mark McDonald a duty of care.

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.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 36 of Count III of Plaintiffs' Complaint at Law, including each and every allegation contained in subparagraphs "a" through "l," inclusive.

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.

ANSWER: The Popovich Defendants are without sufficient knowledge to admit or deny the date and the manner in which Plaintiff Mark McDonald "first learned" of the dismissal order and therefore the Popovich Defendants deny the allegations contained within Paragraph 37 of Count III of Plaintiffs' Complaint at Law and demand strict proof thereof.

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.

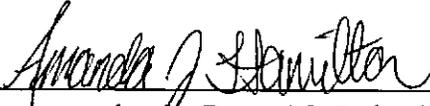
ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 38 of Count III of Plaintiffs' Complaint at Law.

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 to recover significant money damages as a result of the death of Julie McDonald.

ANSWER: The Popovich Defendants deny the allegations contained within Paragraph 39 of Count III of Plaintiffs' Complaint at Law.

WHEREFORE, The Popovich Defendants deny that Plaintiffs are entitled to any relief whatsoever and respectfully request this Court enter judgment in their favor and award them any such further relief this Court deems just.

Respectfully submitted,



Attorney for the Popovich Defendants

Daniel F. Konicek (#6205408)
Amir R. Tahmassebi (#6287787)
Amanda J. Hamilton (#6306098)
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21 W. State St.
Geneva, IL 60134
630.262.9655

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

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,)

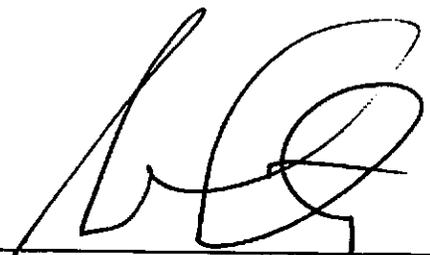
vs.)

No. 12 LA 326

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

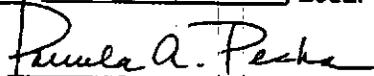
AFFIDAVIT

I, JAMES P. TUTAJ, individually and on behalf of LAW OFFICES OF THOMAS J. POPOVICH, P.C., being first duly sworn under oath, certify that all denials based on insufficient knowledge are true in that I do not have personal knowledge sufficient to form a belief.

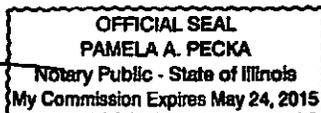


JAMES P. TUTAJ, individually and on
behalf of LAW OFFICES OF THOMAS J.
POPOVICH, P.C.

SUBSCRIBED and SWORN to
before me this 13th day
of December, 2012.



Notary Public



IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

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,)

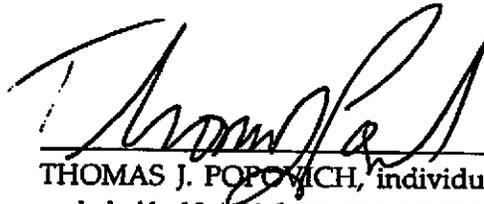
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P.C., JAMES P. TUTAJ and THOMAS J.)
POPOVICH,)
Defendants.)

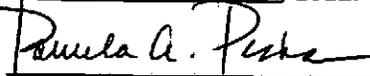
AFFIDAVIT

I, THOMAS J. POPOVICH, individually and on behalf of LAW OFFICES OF THOMAS J. POPOVICH, P.C., being first duly sworn under oath, certify that all denials based on insufficient knowledge are true in that I do not have personal knowledge sufficient to form a belief.



THOMAS J. POPOVICH, individually and
on behalf of LAW OFFICES OF THOMAS J.
POPOVICH, P.C.

SUBSCRIBED and SWORN to
before me this 13th day
of December, 2012.


Notary Public

