** FILED ** Env: 36696390
McHenry County, Illinois
2025LA000360
Date: 2/17/2026 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL R. DULBERG, Individually and THE PAUL R. DULBERG REVOCABLE TRUST,<br><br>Plaintiffs,<br>vs.<br><br>THOMAS W. GOOCH, SABINA SERSHON, EDWARD X. CLINTON, JULIA WILLIAMS, ALPHONSE TALARICO, GEORGE FLYNN, THOMAS J. POPOVICH, HANS MAST, THE GOOCH FIRM, CLINTON LAW FIRM, LLC., LAW OFFICE OF ALPHONSE A. TALARICO,<br><br>Defendants. | ) | Case No. 25 LA000360 |

**DEFENDANTS' MOTION TO TREAT THE REJECTED FILING AS TIMELY SUBMITTED**

Defendants Thomas J. Popovich and Hans Mast (respectively, "Attorney Popovich" and "Attorney Mast") (collectively, the "Popovich Defendants"), by and through their undersigned attorneys, and for their Motion to Treat Rejected Filing as Timely Submitted state as follows:

1. Under Illinois Supreme Court 9(f), "[i]f a document is rejected for any reason, the filing party may, within 5 court days of the notice of rejection, file a motion requesting that the later-filed document be deemed to have been filed on the original submission date."

2. The Popovich Defendants filed their Motion to Dismiss Plaintiff's Complaint and Exhibits on February 13, 2026.

3. On February 17, 2026, the McHenry County Clerk's Office rejected the Popovich Defendant's filing because their Motion to Dismiss was a single document attached as multiple PDFs.

4. The Clerk accepted the Popovich Defendants' Motion to Dismiss and Exhibits 1-20 that were related to it.

5. The Popovich Defendants also attempted to file Exhibits 21-29 as referenced in their Motion to Dismiss, but these Exhibits were rejected by the Clerk.

6. Attached to this Motion are Exhibits 21-29 to the Popovich Defendants' Motion to Dismiss that were rejected by the Court.

WHEREFORE, the Popovich Defendants request that the Court enter an Order GRANTING the Popovich Defendants' Request to Treat the Rejected Filing as Timely Submitted on February 13, 2026, and any other relief that is just and proper.

Dated: February 17, 2026

Respectfully submitted,
**Thomas J. Popovich and Hans Mast**

/s/ Robert F. Merlo
Robert F. Merlo

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## CERTIFICATE OF SERVICE

I certify that on this 17th day of February, 2026, service of a true and complete copy of the above and foregoing pleading upon all counsels of record by e-file service and/or email.

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*/s/ Robert F. Merlo*

# Exhibit 21

** FILED ** Env: 19526335
McHenry County, Illinois
2017LA000377
Date: 9/16/2022 2:53 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Mast") (sometimes collectively "Popovich") by and through their attorneys Karbal, Cohen, Economou, Silk, & Dunne, LLC, pursuant to 735 ILCS 5/2-1005, submit this Motion/Memorandum in Support of their Motion for Summary Judgment, and state as follows:

## I. INTRODUCTION

Plaintiff Paul Dulberg ("Dulberg") was allegedly injured on June 28, 2011 when he was assisting a friend, David Gagnon ("Gagnon"), trim a tree with a chainsaw in the backyard of a home owned by Dulberg's neighbors, Bill and Carolyn McGuire ("The McGuires"). Gagnon, who is Carolyn McGuire's son, and Dulberg were both over the age of 40 at the time of the accident. Dulberg retained defendant Popovich to prosecute a personal injury lawsuit against Gagnon and the McGuires. Defendant Hans Mast was the primary handling attorney. Eventually, in Mast's legal opinion, the case against the property owners was weak because the evidence showed they did not control the work. Mast recommended Dulberg accept the McGuires' settlement offer. Dulberg deliberated and accepted the McGuires' offer in January 2014. Thus



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McGuires were dismissed from the lawsuit in January 2014, and Dulberg continued to prosecute the case against Gagnon.

Popovich and Mast withdrew from representing Dulberg on March 13, 2015. Dulberg later settled with Gagnon, and waited until November 28, 2017 to sue Popovich and Mast. In an unavailing attempt to excuse the late filing of his lawsuit, Dulberg alleges that he did not become aware of a claim against defendants until he sought a legal opinion in December of 2016. He has never been able to explain what legal opinion he received or how it caused him to "discover" his claim and damages, or why he still waited almost another year after December 2016 to file his lawsuit. Summary judgment must be entered because Dulberg's claims are barred by the two-year statute of limitations for Illinois legal malpractice claims under 735 ILCS 13/214.3(b).

## II. STATEMENT OF CLAIM

The following facts can be gleaned from the Complaint (Exhibit A), Amended Complaint (Exhibit B) and Second Amended Complaint (Exhibit C).[1] [2]

On or about June 28, 2011, Dulberg was involved in an accident while assisting David Gagnon in the cutting down of a tree on the McGuire property. Exhibit A, ¶6. Gagnon lost control of the chainsaw he was using causing it to strike Dulberg. Exhibit A, ¶7. In May 2012, Dulberg retained the Law Offices of Thomas J. Popovich. Exhibit A, ¶8. In late 2013 or early 2014, Mast met with Dulberg and agreed with Mast to accept $5,000, releasing William and Caroline McGuire. Exhibit A, ¶13. Mast and Popovich continued to represent Dulberg through March of 2015. Exhibit A, ¶14. Thereafter, Dulberg retained other attorneys and proceeded to a binding

[1] The Complaint and Amended Complaint were filed by The Gooch Firm and signed by attorney Thomas W. Gooch, III.

[2] Dulberg denied the material allegations contained in Popovich's Affirmative Defenses, including its Second Affirmative Defense based on the two-year statute of limitation. (Dulberg Answer to Affirmative Defenses, Exhibit D).



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mediation where he received an award. Exhibit A, ¶16. Dulberg alleges that following the execution of the mediation agreement and final mediation award, he realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Following the mediation Dulberg was advised to seek an independent opinion from an attorney handling malpractice matters, and received that opinion on or about December 16, 2016. Exhibit A, ¶20.

In his First Amended Complaint, Dulberg modified his "discovery" allegations and alleged "it was not until the mediation in December 2016, based on the expert's opinion that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit B, ¶29. In ¶30 he reiterates that "Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016." Exhibit B, ¶30.

Dulberg's first substitute counsel in this case filed a Second Amended Complaint, further modifying the allegations. It is alleged that "after accepting a $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating that "I trust your judgment." Exhibit C, ¶48. He further alleges in ¶55 of Ex. C that "only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable." Exhibit C, ¶55. He also alleges that following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information that Mast and Popovich had given Dulberg was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. Exhibit C, ¶56. He alleged that it was not until the mediation in December 2016 based on the expert's opinions that Dulberg retained for the mediation that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and



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coercing him to accept a settlement for $5,000 on an "all or nothing" basis. Exhibit C, ¶57. Dulberg's allegations of Popovich' breaches of the standard of care are contained in Exhibit C, ¶58 as follows:

> 58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:
>
> a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
>
> b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
>
> c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;
>
> d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;
>
> e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the[sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;
>
> f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."



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## III. UNDISPUTED MATERIAL FACTS

### A. Paul Dulberg Testimony

Dulberg has hired a personal injury attorney in 2002 and has hired a corporate lawyer in the past. (Dulberg Deposition, Exhibit E, pp.8, 9). He was injured on June 28, 2011 while assisting David Gagnon with a chainsaw cutting up some branches after they were removed from a tree. (Exhibit E, pp.12, 13). He hired Popovich to sue Gagnon and Bill and Carolyn McGuire in connection with his June 28, 2011 injury. (Exhibit E, pp. 9, 30). Hans Mast was the primary handling attorney. (Exhibit E, p. 30). Brad Balke substituted for Dulberg on March 19, 2015 when Popovich withdrew. (Exhibit E, p. 35). Dulberg asked hundreds of lawyers to take over his case when Popovich withdrew, but none accepted. (Exhibit, E, p. 36). Dulberg fired Balke prior to the binding arbitration, and he was then represented by the Baudin Law Firm. While Brad Balke handled the case, Balke never gave him an opinion as to the liability of the McGuires and whether the prior settlement was appropriate. (Exhibit E, p. 42). At some point, Dulberg hired The Daley Disability Law Firm to assist him with a Social Security disability claim. A criminal lawyer represented him in a guilty plea for drug possession in 1990. (Exhibit E, pp.34-35) (Exhibit E, p. 43). At some point during the case, it was Hans Mast's opinion that the McGuires did not have liability because they did not control the work David Gagnon was doing. (Exhibit E, pp. 50, 51). Mr. McGuire was inside the house for 45 minutes before the accident happened. (Exhibit E, pp. 51, 52).

On November 18, 2013, Mast emailed Dulberg and relayed a $5,000 settlement offer from the McGuires. (Exhibit E, p.52). Mast suggested that the $5,000 offer be accepted. Dulberg testified that at one point, "Mast defined what an independent contractor is and he said that David was an independent contractor and the McGuires weren't liable because they had hired somebody



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outside even though it's their own son, he is an adult, outside to do the work and that they weren't responsible." (Exhibit E, p.55). Dulberg believed that Mast was relying on his honest legal opinion at the time. (Exhibit E, p.59). Dulberg did not accept the settlement offer on November 8, 2013. Dulberg met with Mast on November 20, 2013. (Exhibit E, p.61). Then Dulberg reviewed the depositions of the McGuires and David Gagnon before he accepted the offer. (Exhibit E, p.63). Eventually Dulberg told Mast that he would agree to accept the $5,000 settlement offer from the McGuires, just before Christmas in December of 2013. (Exhibit E, p.66) Dulberg received a letter with a settlement release from Mast on January 29, 2014 and signed it and sent it back. (Exhibit E, p.69). From December 25 until he received the settlement release, he contacted Mast again to discuss whether it would be appropriate to let the McGuires out for $5,000. (Exhibit E, p.70). Dulberg did not talk to any other lawyers and there was nothing preventing him from seeking a second opinion from some other lawyer at the time. (Exhibit E, p.71). Dulberg emailed Mast with a question about the release on January 29, 2014, and then put a stamp on the envelope with the executed release, put it in his mailbox, put the flag up, and waited for the mailman. (Exhibit E, pp. 71, 72). Mast did not force him to take the settlement. (Exhibit E, p.73).

The case continued against Gagnon through discovery and some of Dulberg's doctors were deposed. (Exhibit E, pp. 78, 79). Dulberg told Mast "First, I'm sorry that I'm not a better witness to prove David cut me with a chainsaw." Dulberg already started looking for new lawyers in the summer of 2014. Mast thought the case against David Gagnon was difficult. (Exhibit E, p.81). Mast told Dulberg that he did not make a good witness at his deposition. (Exhibit E, p.82). Dulberg and Gagnon were the only people who witnessed the accident. (Exhibit E, p.83). There were differences between the factual testimony provided by Gagnon and Dulberg in the underlying



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case. (Exhibit E, p.83). His relationship with Mast was deteriorating over the fall and winter of 2015, even long before that. (Exhibit E, p.86). On February 22, 2015, Dulberg wrote in an email to Mast "Now I'm left wondering… how hard it is to sue an attorney?" (Exhibit F). When asked what the reference to suing an attorney meant he replied:

A. That was me being angry.

Q. With Hans?

A. Yes. I was seeing red.

Q. You're suggesting that you may sue him?

A. Yeah. I didn't know that I could. I'm wondering about it.

Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?

A. Yes.

Q. You, ultimately, sued him for legal malpractice, right?

A. Yes.

On February 22, 2015, Mast wrote in an email to Dulberg "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case." (Exhibit E, p.91). Mast speculated that seven out of ten times he would lose the case outright. (Exhibit E, p.92). Dulberg filed for bankruptcy. He was ordered by the bankruptcy trustee to participate in binding mediation on December 8, 2016. (Exhibit E, p.96). Dulberg admitted that the allegation in his complaint regarding Popovich being involved with the high/low agreement in the mediation was a mistake. (Exhibit E, p.103). Dulberg testified that it was Baudin that advised him to seek an independent opinion from an attorney handling legal malpractice matters. (Exhibit E, p.108). The lawyer he received the legal opinion on December 16, 2016 was Thomas Gooch, the drafter of the Complaint in this case. (Exhibit E, p.108). It was confirmed by Gooch on December 16,



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2016 that Dulberg had a valid case against Popovich. (Exhibit E, p.113). He did not file a lawsuit until nearly a year later because "Thomas Gooch had some health issues and that his wife had some health issues. It took a while." (Exhibit E, p.114). Dulberg agreed that the legal opinion he received on December 16, 2016 was responsive to Interrogatory No. 1 from Dulberg's answers to Mast's Interrogatories. (Exhibit E, pp.125, 126). The legal opinion Dulberg received from Gooch was verbal. (Exhibit E, p.130). Gooch simply stated, "You have a case here. You have a valid case." (Exhibit E, p.130). When asked did he tell you exactly what they did wrong in connection with your – their representation of you, Dulberg replied "He probably did. I'm not recalling it right now. I'm pulling a blank." (Exhibit E, p.131).

Dulberg was questioned further: "Other than you have a case, what did Gooch say to you?" Dulberg responded, "He said they definitely committed malpractice." When asked whether Gooch ever put this in writing, Dulberg replied, "I think he backed it up by filing a suit. That's documented." (Exhibit E, p.136). Dulberg was asked, "As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to the McGuires' liability? Answer: They were definitely liable. He tried to say that – like Popovich and Mast were first – or second year lawyers and that they may have made a mistake here." (Ex. E, pp.139-140).

**B. <u>Hans Mast Testimony</u>**

Mast graduated from Kent Law School in 1991 and has been admitted to practice law in Illinois since 1991. (Mast Deposition, Exhibit G, p.10). He joined the Popovich firm in 2001 and worked there for approximately 18 years. (Exhibit G, p.12). He testified that every time he met with Dulberg: "Every time we met, we talked about this because this was the subject at the time with the McGuires and the testimony of the McGuires, given Paul' testimony, given the lack of



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any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk at moving forward on that claim." (Exhibit G, p.43). Mast thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove. (Exhibit G, p.77). Gagon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts. (Exhibit G, p.77). Mast took that difference in testimony into account in his evaluation and his analysis of the case. (Exhibit G, p.77). Mast also took into account Paul Dulberg's poor performance as a witness at his discovery deposition. Mast's analysis and evaluation of the case hinged in part on whether the McGuires controlled the method of the use of the chainsaw. Mast testified that the McGuires were inside the house and not paying attention to what was going on outside at the time of the accident. (Exhibit G, p.78). Mast's recommendation or suggestion that Dulberg settle the case for $5,000 against the McGuires was based on his analysis of the entire case, including the risks and benefits of going forward and potentially losing the case at trial. (Exhibit G, pp.78,79). Based on his professional judgment, Mast suggested that Dulberg attempt to settle the matter as opposed to taking it to trial against the McGuires. (Exhibit G, p.79).

## IV. LEGAL STANDARD

The purpose of summary judgment is not to try a question of fact but to determine whether there is a genuine issue of material fact. *N. Ill. Emergency Physicians v. Landau, Omahana, & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). Summary judgment is proper if, when viewed in the light most favorable to the nonmovant, the pleadings, depositions, admissions, and affidavits on record establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.* A defendant moving for summary judgment may meet the initial burden of production by either affirmatively showing that some element of the case must be resolved in



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defendant's favor, or by showing the absence of evidence supporting the plaintiff's position on one or more elements of the cause of action. *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill App. 3d 351, 355 (4th Dist.,2000). The plaintiff is not required to prove his case at the summary judgment stage; in order to survive a motion for summary judgment, he must present a factual basis that would arguably entitle him to a judgment. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002).

## V. ARGUMENT

**Dulberg's legal malpractice claim against Popovich is time barred by the two (2) year statute of limitations set forth in 735 ILCS 5/2-614.3.**

**735 ILCS 5/13-214.3(b)** reads as follows:

> (b) An action for damages based on tort, contract or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services [...] must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

735 ILCS 5/13-214.3(b).

While Popovich denies breaching any standard of care or proximately causing Dulberg any damages, assuming *arguendo* there was malpractice, Dulberg knew or should have known of his injury and that it was wrongfully caused when Popovich withdrew. In the alternative, Dulberg should have investigated any potential claims when he questioned the appropriateness of settling with the McGuires.

In his various pleadings, Dulberg alleged that Popovich concealed his malpractice and coerced him to settle with the McGuires, but his own testimony does not bear out any such concealment. He also attempts to plead that he did not discover the malpractice and his injury until December 12, 2016, but his anticipatory pleading is not supported by his own testimony. Under any analysis, Dulberg knew or should have known of the alleged malpractice



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and his injury by the time Popovich withdrew. Dulberg fails to meet his burden of proving a discovery date that would toll the limitations period.

To state a cause of action for legal malpractice, the plaintiff must allege facts to establish (1) the defendant attorney owed the plaintiff client a duty of due care arising from an attorney-client relationship, (2) the attorney breached that duty, (3) the client suffered an injury in the form of actual damages, and (4) the actual damages resulted as a proximate cause of the breach." *Nelson v. Quarles & Grady*, 2013 IL App (1st) 123122 at [*P28], citing *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). A legal malpractice suit is by its nature dependent upon a predicate lawsuit. *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 122 (1st Dist. 1986). Thus, a legal malpractice claim presents a "case within a case." *Id.* "[N]o malpractice exists unless counsel's negligence has resulted in the loss of an underlying cause of action, or the loss of a meritorious defense if the attorney was defending in the underlying suit."

The two-year statute of limitations for legal malpractice under 735 ILCS 5/13-214.3(b) incorporates the discovery rule which delays commencement of the statute of limitations until the plaintiff knows or reasonably should have known of the injury or that it may have been wrongfully caused. *Scheinblum v. Schain Banks Kenny & Schwartz, Ltd.*, 2021 IL App. (1st) 200798 at [*P24], quoting *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666 (1st Dist. 1997). Under this rule, the statute of limitations begins to run when the injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Scheinblum* at [*P24] citing *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989. Under the discovery rule, "a statute of limitations may run despite the lack of actual knowledge of negligent conduct." *SK Partners I, LP*, 408 Ill. App. 3d at 130 (1st Dist. 2011). A "person knows or reasonably should know an injury is 'wrongfully caused' when



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he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct had occurred." *Janousek* at [*p13]. Under Illinois law, the burden is on the injured party to inquire further as to the existence of a cause of action. "When a plaintiff uses the discovery rule to delay the commencement of the statute of limitations, the burden is on the plaintiff to prove the date of discovery." *Dancor* at 673. Identification of one wrongful cause of the plaintiff's injuries initiates his limitations period as to all other causes. *Carlson v. Fish*, 2015 IL App (1st) 140526 at ¶39.

In *Blue Water Partners, Inc. v. Mason*, 2012 IL App (1st) 102165, the Appellate Court again had the occasion to examine the discovery rule under the two-year legal malpractice statute of limitations. The court ruled that the statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Blue Water Partners* at [*P51]. In that case, the court found little dispute that the plaintiff acted on its obligation to inquire further on possible wrongful conduct when consulting with an attorney about potential claims, albeit the Plaintiff lacked diligence in filing the suit.

In the recent Illinois Supreme Court case *Suburban Real Estate Servs. v. Carlson*, 2022 IL 126935, the court distinguished between transactional malpractice and legal malpractice arising out of litigation. The court explained that when the attorney's negligence arises out of underlying litigation, no injury exists, and therefore no actionable claim arises, unless and until the attorney's negligence results in a loss of the underlying cause of action. The court explained that in "this type of legal malpractice claim, commonly referred to as a 'case within a case,' the allegation is that the client suffered a monetary loss and but for the attorney's negligence the client would have recovered in the underlying litigation." *Suburban Real Estate* at [*P19] and [citing *Tri-G, Inc. v. Burke,*



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*Bosselman & Weaver*, 222 Ill. 2d 218 (2006). In *Fox v. Seiden*, 382 Ill. App. 3d 288 (1st Dist. 2008), the appellate court analyzed the requirement of actual damages and held that where malpractice was alleged in the prosecution of a case, the entry of judgment in that underlying case, as opposed to the payment of judgment, is sufficient to establish the element of damages in order to state a legal malpractice claim. *Fox* at 297, 299. Here, the settlement with the McGuires was executed by January 29, 2014, and they were dismissed with prejudice in January 2014. (Dismissal Order, Exhibit H).

On its face, Dulberg's legal malpractice complaint is time barred. He bears the burden of proving a date of discovery that can salvage his claim, but Dulberg has not and can never meet that burden. Dulberg's deposition testimony and pleadings are vague and inconsistent with respect to how Popovich breached the standard of care, and when and how he became aware that his injury was wrongfully caused. As discussed, Dulberg's own testimony refutes many of his allegations of concealment, undue influence and coercion.

Dulberg has fiddled with his "discovery" allegations, going back and forth as to when and how he became aware of his malpractice claim and damages. First, he plead that he sought a **legal opinion,** and received that opinion on December 16, 2016. The legal opinion was supplied by the same attorney who filed his first two pleadings in this case. Then he changed his pleading and theory and attempted to rely on discovery by virtue of the report of a "chainsaw expert" he read in connection with the December 2016 mediation. However, he actually received the opinion (Exhibit I) in July 2016 but "you don't catch everything the first time you read it." (Exhibit D, p.141). Notably the report from Dr. Lanford is dated much earlier, February 27, 2016 and was addressed to Dulberg's then attorney, Randy Baudin.



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Here defendants painstakingly attempted to seek discovery as to how Popovich allegedly breached the standard of care, and when and how Dulberg became aware of any damages. Dulberg's discovery responses and deposition testimony were repeatedly evasive. See Dulberg testimony, Exhibit D, pages 106 to 141. This behavior continued and caused the need for a motion to compel (See Group Exhibit J, Motion to Compel, Motion to Supplement Motion to Compel, and July 19, 2021 transcript from hearing).

Moreover, Dulberg's dissatisfaction with Popovich's representation surfaced much earlier, and he even threatened in writing to sue Mast as early as February 22, 2015. Dulberg, no "babe in the woods" when it comes to experience with litigation retention, met with "hundreds" of attorneys and had opportunity after opportunity to investigate and inquire as to whether Popovich breached the standard of care and caused him any damage in connection with the case (including prosecution of the case against Gagnon and the McGuires). The many cases cited above establish the Plaintiff's duty to inquire, and here Dulberg had the tools, the information, and opportunity to inquire. His contrived late discovery of his claims and damages should not be countenanced by this court. He was clearly questioning whether he should agree to accept the McGuires' offer, and he deliberated on it extensively. Nothing prevented him from seeking a second opinion. Likewise, nothing prevented him from inquiring of Mr. Balke or the Baudin firm whether his injury was wrongfully caused. Summary Judgment must be entered as his claims are barred by the two-year statute of limitations.



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## VI. CONCLUSION

Wherefore, Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, pray that the motion for summary judgment be granted, that summary judgment be entered in its favor and against Plaintiff, and for any other relief that this court deems just and appropriate.

Dated: September 15, 2022

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: */s/ George K. Flynn*
George K. Flynn (ARDC #6239349)

200 So. Wacker Drive
Suite 2550
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com



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

Katherine M. Keefe
Clerk of the Circuit Court
***Electronically Filed***
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

**NOTICE**

**THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018 AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.**

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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**EXHIBIT A**

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

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

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gaguon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.



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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the



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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

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

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III



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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

ALL STATE LEGAL® PLAINTIFF'S EXHIBIT

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CORY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 220 ON 9/28/12, 20 12 AT 8:30 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON ____ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohlak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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## GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

ADR systems

# Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

ALL-STATE LEGAL



Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377


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

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

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

**FIRST AMENDED COMPLAINT AT LAW**
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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EXHIBIT B

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

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

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A.**

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

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



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

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

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

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

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only



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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.**)

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.



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

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

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;



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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;



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n) Failed to retain a liability expert to prove DULBERG's damages;

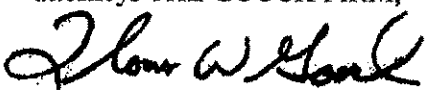
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

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

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~40~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
tabbies
A

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MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 206 ON
11-28-2012, AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

EXHIBIT
Deposition

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of its Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

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

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogo
James P. Tutaj
Robert J. Lumbre
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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# GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2016 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

EXHIBIT
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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

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

**SECOND AMENDED COMPLAINT AT LAW**

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

**COUNT I**
**LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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

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

**B. Relevant Facts**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing



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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

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

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

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

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



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Respectfully submitted by,

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

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
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111 W. Washington, Ste. 1437
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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~40~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

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CORY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11/18/2022, AT 2:00 PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____, 20__, AT ____ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
Exhibit

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

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

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ---- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohnak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
sticker D

Waukegan Offices
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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## GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2016 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ---- Original Message ----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
E

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
F

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

EXHIBIT

sticker C



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**Pamela Walker**

**From:** McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
**Sent:** Monday, December 10, 2018 1:37 PM
**To:** George K. Flynn; Pamela Walker
**Subject:** 17LA000377 - 2 Documents Filed

# 17LA000377

## DULBERG, PAUL VS MAST, HANS, ET AL

| | |
|---|---|
| Doc Type | **COAA** |
| Description | **COMPLAINT - AMENDED** |
| Date Filed | **12/6/2018** |
| Image Link | View Document Image |

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|---|---|
| Doc Type | **NOTF** |
| Description | **NOTICE - FILING** |
| Date Filed | **12/6/2018** |
| Image Link | View Document Image |

**NOTE:** E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message



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** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

**AFFIRMATIVE DEFENSES**
**FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2.

**EXHIBIT D**

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3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

**SECOND AFFIRMATIVE DEFENSE**
**STATUTE OF LIMITATIONS**

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.



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**ANSWER:** Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

**AFFIRMATIVE DEFENSES**
**THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 Washington Street, Suite 2400
Chicago, IL 6002
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net



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

PAUL DULBERG, )
Plaintiff, )
vs. ) 17 LA 377
THE LAW OFFICES OF THOMAS J. )
POPOVICH, P.C., and HANS MAST, )
Defendants. )

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

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PRESENT:

THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

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(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

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Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's



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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

Page 6

case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.



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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a



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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate



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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?



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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary -- we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't -- I'll give you -- we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of



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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an



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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.



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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from



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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he --
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of



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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for --
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law --
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to



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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you —
A. Yes.
Q. — in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both



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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question.
You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or –
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe – he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which – where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for



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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law



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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.



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Q. Did you meet with Hans and some third person –
A. Yes.
Q. – at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires – strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are –
A. I believe I asked him – I don't know – it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.



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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.
Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?
A. I believe so.
Q. Did you review and approve the allegations in this complaint?
A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.
Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?
A. Yes.
Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.
The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?
A. He was verbally granted authority to investigate, yes.
Q. Who did you want him to investigate a settlement with?
A. The McGuires.
Q. Just the McGuires or the McGuires and –
A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."
Q. Did you grant him authority to investigate a settlement with David Gagnon as well?
A. I don't know if I did or not, off the top of my head, but that would have been much later.
Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?
A. Eventually did I tell him that?
Q. Yes.
A. Yes.
Q. When did you tell him that?
A. I want to say just before Christmas in December of 2013.
Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?
A. Right.
Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?
A. I'd like to see the letter, but yeah, I believe so.
Q. I believe it's –
A. I believe he had to mail it a couple times because I didn't get it.
MR. FLYNN: Let's mark Exhibit 5.
(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.
Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?
A. That's what it says.
Q. In the letter did he ask you to – it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."
A. Right, but I believe it was just a release – it was all tied into one.
Q. This letter is unsigned. Did you receive the letter unsigned?
A. Did I receive this unsigned?
Q. Yes.
A. Yes.
Q. Have you ever seen a signed copy of this letter?
A. No.
Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?
A. Exhibit D?
Q. Correct.
MS. WILLIAMS: Turn the page.



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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it --
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and --
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.



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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?



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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were – not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his –
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that



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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?



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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and – let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.



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Q. This –
A. We're talking – this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a



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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail –
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you –
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.



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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries –
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the – I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.



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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B -- I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.



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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the – following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think – December 8th was the mediation; is that right?



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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –



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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me — I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information



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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report – I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't – you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention – it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against –

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A. A valid case, yes.

Q. – Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December – in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.



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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental -- in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So --
MR. FLYNN: That particular one I agree with you is not phrased as calling for --
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely -- I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line of questioning and we'll agree to move forward.

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MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think -- I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.



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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me –
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding –
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks – Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.



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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you -- strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your -- their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him --
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to



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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not – whenever we started – whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint



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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.



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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean – that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.

(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)

* * * * *

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STATE OF ILLINOIS )
) SS:
COUNTY OF DUPAGE )

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto



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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

*Karen Pileggi*

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404



EXAMINATION


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|---|---|---|
| PAUL DULBERG | | |
| Examination by Mr. Flynn | 3 | 6 |
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DULBERG'S ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

**INTERROGATORIES**

1. Identify the person(s) answering and/or providing assistance in the answering of these interrogatories.

**ANSWER:** Paul Dulberg, available through counsel. The Clinton Law Firm, as counsel for Paul Dulberg.

2. Identify all persons who have knowledge of any matters relating to any of the facts, claims, damages, or defenses at issue in this case.

**ANSWER:** Paul Dulberg is the Plaintiff in this matter and is expected to testify in accordance with any deposition testimony he provided or provides. He has knowledge regarding the circumstances leading to the injury he sustained, the actual injury, the harm he suffered, including financial injury.

William McGuire ("William") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

EXHIBIT # 1



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Caroline McGuire ("Caroline") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

David Gagnon ("Gagnon") has knowledge regarding the facts and circumstances leading to Dulberg's injury.

Barbara Dulberg. 4606 Hayden Ct., McHenry, IL 60051. Retired. Barbara is expected to testify to the facts and circumstances of the November 4, 2013 meeting with Hans Mast. Barbara is also expected to testify as to the facts and circumstances of Paul Dulberg's pain and suffering, and Dulberg's loss of use of his arm.

Thomas Kost. 423 Dempster Ave., Mt Prospect, IL 60056. Electrician. Thomas Kost is expected to testify as to the legal advice given to Dulberg from Mast and The Popovich Firm on the McGuires' liability, or lack of it, and how the judge would rule in the December 2013 meeting, as well as Dulberg's pain and suffering and loss of use of arm.

Mike McArtor, 4606 Hayden Ct., McHenry, IL 60051. McArtor was Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Scott Dulberg, 8245 Cunat Blvd, Apt. 2B, Richmond, IL 60071. Scott Dulberg is Paul Dulberg's family member and was Paul Dulberg's business partner at Sharp Printing, Inc. He is expected to testify regarding the facts and circumstances as to Dulberg's ability to work, loss of use of arm, and the facts and circumstances of the pain and suffering after the accident.

Investigation continues.

3. Identify the address of the McGuire's property described in paragraph 6 of your second amended complaint, and your address identified in paragraph 7 of the second amended complaint.

**ANSWER:** McGuires' real property is located at 1016 W. Elder Ave., McHenry, IL 60051.



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Dulberg's home is located at 4606 Hayden Ct., McHenry IL 60051

4. Identify and describe how you were invited to the McGuires' property to see if you wanted any of the wood from the tree, as alleged in paragraph 12 of your second amended complaint.

**ANSWER:** Dulberg received a call from Gagnon on June 27, 2011. Over the phone, Gagnon asked Dulberg if he wanted wood from the tree that the McGuires were removing and invited Dulberg to come see the wood.

5. Identify how William McGuire physically assisted in cutting down the tree, including the date, time, and location of his assistance, and describe how and when he supervised David Gagnon's actions in cutting down the tree, as alleged in paragraph 13 of your second amended complaint.

**ANSWER:** On June 28, 2011, Dulberg went to the McGuires' home and arrived between 8:30-9:00 am. He observed William McGuire working with Gagnon between that time and approximately noon that same day to remove tree branches from the tree. Gagnon continued to work throughout the day, after William stopped working. Caroline was present observing the work and supervising the work.

William and Caroline McGuire purchased and provided the chainsaw that was used to cut the branches. William and Caroline McGuire provided the ropes and straps that Gagnon used to climb the tree. Caroline had the chain saw owner's manual in her possession and instructed Gagnon what fuel/oil ratio to use for the chain saw.

William and Caroline McGuire instructed Gagnon as to which trees and branches that they wanted removed and where they wanted the trees and branches to fall during the removal process. Gagnon climbed into the tree and cut the branches utilizing the chain saw that the McGuire's provided. The branches would fall to the ground and William would pile the branches in the yard. He also started a fire and burnt some of the branches. At times, William started the chainsaw for Gagnon.

Throughout the entire day, Caroline observed the work and instructed Gagnon to "be careful"



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on several occasions. She also provided water to both William and Gagnon.

William, Caroline, and Gagnon had several conversations throughout the morning as to which trees and branches to cut, how to best remove the trees and branches, where the trees and branches would fall, and how to clean them up. William and Caroline instructed Gagnon regarding those matters.

At approximately noon on that same date, William stopped working on cutting down the tree and went into the house. He then came out of the house and entered the McGuires' pool that is located on the same property.

Gagnon continued to work through the afternoon and early in the afternoon complained to Caroline that he was "working alone" and couldn't complete the work that day without help. Caroline and Gagnon then asked Dulberg to assist. Dulberg agreed to assist.

Dulberg assisted William McGuire by moving branches to the garden and started the chainsaw for Gagnon once while Gagnon was in the tree.

Dulberg then assisted Gagnon by moving the large branches that had already been cut and holding the large limbs steady so that Gagnon could cut them. Dulberg would hold the large branch while Gagnon would cut the smaller branches off the larger branch with the chain saw.

Gagnon would tell Dulberg which branches to pick up and move to the location where Gagnon was cutting them into smaller pieces by cutting off smaller limbs with the chain saw. Gagnon would also instruct Dulberg as to how and where to hold the limbs so that he could cut the branch with the chain saw. Gagnon placed the larger limb, which was now stripped of the smaller branches in a pile and instructed Dulberg to grab the next limb, which still had the smaller branches, to start the process again.

The chain saw was very loud and little conversation occurred during the time the chain saw was on. Instead, Gagnon would gesture to communicate with Dulberg as to how he wanted the branch



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held or moved.

No one cut down the entire tree that day, instead branches were removed from the tree and cut down into smaller pieces.

6. Identify and describe how Caroline McGuire supervised David Gagnon and William McGuire's actions, as alleged in paragraph 14 of the second amended complaint.

**ANSWER:** See answer to 5.

7. Identify the date, time, the location, and the exact words exchanged between Gagnon and the McGuires on the one hand and you on the other as alleged in paragraph 15 of your second amended complaint, in which it is alleged that were asked to assist the trimming and removal of the tree.

**ANSWER:** See answer to 5. Dulberg does not recall the "exact words exchanged" but does recall the incident as outlined in his answer to 5.

8. Identify what safety information was readily available to Caroline and William McGuire as alleged in paragraph 18 of your second amended complaint, and how you know this information.

**ANSWER:** Caroline and William McGuire had the owner's manual to the chain saw. Caroline was reading parts of it aloud to Gagnon in the morning of June 28, 2011. Dulberg observed Caroline in possession of the owner's manual and saw her reading it in the morning of June 28, 2011.

The owner's manual had safety instructions and warnings that would have prevented the accident.

9. Did you request any protective equipment or other safety devices from the McGuires or Gagnon while you provided assistance to Gagnon in operating the chainsaw?

**ANSWER:** No, Gagnon instructed Dulberg as to what to do and Dulberg never operated the chain saw or read the owner's manual.

10. Did you assist Gagnon with trimming and removal of the tree? If so, describe



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each and every action you took in assisting Gagnon with the cutting down or removal of the tree.

**ANSWER:** See answer to 5.

11. Identify and describe each and every conversation between and David Gagnon while you were assisting him with trimming or cutting down the tree.

**ANSWER:** See answer to 5.

12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.

**ANSWER:**

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

2. 1999-2011 Juskie Printing

Paul Dulberg served as an independent contractor for Juskie Printing performing graphic design and prepress functions.

From 1999-2006, this was a barter arrangement.

From 2007-2011, Paul Dulberg earned approximately $18,000 per year.

See tax documents.



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3. Intermatic Incorporated

1998-2002 Intermatic Incorporated, Offset Press Operator I

2002-2007 Intermatic Incorporated, Graphic Designer

2010 Intermatic Incorporated, Independent Contractor for Graphic Design

See tax documents for income information.

See job description provided with documents.

4. 2011 Art Material Services. Material Handler

Operated and maintain thread roller.

See tax documents for income information.

13. Did you suffer any serious personal injury and/or illness within ten years prior to the date of the occurrence? If so, describe where and how you were injured and/or became ill and describe the injuries and/or illness suffered.

**ANSWER:**

1. Migraine Headaches, treated at home.

2. 2002. Rear end collision at Hayden Dr and Johnsburg/Wilmot Rd., in McHenry, IL.

See medical records produced.

3. Approx. 2004, Chest Infection. Treater: Dr. Sek. Treated with inhaler and antibiotics

4. 2005. Broken Foot. Treated at Centegra Hospital in McHenry. Scott Dulberg stepped on Paul Dulberg's bare right foot.

14. Have you suffered any serious injury and/or illness since the date of the occurrence? If so, state when, where, and how you were injured and/or became ill and describe the injury and/or illness suffered.

**ANSWER:**

1. 2011 to present. Migraines.
   Treaters: Dr. Levin
   Dr. Terrance Lee
   Investigation Continues.
2. 2013 Hemorrhoid related to stress. Treater: Dr. Conway



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3. 2016 Dog Bite to Left Leg. Treater: Centegra, McHenry.

a. Dulberg broke up a fight between his dog and the neighbors' dog when he was bitten by a neighbor's dog.

4. Enlarged Prostate Treaters: Dr. Berger, The Uro Center, Lake Zurich, Illinois.

Dr. Elterman and Dr. Tarnauskas, Elterman Center, Skokie, Illinois.

Investigation continues. No other major illness or injuries relevant to this case.

15. Have you filed any claim for workers compensation benefits in the ten years prior to the underlying accident of June 28, 2011? If so, state the name and address of your employer, the date(s) of the accidents, the identity of the insurance company that paid you such benefits and the case nos. and jurisdictions where filed.

**ANSWER:** No.

16. State the personal injuries sustained by you as the result of the underlying occurrence.

**ANSWER:** Chainsaw injury to the right arm. See medical records.

17. With regard to your injuries, state:

(a) The name and address of each attending physician and/or health care professional;
(b) The name and address of each consulting physician and/or health care professional;
(c) The name and address of each person and/or laboratory taking an x-ray, MRI and/or other radiological tests of you;
(d) The date or inclusive dates on which each of them rendered you service;
(e) The amounts to date of respective bills for services; and
(f) From which of them you have written reports

**ANSWER:** See medical records provided.

18. As a result of your personal injuries from the underlying case, were you a patient or outpatient at any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

**ANSWER:** See medical records provided.



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19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
(b) The date or inclusive dates on which you were unable to work;
(c) The amount of wage and/or income lost by you; and
(d) The name and address of your present employer and/or wage and/or salary.

**ANSWER:** Paul Dulberg was self-employed and unable to work after the accident. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

20. State any and all other expenses and/or losses you claim as a result of the occurrence in the underlying case or resulting from any alleged legal malpractice committed by Popovich or Mast. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm, and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid, and if so, by whom it was so paid and describe the reason and/or purpose for each expense and/or loss.

**ANSWER:** Investigation continues. Medical costs, lost wages, loss of use, permanent disability resulting from injury, and pain and suffering.

21. Were any photographs, movies, and/or videotapes taken of the scene of the occurrence or the persons and/or equipment involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

**ANSWER:** Photograph of Mr. Gagnon. See all photographs produced with request to produce.

22. Had you consumed any alcoholic beverage within the 12 hours immediately prior to the occurrence or had you used any drugs or medications within 24 hours immediately prior to the occurrence. If so, state the name(s) and address(es) of those from whom it was obtained, where it was used, the particular kind and amount of drug, medication, or alcohol so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication or alcohol.

**ANSWER:** Dulberg may have taken Naproxen sodium prior to the accident. Naproxen



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sodium is a pain reliever available over the counter. Dulberg does not recall whether he took the drug the night before or the day of the accident, but he did take it on a regular basis at that time. He did not consumer any other drugs or alcohol during that time.

23. Describe why you agreed to a binding mediation in the summer of 2016 as alleged in paragraph 52 of your second amended complaint.

**ANSWER:** At that time, a bankruptcy trustee was appointed by the bankruptcy court and the bankruptcy trustee filed a motion for binding mediation that was granted.

24. Identify the date on which you provided any settlement authority to Hans Mast or the Popovich firm, and the amount of any specific settlement authority to make any settlement demand upon the defendants in the underlying case.

**ANSWER:** Specific settlement authority was never given. On November 4, 2013, Mast was granted authority to investigate a settlement, but a specific dollar amount was never provided. On or around January 29, 2014, Dulberg signed the settlement agreement.

25. Identify and describe the date on which you received a copy of the settlement agreement from Mast in the underlying case, the date on which you executed the settlement agreement and the date on which you mailed the executed settlement agreement to Mast.

**ANSWER:** January 29, 2014, received, signed and mailed back to Mast.

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

**ANSWER:** Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that Dulberg would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to



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seek and receive a full recovery from Gagnon.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

**ANSWER:**

Dr. Landford is a chain saw expert who was retained by Dulberg. See documents produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

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# MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

EXHIBIT # 3

2-19-20



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VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dalberg

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

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM.
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT # 4
2-19-20



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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

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

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as Exhibit B reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as Exhibit C.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.



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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the



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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. *MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by* violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

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

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III



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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

ALL STATE LEGAL

CORY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 17LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, Individually, and states as follows:

### Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

ALL-STATE LEGAL®
PLAINTIFF'S EXHIBIT
B

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ____ ON
____ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 2 ON
12/18/2012 AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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**Count II**

**Paul Dulberg vs. Caroline McGuire and Bill McGuire**

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06208784



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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobiak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

Copy
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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## GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released



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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public



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ADR systems

# Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

| Comments/Explanation | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.S | 75,000. |
| L N L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D



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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>PLAINTIFF,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS POPOVICH,<br>and HANS MAST,<br>DEFENDANTS. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 17 LA 377 |

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch
Mary Winch

EXHIBIT # 5
2-19-20

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

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

**SECOND AMENDED COMPLAINT AT LAW**

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

**COUNT I**
**LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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

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

**B. Relevant Facts**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing



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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

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

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

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

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



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Respectfully submitted by,

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

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
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111 W. Washington, Ste. 1437
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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40 % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Client

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

COPY

MAY 15 2012

KATHERINE M. KEEFE, McHENRY CTY. CIRC. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 17LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 226 ON 7-28, 2022, AT 2 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ____ ON ____ 20____ AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06208684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

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

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ---- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kowiak

Mark J. Vogo
James P. Tutin
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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## GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____ _____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2018 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject:** **Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ---- Original Message ----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ---- Original Message ----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

EXHIBIT
F

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap..
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
F

ADR systems

# Binding Mediation Award

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2015, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

EXHIBIT



Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000
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**Pamela Walker**

**From:** McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
**Sent:** Monday, December 10, 2018 1:37 PM
**To:** George K. Flynn; Pamela Walker
**Subject:** 17LA000377 - 2 Documents Filed

# 17LA000377

## DULBERG, PAUL VS MAST, HANS, ET AL

| | |
|---|---|
| Doc Type | COAA |
| Description | COMPLAINT - AMENDED |
| Date Filed | 12/6/2018 |
| Image Link | View Document Image |

| | |
|---|---|
| Doc Type | NOTF |
| Description | NOTICE - FILING |
| Date Filed | 12/6/2018 |
| Image Link | View Document Image |

**NOTE:** E-Filed documents are available for immediate viewing. Manually filed documents are typically not available for approximately 24 hours. If the document is not yet available, check back to this email link or your Attorney Access Portal account at a later time to view the document.

End of Message



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Just received your mailed letter**
**Date:** December 27, 2016 7:10:43 PM CST
**To:** paul_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** September 23, 2014 at 9:06:46 PM CDT
**To:** Hans Mast <hansmast@comcast.net>
**Subject:** **Fwd: Just received your mailed letter**

Hans,
if I use a chainsaw and cut you badly who is going to believe me when I say it's not my fault, Hans just fell into it?

Who in their right mind is going to believe me when your pointing your finger at me saying I did it?

Who?

Begin forwarded message:

> **From:** Paul Dulberg <pdulberg@comcast.net>
> **Date:** September 23, 2014 at 8:25:03 PM CDT
> **To:** Hans Mast <hansmast@comcast.net>
> **Subject:** **Re: Just received your mailed letter**
>
> First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw. I was but a lowly printer/graphic designer my whole life and never asked for anyone's sympathy till now.
>
> Secondly, I'm sorry I must live among a bunch of potential jurors that you don't trust to just do the right thing.
>
> Thirdly, I'm most sorry for agreeing to lend David Gagnon a hand when he needed some help, I had no idea he was going to try and lop it off.
>
> Fourth, I'm sorry you don't feel good about pushing for a trial. I wish whatever mysterious evidence you seek would be shared with me because without a video camera I can only say what I've seen from direct experience. And I guess in this case "me" the victim isn't credible enough but the one wielding a chainsaw that hurt me is.
>
> A few questions from a layman,
>
> How much could a trial actually cost?
> What,
> $50,000
> $150,000
> Does it even cost as much as a car?
> What number?
>
> How much would you hope to get for us in a settlement?
>
> How much could be expected if the trial does proceed and we have a favorable outcome?
>
> Hans, if your heart is not in this I'm sorry
>
> Paul
>
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> On Sep 23, 2014, at 7:39 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Hi Paul. My view hasn't changed. I think each time we've talked I've always tried to be open about my reservation to take this

EXHIBIT # 6
2-19-20



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case to trial. I just don't think we have enough evidence to prove our case and to invest the time and cost and preparing for trial and moving to trial just in my mind does not make sense to me. I have to be very realistic about things and honest with my opinion. It doesn't do you any good if I do not feel strongly about the case.

That's the very reason why I wanted to have this discussion. I want to give you the option of finding other counsel at this point if you really want to take the case to trial which I think ultimately will be necessary. I just do not believe strongly that defense counsel will offer much in the way of a settlement. Although I will ask him if he is going to make an offer and maybe that will allow you to make a better judgment on this.

Sent from my iPhone

> On Sep 23, 2014, at 7:17 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Before I proceed,
> Why the change of heart?
> I mean, last month your response was we are setting a date for trial or something like that but Now it's settle or find new council again.
> Paul
>
> Paul Dulberg
> 847-497-4250
> Sent from my iPad



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Bad night**
**Date:** December 27, 2016 7:07:16 PM CST
**To:** paul_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** September 26, 2014 at 6:32:40 PM CDT
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Bad night**

Hans,

Last evening I was in the hospital with the most severe migraine I've ever had.

This morning I filed for bankruptcy with David Stretch.

This afternoon I spent with my regular physician Dr Zaide doing a follow up from yesterday.

And right now, I have to email you. All when I still have a slight residual headache and should be in bed.

At first I thought the migraine was brought on by the medications I'm taking but it wasn't, it was brought on after our discussions. Now I can't prove that but it seems pretty obvious to me. Joke no pun intended there!

That migraine made me realize I need the stress of this situation over with. All the stress on top of losing everything is too much and I'd rather live than die from it all before my body does something worse.

My body is not reacting well and the migraines are getting more frequent and worse. Have you ever vomited at the same time as deficating while being in some of the most excruciating pain in your life?

If not, neither did I till the chainsaw went through my arm. That's when the migraines became more frequent, stronger and faster coming on. And now for the first time during the day.

Ever since I awoke this morning, all I can I think is the stress of it all is killing me more and more as the reality sets in and I just can't afford to care about it anymore.

My health means more than some lawsuits and the lure of money.

All because some idiot named David Gagnon forgot to tell me to move out of the way and he can't seem to admit it.

Yes, after reading his deposition and hearing it was my fault I was pissed.

In my anger I suspected all sorts of things. Including it being intentional especially after my discussions at his home only trying to get his homeowners policy number and him wanting money and threatening me for it.

Yes, my arm and elbow were hurt from his stupidity irregardless if some dr can link the two together or not.

Yes, there will be ongoing medical as a result of all this because it still hurts and doesn't work right.

Yes, I am now disabled irregardless of what SSDI appeal goes because of this.

Yes. I understand I'm screwed because of a system that allows one person to hurt another and even after a trial and judgement entered all they have to do is go file for bankruptcy in the same courthouse on the same day.

Yes, it just took me almost an hour just to type this.

Yes, yes, yes...

but none of it matters anymore!

Bottom line Hans... Do the best you can with what you got, I've got nothing more to lose or give. I need it all to just go away.

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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:01:21 PM CST
**To:** paul_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 9:38:57 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject:** **Re: Memo**

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

EXHIBIT # 8
2-19-20



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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

FILED APE
MAR 19 2015
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

PAUL DULBERG

vs. Case Number 12 LA 178

DAVID GAGNON, ET AL.

# APPEARANCE

I HEREBY ENTER THE APPEARANCE OF

PAUL DULBERG
(Insert the name of the party for whom you are entering your appearance)

AND MY OWN AS

| | | | |
|---|---|---|---|
| ☐ | REGULAR COUNSEL | ☐ | TRIAL COUNSEL |
| ☐ | SPECIAL & LIMITED APPEARANCE | ☒ | SUBSTITUTE COUNSEL |
| ☐ | PRO-SE | ☐ | COUNSEL IN FORCIBLE ENTRY |
| ☐ | ADDITIONAL COUNSEL | ☐ | APPELLATE COUNSEL |
| ☐ | GUARDIAN AD LITEM | ☐ | COURT APPOINTED COUNSEL |

AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.

SIGNED BB
(Signature of Attorney filing appearance)

Name BRAD J. BALKE, P.C. BRAD J. BALKE
Printed Name

ARDC Number 6273309

Attorney for PLAINTIFF

Address 542 S. DEARBORN ST., STE. 310

City, State Zip CHICAGO, IL 60605

Phone 312-986-8063

GE-APPI (Revised 12/01/06)

EXHIBIT # 9
2-19-20



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**Binding Mediation Agreement**
**ADR Systems File # 33391BMAG**

**Revised for Special Billing**

## I. Parties

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

**SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

## II. Date, Time and Location of the Binding Mediation

Date: Thursday, December 8, 2016
Time: 1:30 P.M.
Location: ADR Systems of America, LLC
20 North Clark Street
Floor 29
Chicago, IL 60602
Contact: Alex Goodrich
312-960-2267

## III. Rules Governing the Mediation

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

### A. Powers of the Mediator

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

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2-19-20



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B. **Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

C. **Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

D. **Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
   a. Medical records and medical bills for medical services;
   b. Bills for drugs and medical appliances (for example, prostheses);
   c. Property repair bills or estimates;
   d. Reports of lost time from employment, and / or lost compensation or wages;
   e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
   f. Photographs;
   g. Police reports;
   h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
   i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.



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a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and

b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.

3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**

4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016**.

5. The items are considered delivered as of the date that one of the following events occur:

   a. If mailed, by the date of the postmark;

   b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and

   c. The date transmitted by facsimile or email.

6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

   If emailing Submissions, please send to submissions@adrsystems.com, however, please do not send anything over 50 pages, including exhibits.

   The Honorable James P. Etchingham, (Ret.) (Mediator)
   C/O ADR SYSTEMS
   20 North Clark Street
   Floor 29
   Chicago, IL 60602

   Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)
   BAUDIN LAW GROUP
   304 McHenry Avenue
   Crystal Lake, IL 60039



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Shoshan Reddington, Esq. (Defense Attorney)
LAW OFFICES OF STEVEN LIHOSIT
200 N. La Salle Street
Suite 2550
Chicago, IL 60601

E. **Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

F. **Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").

   a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.

   b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

      The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **$50,000.00**. Also, the maximum award to Paul Dulberg will be **$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

## IV. Effect of this Agreement

A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.



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B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

## V. Mediation Costs

### A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is $2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

| | |
|---|---|
| Administrative Fee | $390.00 (Non-refundable) |
| Mediator's Review Time | $450.00 per hour |
| Session Time | $450.00 per hour |
| Mediator's Decision Writing Time | $450.00 per hour |
| Mediator's Travel Time (if any) | $75.00 per hour |

### B. Responsibility for Payment ****Special Billing**

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.



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3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.

4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.

5. ****Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

## VI. Acknowledgment of Agreement

A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Paul Dulberg / Plaintiff Date

By: _____
Kelly N. Baudin / Attorney for the Plaintiff Date

By: _____
Randall Baudin, II / Attorney for the Plaintiff Date

By: _____
Shoshan Reddington / Attorney for the Defendant Date



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DULBERG'S SUPPLEMENTAL ANSWERS TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds, in supplement, to Defendant, The Law Offices of Thomas J. Popovich, P.C.'s Interrogatories To Plaintiff Paul Dulberg as follows:

**INTERROGATORIES**

**12. Identify and describe each of your employers in the ten year period prior to the accident of June 28, 2011, including any self-employment. For each employer, identify your wage rate or salary, your title, your job description, your required duties, and your income for the ten year period prior to the accident in question.**

**SUPPLEMENT TO ORIGINAL ANSWER:**

1. 1999-2011 Sharp Printing, Inc., 4606 Hayden Ct., McHenry, IL 60051

Paul Dulberg was an owner and operator of Sharp Printing, Inc. along with his two partners Scott Dulberg and Michael McArtor. Dulberg provided full time employment services to Sharp Printing, Inc. and thus was "employed" by Sharp Printing, Inc. However, Dulberg did not draw a salary from Sharp Printing, Inc. and did not receive any profits from the company.

Paul Dulberg was the President, salesperson, graphic designer, 8 color screen print pressman, handled fulfillment, shipping & receiving, as well as other day to day operations of the company.

For income, see tax returns.

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Sharp Printing, Inc. operated out of the lower floor of Paul Dulberg's personal residence and paid all utilities bills, including garbage, water, natural gas, electric, internet, phone, and cable. The approximate value is $650 per month.

**19. As a result of your personal injuries from the underlying case, were you unable to work? If so, state:**

**(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;**
**(b) The date or inclusive dates on which you were unable to work;**
**(c) The amount of wage and/or income lost by you; and**
**(d) The name and address of your present employer and/or wage and/or salary.**

**SUPPLEMENT TO ORIGINAL ANSWER:**

Paul Dulberg was self-employed by Sharp Printing and unable to work after the accident. He was also an independent contractor with Juskie Printing. He has not been employed since the date of the accident. See tax returns for lost wages. See SSDI documents for current income.

**26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.**

**SUPPLEMENT TO ORIGINAL ANSWER:**

On December 8, 2016, the mediator issued a net award to Dulberg of $561,000. Dulberg discovered he could not recover the entire mediation award from Gagnon. At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect, because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning.

**27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.**

**SUPLEMENT TO ORIGINAL ANSWER:**

Dr. Landford is a chainsaw expert who was retained by Dulberg during the mediation which occurred in 2016. Landford's expert opinion demonstrates that contrary to Mast's advice, the McGuires were liable for Gagnon's actions with the chainsaw. The expert report came out in February of 2016 and the mediation award was issued in December of 2016.

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Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
**ed@clintonlaw.net**
**juliawilliams@clintonlaw.net**

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VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true, correct, and complete, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dulberg

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DULBERG'S ANSWERS TO DEFENDANT HANS MAST'S INTERROGATORIESTO PLAINTIFF PAUL DULBERG**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 213, responds to Defendant Hans Mast's Interrogatories To Plaintiff Paul Dulberg as follows:

**INTERROGATORIES**

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

**ANSWER:** Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

**ANSWER:** Various dates between October 2013 to January 2014. The advice was

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provided via email, text messages, telephone calls, and in person meetings.

Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg would that he would retain his claim against Gaganon and be able to seek and receive a full recovery from Gagnon.

All documents in Plaintiff's possession and control produced.

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

**ANSWER:** The McGuire's owned their home and vehicles. McGuire's also held bank accounts in their name. Investigation continues.

4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

**ANSWER:** The McGuire's produced insurance information to Dulberg on the day of the accident and also were represented by insurance counsel.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street, Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
312.357.1515
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juliawilliams@clintonlaw.net



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5ttIN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DULBERG'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPVICH, P.C., s REQUESTS FOR PRODUCTION TO PLAINTIFF**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, pursuant to the provisions of Illinois Supreme Court Rule 214, responds to Defendants, The Law Offices of Thomas J. Popovich, P.C.'s Requests for Production To Plaintiff as follows:

**PRODUCTION REQUESTS**

1. Produce any and all records regarding the legal representation provided to you by the Law Offices of Thomas J. Popovich, P.C. ("Popovich") and/or Hans Mast ("Mast") in connection with the underlying case, against William McGuire, Caroline McGuire, and David Gagnon.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

2. Produce any and all correspondence, agreements, draft agreements, emails, letters, and any other documents between you and Popovich or Mast in connection with the legal representation in the underlying case.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

3. Produce any and all correspondence between you and any defendant from the underlying case, including Caroline McGuire, William McGuire, and David Gagnon, from June 28, 2011 to the present time.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

4. Produce any and all documentation relating to legal representation of you by any successor counsel in the underlying case.

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**RESPONSE:** Objection. Attorney Client Privilege.

5. Any and all engagement or disengagement letters or agreements between you and any attorney relative to legal services in the underlying case.

**RESPONSE:** Objection. Attorney Client Privilege.

6. Any and all pleadings and discovery (including deposition transcripts) created, filed, served, and received in the underlying case prior and subsequent to Popovich and Mast's withdrawal as your attorneys, including but not limited to any "high/low" agreement and any arbitration award, arbitration agreement, and any other documentation relating to any arbitration in the underlying case.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

7. Produce any and all documents relating in any way to your claimed damages in the instant case, including but not limited to any special damages, such as medical bills, medical records, costs, invoices, and lost wages.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

8. Produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created, and the date any recipient received the document.

**RESPONSE:** Plaintiff is only withholding attorney client communication between his successor counsel.

9. Produce any and all state and federal tax returns you filed in the ten year period prior to the accident of June 28, 2011.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

10. Produce any and all documentation of lost wages as alleged in paragraph 30 of your second amended complaint, including but not limited to any employment agreement, wage records, paystubs, cancelled checks, and any other documentation reflecting income in the ten year period prior to the date of the accident.

**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

11. Produce copies of any and all settlement documents, settlement agreements, cancelled checks or other payments made in connection with any settlement reached in the underlying case, including payment of approximately $300,000 as alleged in paragraph 54 of your supplemental complaint.



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**RESPONSE:** All relevant documents in Plaintiff's possession will be produced.

12. An affidavit signed you (and not your attorney) pursuant to Illinois Supreme Court Rule 214, certifying that your response is complete in accordance with each request contained herein.

**RESPONSE:** Produced.

Respectfully submitted,

/s/ Julia C. Williams
Julia C. Williams
One of Plaintiff's Attorneys

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
Attorneys for Plaintiff, Atty No. 35893
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juliawilliams@clintonlaw.net



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:01:21 PM CST
**To:** paul_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 9:38:57 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

No answer, that's what I thought...
Your not very quick when cornered and your not excused from this case until I say you are whether or not your firm agrees.
Got it?

> On Feb 22, 2015, at 9:05 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>
> Is your wanting out a personal issue with me or is it strictly financial?
>
> > On Feb 22, 2015, at 9:01 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Oh, and unless I'm wrong, David did admit to having control over the chainsaw. David, in his lie, admitted to seeing me move my arm and continued along his path with the chainsaw at cutting rpm's.
> > In effect he did admit it was his fault.
> >
> > > On Feb 22, 2015, at 8:52 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > You do not have my consent to quit.
> > >
> > > > On Feb 22, 2015, at 8:23 PM, Hans Mast <hansmast@att.net> wrote:
> > > >
> > > > Paul, honesty hurts. I am honest to a fault sometimes. You told me at the start that David would admit his fault. That proved not to be true. Still your threats and putdowns don't change anything. Just find another attorney and we can part ways.
> > > >
> > > > Sent from my iPhone
> > > >
> > > > > On Feb 22, 2015, at 8:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > >
> > > > > To be honest, you took this case knowing it was my word vs. his.
> > > > > Now you back out because the value of the case isn't worth your time?
> > > > > You got some nerve and your earning the reputation of a shady lawyer
> > > > >
> > > > > > On Feb 22, 2015, at 7:42 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > > > > >
> > > > > > To believe David's version of events you must believe I was committing suicide.
> > > > > > Who in their right mind puts his arm into a chainsaw?
> > > > > >
> > > > > > I figured you would cop out again...
> > > > > >
> > > > > > Now I'm left wondering...
> > > > > > How hard is it to sue an atty?
> > > > > >
> > > > > > And yes I am and have been looking for someone who will take this case...
> > > > > >
> > > > > > The issue of my word vs David Gagnons... Did he cut me or did I cut myself?
> > > > > >
> > > > > > Of coarse he cut me.
> > > > > >
> > > > > > Next issue please?

**EXHIBIT F**

EXHIBIT # 8
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Dulberg 001384

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STATE OF ILLINOIS )
) SS:
COUNTY OF MCHENRY )

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

PAUL DULBERG,

Plaintiff,

-vs- No. 17 LA 377

THE LAW OFFICES OF THOMAS POPOVICH and HANS MAST,

Defendants.

The remote videoconference deposition of HANS MAST, appearing remotely from McHenry County, Illinois, called by the Plaintiff for examination, pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of Illinois, and the Rules of the Supreme Court thereof, pertaining to the taking of depositions, for the purpose of discovery, taken before Barbara G. Smith, appearing remotely from Will County, Illinois, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, commencing at the hour of 10:00 a.m. on the 25th day of June, A.D., 2020.



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REMOTE APPEARANCES:

THE CLINTON LAW FIRM, By
MS. JULIA C. WILLIAMS
111 West Washington Street, Suite 1437
Chicago, Illinois 60602
(312) 357-1515
(312) 201-0737 (Facsimile)
juliawilliams@clintonlaw.net
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, By
MR. GEORGE FLYNN
150 South Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3622
(312) 431-3670 (Facsimile)
gflynn@karballaw.com

On behalf of the Defendants.

ALSO PRESENT: Mr. Paul Dulberg

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I N D E X

| WITNESS | EXAMINATION |
|---|---|
| HANS MAST | |
| By Ms. Williams | 5 |
| By Mr. Flynn | 76 |

E X H I B I T S

| HANS MAST DEPOSITION EXHIBIT | MARKED FOR ID |
|---|---|
| No. 1 | 10 |
| No. 2 | 17 |
| No. 3 | 18 |
| No. 4 | 26 |
| No. 5 | 28 |
| No. 6 | 32 |
| No. 7 | 35 |
| No. 8 | 36 |
| No. 9 | 40 |
| No. 10 | 46 |
| No. 11 | 48 |
| No. 12 | 49 |
| No. 13 | 53 |
| No. 14 | 55 |
| No. 15 | 64 |

(All exhibits provided electronically to the reporter.)

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THE REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, the witness will verbally declare his testimony in this matter is under penalty of perjury. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting. Please indicate your agreement by stating your name and your agreement on the record.

MS. WILLIAMS: Julia Williams. I agree.

MR. FLYNN: George Flynn. I agree.

THE REPORTER: Will the witness kindly present his government-issued identification by holding it up to the camera for verification?

(Witness presents government-issued identification and identity is verified.)

THE REPORTER: Thank you.

HANS MAST,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

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EXAMINATION

BY MS. WILLIAMS:

MS. WILLIAMS: Okay, so this is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of Dulberg versus The Law Offices of Thomas Popovich, et al. This deposition is being taken for the purposes of discovery.

Q. Hans, can you state your name for the record, please?

A. Hans Mast.

Q. Have you had your deposition taken before?

A. Yes.

Q. And how many times?

A. I think two.

Q. And for what purpose?

A. Long, long time ago I think there was a malpractice case I was a witness on and a legal -- a medical malpractice case that turned into a legal malpractice case, not against me but against the office I was with.

Q. Okay. So you weren't named in the lawsuit as a defendant?

A. I might have been named. I might have been



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named, but I was somebody that appeared on a motion. I think I got out eventually.

Q. Okay, and then -- And then -- Sorry. And then you said you think twice, so do you know approximately what year that medical malpractice case that turned into a legal malpractice case, do you know roughly what year that was?

A. '94 or something.

Q. Okay, and then the second time, what would have that been?

A. It's not coming to me. It was another legal case. I don't remember the details.

Q. Okay --

A. There -- Go ahead.

Q. More than 10 years? I'm sorry, I didn't mean to interrupt you.

A. Yes.

Q. We can go over the -- I'm going to try not to interrupt you, you're going to try not to interrupt me. You've taken depositions before, I'm sure we can get into that and appreciate you answering orally, all of those typical things that apply, and I'll try not to interrupt you too much. Have you ever -- Other than the one time you just

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identified, have you ever been sued other than this suit for legal malpractice?

A. No.

Q. Do you recall any other details about that medical malpractice lawsuit that turned into a legal malpractice suit? Do you know what the basis of the suit was?

A. It was a medical malpractice case that I think lost on a summary judgment motion and they were -- the client was suing the office and I think I got involved in it because I was on a motion.

Q. Were you the one that drafted the summary judgment motion?

A. I don't think so. I don't really remember clearly back then, but I don't think I did.

Q. Okay.

A. I think I argued -- I might have argued it. I don't remember.

Q. Okay. Have you -- Have you taken depositions before?

A. Yes.

Q. Roughly how many depositions do you think you've taken in your legal career?

A. Lots. Lots.

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Q. Hundreds?

A. Probably.

Q. Oh, I'm sorry, I forgot to do this, but I think we saw your room. It's just you and George Flynn in the room with you, correct?

A. Yes.

Q. And there's no one else in the room and if there were, you would identify them, correct?

A. Yes.

Q. And you don't have any devices or anything with you? You're not communicating with anyone during this deposition other than the attorney in the room with you, correct?

A. And you and who else is on this meeting.

Q. Okay. I'm sorry, let me rephrase. Is there anyone that I don't know that you are communicating with that I wouldn't know?

A. Not that I'm aware of.

Q. Okay. If you take any notes or otherwise communicate with people during the deposition, we just ask that those notes be produced. Okay. Did you do anything to prepare for the deposition today?

A. Well, I just saw some exhibits you sent George. I didn't really prepare them. I looked them

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over briefly.

Q. Did you review any of the other files that have been produced in this case?

A. No.

Q. Did you review any notes?

A. No.

Q. Any other documents?

A. No.

Q. Did you meet with anyone --

A. Other than George?

Q. -- to prepare? Other than George.

A. No.

Q. And you did meet with George, I'm assuming. I don't want to know the contents of that meeting, but you met with George to prepare?

A. Not very long.

Q. Okay. Did you talk to anyone else about today's deposition prior to the deposition today?

A. No.

Q. Where did you go to law school?

A. Kent.

Q. And what year did you graduate?

A. '91.

Q. And were you admitted to practice in



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Illinois that same year?
A. Yes.
Q. And have you -- Are you admitted to practice anywhere else?
A. No.
Q. Have you ever been reprimanded or disciplined by any courts?
A. No.
Q. Have you ever been publicly reprimanded or disciplined by any oversight body, such as the ARDC?
A. No.
Q. When did you start practicing?
A. '91.
Q. And where did you start?
A. In Rockford.
Q. With a firm?
A. Yeah, Cacciatore.
Q. And how long were you there?
A. About a year and a half.
Q. And what kind of work did you do there?
A. Personal injury, plaintiff.
Q. Have you done personal injury your entire career?
A. No, I did some defense work.

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Q. Okay. So you were at Cacciatore for a year and a half and you were doing plaintiff's personal injury work. What did you do after that?
A. I went to the Loggans firm in Chicago for about 6 months.
Q. And what did you do there?
A. Plaintiff's.
Q. PI again, personal injury?
A. Yeah.
Q. And after that?
A. Judge and James in Park Ridge.
Q. And how long were you there?
A. 7 years, I think.
Q. Did you do plaintiff's personal injury there as well?
A. No, that was defense.
Q. What kind of defense work?
A. Lots -- All kinds, municipal, tort.
Q. Did you defend personal injury cases while you were there as well?
A. Yes.
Q. And then after that, where did you go?
A. Kemper, I think.
Q. And how long were you with Kemper?

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A. I think a couple years. Maybe a little more than that.
Q. And what kind of work did you do at Kemper?
A. Defense.
Q. Defense of what type of cases?
A. Lots of different kinds, auto accidents, premises.
Q. Mostly torts though, negligence-type cases?
A. Yes.
Q. And then after Kemper?
A. I think Popovich was next.
Q. And how long were you with the Popovich firm?
A. About 18 years, I think.
Q. And do you know what year you -- roughly what year you joined Popovich?
A. 2001 maybe.
Q. And you were there for roughly 18 years you think?
A. Yes.
Q. So you left maybe just last year?
A. In '18.
Q. 2018?
A. Yeah.

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Q. And why did you leave Popovich?
A. To start on my own.
Q. And where are you now?
A. With Compton Law Group.
Q. I'll give you just a second to come back.
A. Yeah.
Q. And what types of -- I'm sorry, I'm going to go back to the Popovich firm. What kind of cases did you handle at Popovich's firm?
A. Plaintiff's personal injury, all kinds.
Q. And then at Compton, what kind of work do you do?
A. Same thing, same kind of cases, plaintiff's personal injury.
Q. So is it fair to say you've been doing plaintiff's personal injury cases steadily throughout your career?
A. Yeah, except for the time I was with the defense offices.
Q. Okay. But you were still doing personal injury, just on the defense side, not on the plaintiff side?
A. Right.
Q. Okay. Did you answer discovery in this


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case, in the malpractice case that we're -- the Dulberg versus Thomas Popovich case?
A. I think I did.
Q. Do you remember -- Did you review discovery in this case, do you recall?
A. Like I said, I think I answered some and signed off on some, I just don't remember. I haven't seen them recently.
Q. Okay. Okay. If you recall, do you remember reviewing the documents that were produced in this case?
A. I don't know what was produced.
Q. Okay.
A. I assume the file.
Q. Right. Okay, if I represented that the file was produced, would that make sense to you? Can we kind of agree that the file was produced?
A. Well, if you told me that.
Q. Okay. So when the file was produced, I don't know if you recall, there were black -- some black pages between the file. Do you remember any discussions about that?
A. I didn't produce anything so and I haven't reviewed what was produced, that wasn't my -- I was

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in a different office when it was produced, I think.
Q. Okay. So Thomas Popovich would have had possession of the file?
A. Right.
Q. You did not have possession of any documents from the underlying case, from the Dulberg versus Gagnon-McGuire case?
A. I didn't.
Q. Okay. So you would not have had access to that file since you were with Thomas Popovich in 2018?
A. Once I left the firm, I have not had the file.
Q. Okay. In this case did you produce emails that you possessed or did you not have access to those either?
A. I would -- I don't know what was produced, again, by the Popovich firm. I don't know if they had my emails, but I have a new email address. I don't think it's the same as it was back then.
Q. Okay.
A. So I didn't produce anything.
Q. So you didn't produce any emails or communications that -- in the -- from the underlying

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case?
A. Not that I'm aware of. Unless I produced it to Popovich and he produced it. I don't know how that worked.
Q. Okay. When were you retained by Paul Dulberg?
A. I don't recall. I'm assuming there's paperwork that shows that.
Q. Yes. Let me upload a file here. Just give me a second.
A. I don't think he retained me. I think he retained Tom Popovich's office.
Q. Okay. I just uploaded a file that's titled Dulberg Mast Dep Exhibit 1, if you can -- And, George, you should have that as well -- and it should be the retainer contract.
A. Yeah, I see it.
Q. Okay. So it's a contract for legal services and it's marked POP, P O P, 000586 on the bottom, just for reference, so this will be the first exhibit in this deposition. Do you recognize this document?
A. I recognize what it looks like, yeah.
Q. Yeah, and it's the contract for legal services and it's undated, it looks like.

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A. That's what it looks like.
Q. Okay. I'm going to upload another exhibit. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case of Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document?
A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not — that's what I'm looking at.
Q. Okay.
A. It's a complaint and it says Exhibit 2.
Q. Right, okay. So our numbers may be a little off, but the description should be correct. In that complaint shows file stamp May 15, 2012?
A. Yeah, that's what it says.
Q. Okay, and so Mr. Dulberg would have hired you sometime -- hired the Popovich firm sometime prior to that, correct?
A. I'm assuming. I --
Q. Okay. Do you have any idea?
A. I'm sorry.
Q. I'm sorry, I didn't mean to interrupt you. Go ahead.


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A. Go ahead.
Q. Do you have any idea about -- Do you have any idea about what timeframe he would have hired -- retained you?
A. I really, again, I don't have an independent recollection of it. I think there's probably a memo out there of me meeting with him, too.
Q. Okay. Actually, I think there is. Okay, I just uploaded Dulberg Mast Dep Exhibit No. 3 and the top says -- it's titled, "Intake Memo." At the top it says, "Memorandum," it's Popovich, it says POP00961 and 000962. Do you recognize this document?
A. I -- It looks familiar.
Q. And it indicates that it's from you, so you would have drafted this document, correct?
A. I would have dictated it, yeah.
Q. Okay, and it looks like you had a new client meeting with Paul on December 1st of 2011?
A. That's what it says.
Q. Okay. Does that seem like that timeframe would have been roughly correct?
A. I have no reason not to believe that's accurate.
Q. Okay. So Paul retained you probably

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sometime in December of 2011 and then you filed a complaint around May 15, 2012?
A. That's what it appears.
Q. Okay. So can you just tell me what the case against Mr. -- I'm sorry. Can you describe the case between Paul Dulberg and David Gagnon, Caroline and William McGuire?
A. What do you mean describe it? What it's about?
Q. Yeah, basically what was it about?
A. An injury, a chain saw injury.
Q. Okay. Was there anything about the case that was unique to you?
A. Other than it was a chain saw injury.
Q. Okay. What was your theory of that case? What was your theory of liability in the case?
A. I think the -- Paul had claimed Dave struck him with the chain saw.
Q. So was it just a negligence theory or was it a strict liability or --
A. I believe it was negligence, if I recall correct.
Q. Negligence against Gagnon, David Gagnon?
A. Yeah, and I think the McGuires actually were

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named as well.
Q. And what was the theory as to the McGuires?
A. I think Paul had said that they were the ones that owned and looked over the work that was being done.
Q. Okay. So if they owned the chain saw and were overseeing the work, what's the legal theory for liability on that? Why would they be liable?
A. Under case law potentially there's liable -- liability for people that oversee and direct the work.
Q. Okay, and is that a strict liability or is it some other form of liability?
A. It would be negligence.
Q. So negligent oversight?
A. Potentially.
Q. Okay. Were there any other theories that you were going to pursue or could be pursued?
A. Not that I recall.
Q. Okay. So a negligence claim against Gagnon for negligently utilizing the chain saw and then a negligence claim against McGuires for not -- for not controlling his use of the chain saw, is that accurate?

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A. I don't recall the exact allegations, but I think in a general theme that was what we were going to try to prove.
Q. Okay. In the intake memo, do you want to go back to that? There are some notes on this exhibit that state -- it looks to me like it says, "Hans BC the accident occurred on their premises, their HO med pay will cover the bills," and then it's signed. Do you recognize that handwriting?
A. Yeah, that would be Tom.
Q. Okay, and what does that note mean?
A. Medical coverage, medical payments coverage.
Q. So there -- So the McGuires -- When he says their, is he referring to Caroline and Bill McGuire?
A. Well, I don't know what he's referring to. I think what he's -- Well, he circled their names, so that probably indicates what he's referring to.
Q. Okay. Would their -- Would their insurance cover medical bills in an instance like this?
A. Possibly.
Q. Okay. Did you reach out to their insurance company about covering any medical bills?
A. I don't recall if that was applicable or I don't know -- I don't recall that issue.


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Q. Okay.
A. Oh, uh, I think -- It just kicked me off.
MR. FLYNN: I got disconnected, too. It's the Wi-Fi.
BY MS. WILLIAMS:
Q. Okay, we'll just wait a minute here.
A. I can hear you. I just can't see you.
Q. We'll wait a minute until you can get your video back on.
MR. FLYNN: Julia, we think the Wi-Fi may have dropped here in the office.
MS. WILLIAMS: Okay. Well, let's just give it a minute and see.
MR. FLYNN: Okay.
(Whereupon, a break was taken, after which the following proceedings were had:)
MS. WILLIAMS: Okay. I think we're back on the record. Barb, are you doing all right?
THE REPORTER: Yes.
BY MS. WILLIAMS:
Q. Okay. So we just went through the memo that Tom made a note about insurance and your testimony was that you don't recall whether you made any

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requests to the McGuires' insurance to pay Paul's medical bills; is that correct?
A. I don't remember, right.
Q. Okay. Back to the actual claims made. Do you remember -- Do you recall what the defense was for first Gagnon and then Bill -- William and Caroline McGuire?
A. What do you mean by defense?
Q. What was their theory of defense in the case, do you recall? As you understood it.
A. I mean, that's a big question. I mean, they, like every case, they were denying what we were alleging.
Q. Were they denying the facts? Did they dispute the facts of the case?
A. Definitely.
Q. Okay. Do you recall what they were alleging as far as the facts that were different from what you were alleging?
A. I mean, I can probably answer that for -- with an hour -- an hour answer. There's a lot that they were denying. There was a lot that, you know, I mean, I'd have to -- I could look at their answer. I could look at their deposition testimony, but, I

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mean, that brings up a lot of issues.
Q. Okay. Let's -- Let me narrow it down a little bit and try to get more to a point that will be useful for our discussion. At some point, you had recommended that Paul settle the case as to the McGuires; is that correct?
A. Yeah.
Q. And what was the reasoning for settling the case as to William and Bill McGuire?
A. Just risk, like you always discuss with any settlement.
Q. Can you be a little more specific about what type of risk?
A. Again, that's a long question but, I mean, it's like any settlement, you're taking a risk if you don't settle the case when you have issues that could be problematic.
Q. Okay. When you say issues that can be problematic, and I know it could be a very long answer, but as much as you can, can you summarize what you think those risks were?
A. Understanding it's a summary that, I mean, I could probably answer that in a couple hours, but the chance of recovery was in my view very slim if at all

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because of lots of reasons, one, because of Paul's testimony, Gagnon's testimony, the McGuires' testimony. The evidence didn't seem to be something that was going to allow us to prove the case against the McGuires.
Q. Okay. What -- And, again, I understand this is -- these are very long questions, but just in summary, what were you going to need to prove the case against the McGuires?
A. Now, again, understanding I would have to put myself in my place where I was back at the time that I fully evaluated this with Paul, but if I'm just trying to come up with some thoughts now years later the case law, I think, was against us. The defense was going to file a motion for summary judgment if we didn't work out some sort of settlement that I felt they were going to win and the testimony from all parties was not helpful to us.
Q. Okay. I'm going to move forward and then we may come back to this a little bit. Do you recall when the first time was that you talked to Paul about settling the claims with the McGuires?
A. No, whenever -- You know, the defense attorney would have reached out to me to ask for some


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sort of demand, I assume.
Q. Did you make a demand at some point?
A. I think -- I think some of your paperwork showed that I did.
Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter -- it's "Letter Re Settlement," and that should be -- still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recognize those documents?
A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try it again? Do you have that, George?
MR. FLYNN: Yeah, here's the hard copy.
THE WITNESS: I'll look at the hard copy, so what are you asking?
BY MS. WILLIAMS:
Q. Great. So it should be the document it has letterhead on the top, Popovich letterhead on the top, and at the bottom it's POP000192 and POP000193.
A. Right.
Q. Do you recognize those documents?

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A. I mean, they look familiar. Documents from the Popovich firm, if that's what you're asking.
Q. Is that your signature?
A. Yes.
Q. So you would have drafted or caused this letter to be drafted and sent?
A. It appears that way, yeah.
Q. And this is a demand letter where you make a demand of $7,500; is that correct?
A. Yes.
Q. Do you recall making that demand?
A. No.
Q. Do you recall if you talked to Paul prior to making the demand?
A. I'm sure I would have.
Q. Okay. Do you recall -- Do you have any memos or notes regarding that conversation with Paul?
A. I don't personally.
Q. Okay. If there were memos and notes, would they be in Thomas Popovich's file?
A. It should.
Q. Okay. Do you recall any emails about the demand -- the 7,500 demand?
A. I know there were lots of emails. I don't

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know if this number is identified in those emails, but, again, it would have been something I would have talked to him about before making it.
Q. Okay. But at this time you don't know if there are any memos, notes or emails memorializing any conversation with Paul prior to sending the October 22, 2013 demand?
A. Not that I recall.
Q. Okay, and if they did exist, they would be in the possession of Thomas Popovich, correct?
A. I would think so.
Q. Okay, and if you had those in your possession, you would produce them in discovery, correct?
A. If I had them.
Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom POP000195.
A. Okay.
Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that?
A. It looks like there's a couple emails here. There's several pages. You just mean the first page?

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Q. I think -- It should only be, I believe it's only one page and it looks like --
A. Oh, these aren't part of it? Just one page?
Q. The document that I have is just one page. Are we looking at the same thing?
A. Okay.
Q. It's POP00195 on the bottom.
A. Yeah, he had a couple other pages on it, but okay.
Q. Okay. I just want to make sure that I didn't -- Okay. And on the bottom there of the first sheet, if you have several, I've only published one sheet for the purposes of this deposition, it states, "Friday, October 25, 2013," do you see that?
A. Where does it say that?
Q. So about halfway down the page it looks like it says, "Original message from Paul"?
A. Yeah.
Q. Okay. So that looks like Paul reached out to you about medical deposition and then on the top it appears to be your reply of October 30, 2013. Does that seem like that's accurate?
A. That's what it shows.
Q. Okay. Okay. And here you first -- Am I


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correct in summarizing this is an email where you talk to Paul about liability for Mr. Gagnon?
A. Look likes I did cover that issue.
Q. Okay, and do you recall at the time what your purpose was behind this email?
A. I mean, every purpose is just to have open communication. That's all the purpose --
Q. Okay. Would you have been trying to explain to Paul the liability issues in his case that you described earlier?
A. Yeah, I definitely was discussing several issues for him so he knows what's going on.
Q. Okay, and this email response is dated October 30th, so that was after you sent that initial letter. Do you recall whether there would have been anything prior to this?
A. Whether what was prior to this?
Q. Would there have been any communications about liability either to Gagnon or the McGuires prior to the October 30, 2013 email?
A. Every time we talked, there were issues about liability, I mean, for whatever I first -- he first came to the office I recall he was lots of questions and I gave him lots of answers as is

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reflected in my emails.
Q. Okay. Did you meet with Paul after you sent that October 22nd demand letter?
A. Did I meet with him?
Q. Yes. In person.
A. I'm sure I did.
Q. Okay. Do you recall -- Do you recall meeting -- the dates of those meetings?
A. No, I don't recall the dates.
Q. Okay. So I'm going to upload another file here.
A. Yeah, our Internet is down. That's why I can't bring these up.
Q. Okay.
MR. FLYNN: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.
MS. WILLIAMS: Okay. Okay, great.
MR. FLYNN: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.
MS. WILLIAMS: Okay. I think we'll be -- For the most part, I think we'll be fine and we'll

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deal with it if and when we get to that point.
Q. Okay. So the document that I'm looking at now is another email on the -- it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date on the email is November 5, 2013 email chain and it's -- at the bottom it's stamped Dulberg001531.
A. What exhibit is it?
Q. I think it might have been 5-A to George. It's now Exhibit 6 for the purposes of this deposition.
A. Yeah, that wasn't part of the download then. Do you have --
MR. FLYNN: Yeah, I don't think that was included.
THE WITNESS: What's the Bates stamp or what's the stamp?
MS. WILLIAMS: The Bates stamp is Dulberg001531.
THE WITNESS: Yeah, I don't recall --
MR. FLYNN: I don't recall seeing a 5-A on the download. I think it just went straight from

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5 to 6.
MS. WILLIAMS: Okay, let me see if I can do something else. I'm going to try to share my screen. I don't know if I'm going to be able to do it. So bear with me. Okay. I can't -- I can't share the screen. Can I email -- George, can you pull up an email if I email it to you?
MR. FLYNN: I should be able to eventually.
MS. WILLIAMS: Okay, let me see if that will --
THE WITNESS: Let me run to the washroom real quick while you guys do --
MS. WILLIAMS: We'll take a quick break, that's fine, we'll try to work this out. If anybody else needs a break, obviously take a break now.
(Whereupon, a break was taken, after which the following proceedings were had:)
BY MS. WILLIAMS:
Q. Okay, back on the record. This is the Exhibit 6 for the deposition and it's marked at the bottom Dulberg001531 and it's an email chain between Paul Dulberg and Hans Mast dated November 4th through about November 5th, is that accurate, Hans?


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A. That's what it appears.
Q. Okay, and it appears at the bottom that Paul is asking you if he should bring anything to a meeting.
A. Okay.
Q. And that meeting appears to be at 3:00 p.m. on November 4th of 2013.
A. Okay.
Q. Is that an accurate description? Okay? Do you recall having --
A. Go ahead, I'm sorry.
Q. Do you recall having a meeting on November 4th of 2013 with Paul Dulberg?
A. I don't have an independent recollection.
Q. Okay. Okay.
MR. FLYNN: Julia, now I recall, this is a separate exhibit you sent a little bit later than the original download, so I did have this.
MS. WILLIAMS: Okay. Okay. We got it worked out.
MR. FLYNN: Yeah, okay.
BY MS. WILLIAMS:
Q. Okay. So you don't recall calling a meeting for November 4th?

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A. We had lots of meetings so --
Q. Okay.
A. -- I don't have an independent recollection of that one particular date.
Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purposes of this deposition right now it's going to be 7 and it's an email chain dated --
A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.
Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182, and it's two pages of an email chain, November 15th, looks like on the second page it starts November 15th and ends November 19th, is that accurate?
A. Yes.
Q. Okay, great. So here it looks like Paul started this email chain, but then on November 18th you note that, "The McGuires' attorney has offered us, you, $5,000 in full settlement of the claim against the McGuires only," do you see that?
A. Yes.
Q. Okay. Do you recall that offer being made?
A. I do have some recollection of having a conversation with them.
Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for -- it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you have that?
A. What's it dated?
Q. I'm sorry, dated November 18, 2013.
A. Yeah, I have that.
Q. Okay. And that's a settlement letter from Barch offering the settlement of $5,000, correct?
A. Right.
Q. Do you recall receiving this letter?
A. I mean, I don't today recall getting the letter, but I'm familiar with the transaction, yes.
Q. Okay. Okay. So you would have received the $5,000 offer from Barch and you communicated it to Paul via the email on November 18th?
A. As well as when we talked, yes.
Q. Okay. Okay. And when did you talk?

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A. Again, I don't know the dates. I just know generally how this all transpired.
Q. Would you have talked to Paul on the 18th when the letter came in?
A. It's dated the 18th. I doubt I got it on the 18th. Whenever I got it, I would have told Paul.
Q. Okay. And it looks like the email you sent, which is Exhibit 7, communicated that offer?
A. Okay.
Q. Would you have talked to the McGuires' attorney prior to receiving the letter about the offer?
A. I don't recall. It might have -- that might have happened.
Q. Okay. Do you recall whether you met with Paul sometime after -- on or after November 18 to discuss the settlement offer?
A. I'm sure we did. I know we had several conversations and meetings about that.
Q. Okay. In this email chain that's Exhibit 7 about halfway down the page it says on November 18, 2013, at 7:40 p.m., Paul responds to your email. Can you see that?
A. Are we going back to the email now?


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Q. Yep, it's POP00181.
A. What exhibit?
Q. It's Exhibit 7.
A. 7, that's the letter.
Q. If may be 6 for you. It may be 6 for you.
A. Let's take a look. What page is the email?
Q. The date at the top of the email chain is Tuesday, November 19, 2013.
A. Yeah, I have that.
Q. Okay. And then about maybe halfway down the page it's dated on November 18, 2013, at 7:40 p.m., do you see that?
A. Yep.
Q. And there it says, "Only five? That's not much at all," do you see that?
A. That's his response, yes.
Q. Right. Right. Do you recall talking to Paul about the $5,000 and that not being much?
A. Like I said, yes, we've had plenty of conversations and meetings on that.
Q. Okay. When you originally offered the 7,500, did you talk about what the possible outcomes as far as counteroffers, what they may demand, something like that, did you talk about that prior to

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making that $7,500 offer?
A. I mean, I think I generally understand what you're asking. Did we just have general conversations of numbers? Yes.
Q. Okay. In this email and this is -- I understand this is speculation, but in this email it appears that Paul is surprised that it's $5,000 was the offer, correct? Would that be fair to characterize it that way?
A. Is he surprised at it or is he surprised at the amount? It looks like he didn't think it was much.
Q. Right. So if you originally offered 7,500 and they came back at 5,000, in your experience, does that seem like much of a difference when it comes to counteroffers?
MR. FLYNN: I'll object to the form.
THE WITNESS: Yeah, I'm not real sure what you mean by that.
BY MS. WILLIAMS:
Q. I guess let me rephrase because I don't think I'm getting to the point. Prior to making the $7,500 offer, did you discuss with Paul that the McGuires may come back with an offer that was lower

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than the 7,500?
A. Again, I'm -- I understand the question. I'm just not trying to play games, but you're asking me do I recall specific words that are used or topics. All I can tell you about this is we talked about the whole gamut of options, that I didn't feel it was a strong case, that they were reaching out to us for $5,000, and that balancing everything, the risks, costs, even though it wasn't much, it was something that would have been desirable for him if he wants to end up with money versus the McGuires.
Q. I'm going to add another exhibit here. Okay, for the purposes of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, "Memorandum," and the date is November 20, 2013, and at the bottom it's identified as POP and then 3 — there's 000003, I believe. Do you have that?
A. What exhibit is it?
Q. I think you're probably going to have it as Exhibit 8, but for the purposes of this deposition it's actually going to be Exhibit 9.
A. Okay.
Q. And it's Dulberg Mast Memo,

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2013 November 20.
A. Okay, yeah.
Q. Okay. It looks from this memo that you had a meeting with Paul and his friend on November 20th, is that accurately reflected what's stated in the memo?
A. Yes.
Q. Do you remember this document? Do you recall this?
A. As I said before, I understand what you're asking, but we've had lots of meetings. Do I remember that particular date, no, but I remember the meetings.
Q. Do you recognize this memorandum?
A. I recognize the discussion that's referenced in the memo. I haven't seen the memo for 7 years.
Q. Okay. Do you recall the advice that you gave in that meeting of November 20th?
A. Yeah, like I said, it's summarized a little bit in there. Yeah.
Q. Okay. And what was the -- Why don't -- What was the advice that you gave?
A. Do you want me to read the memo or you want me to just tell you generally what the topics were or


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what?
Q. Generally to the best that you can recall.
A. Looks like on that day he brought his friend in because before he wanted to consider the offer, he wanted to have his friend come with him to talk about these issues with me. So we went over --
Q. So --
A. Go ahead.
Q. No, I'll let you finish. Go ahead. I'm sorry.
A. Well, we went over all the issues, all the risks, all the money issues, all of the issues.
Q. Do you recall who the friend was?
A. Not as I sit here today.
Q. From this memo it says, "Paul maintains the McGuires controlled everything that they were doing and you told him that wasn't what the evidence seemed to show." So can you expound on what -- This is really going to be a complicated question, but to the best of your ability, can you explain what the theory of your case was against the McGuires and what the evidence was that was going to -- what evidence was your reason for believing that you couldn't prove your theory?

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A. We already talked a little bit about that earlier, but every time we met, we talked about this because this was a subject at the time with the McGuires and given the testimony of the McGuires, given Paul's testimony, given the lack of any evidence that they were controlling any work or even knew what Paul was doing, I felt it was a big, high risk of moving forward on that claim.
Q. So I'm going to try to summarize this. Maybe in parts. So in order for the McGuires to be liable for Gagnon's work, Paul would have to prove in his case that the McGuires controlled Gagnon's work, is that accurate?
A. Are you asking me if that's an accurate statement of the law?
Q. Yes.
A. I think that's partially right. There's a lot more to it. It's different branches and elements that you have to prove, control was a factual matter, and he would have to be able to establish there was some oversight. It goes down into some factual issues that you have to be able to show.
Q. Okay. So can you -- To the best of your ability, can you kind of walk me through for the

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negligence claim against the McGuires what the legal elements were that you would have to show?
A. I haven't brushed up recently on that area, but I can tell you that under the case law they have to have some oversight and control over what was going on and some involvement in the work and some knowledge higher and above what Paul was doing, and if you look at their testimony, they were not out there, they were not looking at it, they didn't even really know what Paul was doing frankly.
Q. And what about David? Did they have to control what David was doing as well?
A. I meant David, I'm sorry.
Q. Okay. So the McGuires would have to have oversight and control over David Gagnon?
A. Over the work.
Q. Okay. Over the work. Okay. So William and Caroline did buy the chain saw, correct?
A. I believe that is true.
Q. Okay. But then David Gagnon was the one operating the chain saw?
A. Right.
Q. And you would have to show in Paul's case that Bill and Caroline, one or the other, had control

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over David's operation of the chain saw?
A. Control could mean a lot of things. They would have to be in a position to instruct him, tell him what to do, be aware of the work that was being done and have some control over what he was doing.
Q. Okay. So in your -- Your opinion of the case was that it was insufficient for them to have simply purchased the chain saw and provided it to Gagnon?
A. Yeah.
Q. And what about if they were paying him? Would that make any difference?
A. No.
Q. I'm sorry, I don't know or no?
A. No.
Q. Just bear with me for a second here. And you informed Paul -- I'm sorry, let me back up. In exhibit -- Deposition Exhibit 7, so it's probably 6 for you, the email chain between you and Paul, roughly November 18th through the 19th, Popovich 000181, on the bottom of that first page, November 18, 2013, at 1:28 p.m. there's an email from you. Do you see that?
A. Yes.


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Q. "In addition, the McGuires' attorney," so it's ATTY, "has offered us, you, 5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners so they likely will get out of the case on a motion." Did I read that correctly?

A. Yes.

Q. So this is where you told Paul that you didn't believe the McGuires had any liabilities for the reasons -- in part for the reasons we just discussed?

A. Right.

Q. Ultimately Paul accepted that $5,000 offer, correct?

A. Yes.

Q. And you communicated that to the other side later in 2013, does that sound correct to you?

A. Yes.

Q. I'm uploading Exhibit 10, and it should be Exhibit 10 for you as well, and it's a memorandum dated December 20, 2013, and at the bottom it's POP000884, do you see that?

A. Yes.

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Q. And that's a memorandum that you wrote to the legal file; is that correct?

A. It looks like that.

Q. I think I already said this, it's dated December 20, 2013?

A. Yes.

Q. Okay. And the substance of it, it appears that you had a conversation on December 18th with Paul and that he was authorizing you to accept the $5,000 settlement?

A. Yes.

Q. Okay. Do you recall that conversation of December 18?

A. I recall having lots of conversations, this is one of them, and generally I do recall the conversations in a general sense, not the exact dates.

Q. Okay. So you don't remember anything specific to this December 18th call what you would have discussed?

A. Not other than what I've already said we discussed over the time.

Q. Okay.

A. Paul was weighing his options. He knew the risk and he had -- he wanted some time to think about it and consider it.

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Q. Okay. All right, just bear with me here. Okay, I just uploaded Deposition Exhibit 11, it's a settlement acceptance letter, letterhead from Thomas Popovich's office dated December 26, 2013. Hans, your signature appears on there and it's POP00670. Do you recognize this document?

A. That appears to be a letter from Popovich's office to defense counsel.

Q. Do you recognize your signature on here?

A. Yes.

Q. And this is the letter where you accepted the offer on behalf of Paul, is that accurate?

A. It appears, yeah.

Q. Okay. So the Defendants made the original offer around November 18 and Paul -- November 18, 2013, and Paul accepted it around December 20, 2013. Is that statement accurate?

A. I don't have, like I said, independent recollection of the dates. I would just have to go off the documents.

Q. Okay. Was there -- If that timeframe is roughly correct, was there anything that occurred during that timeframe that indicated to you, you know, why Paul changed his mind from originally thinking it was too little to now accepting it. Was there anything that stuck out in your mind about that?

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A. Yeah.

Q. Can you expound on that?

A. Well, he had his friend with him during our meeting and he reviewed the depositions.

Q. Okay. Did he not have the depositions prior to that?

A. I remember he asked for copies of them, so I provided them to him.

Q. Okay, and when you say the depositions, do you mean just the party depositions, the McGuires and the Gagnon?

A. I don't remember if I gave him the doctors. I don't remember which ones I gave him, but I know specifically it was Gagnon and the McGuires.

Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. This is titled, "Legal Research." And this is hard because there's -- it's 27 pages. Some of them have Bates numbers, but some of them are black on the bottom, so I think the Bates numbers



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didn't -- didn't take, but it's roughly -- looks like roughly 204, maybe 205, Dulberg204, 205 through roughly Dulberg00304 -- Actually, I'm sorry, these aren't going to be continuous. But do you have that packet of legal research in front of you? It appears to be copies out of a -- copies of case law out of the Northeastern Digest.

A. I just have the one case here.

Q. Just one case? Which -- What's the case title?

A. The first one, it's L A J A T O.

Q. Okay. Do you -- Did you copy this case law?

A. I don't know.

Q. Do you recall providing any case law to Paul?

A. I don't know if I did or didn't. I don't know if he asked.

Q. Okay. Do you recall doing case law research?

A. I'm sure I did, yeah.

Q. Would have there been a memo or something regarding that research?

A. Not necessarily. I was familiar with the law.

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Q. Okay. Okay. Was there any -- Was there any case law that stuck out to you, any particular cases that stuck out to you?

MR. FLYNN: Object to the form.

THE WITNESS: You mean stuck out to me with regard to Paul and his case?

BY MS. WILLIAMS:

Q. No. Were there any applicable cases that stuck out to you one way or the other as to whether the McGuires would be liable? Was there any specific cases that made you think that the McGuires may not be liable given the facts in Paul's case?

A. I mean, you deal with this issue a lot and I can't think of one particular name of a case, but these cases all go along the same line, so there were lots of cases on this one particular issue. It wasn't a complicated issue.

Q. So particularly the issue of control of Gagnon.

A. Of a premises owner's liability for an independent contractor.

Q. Okay. So can you explain generally what an independent contractor is?

A. I'll give you have an answer if you want,

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but just, I mean, we're talking now, what is it, 7 years later? I haven't been asked to do any research before today's deposition, but so, I mean, if you're asking me for what the case law says, I'd have to look at the case law, if that's what you're asking.

Q. I'm asking based on your -- on your experience and knowledge as a personal injury attorney and not necessarily related to Dulberg's case specifically.

A. Okay.

Q. But based on your knowledge and experience in premises liability cases, what is an independent contractor?

A. Someone that works on their own.

Q. And can you explain what you mean by on their own?

A. Somebody that's hired, like, somebody that's hired to paint the house.

Q. Okay. So somebody that's hired by a homeowner or maybe a business?

A. Yes.

Q. But someone that's hired by a homeowner but the homeowner doesn't -- doesn't tell them how to do

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their job?

A. Right.

Q. Did you ever obtain a copy of the McGuires' insurance policy, do you recall?

A. I don't have an independent recollection.

Q. Did you ever advise Paul as to the limits of the McGuires' policy?

A. I'm sure we talked about it.

Q. Okay. I just uploaded Dulberg Mast Deposition Exhibit 13 McGuire Interrogatory Answers and they're Bates stamped Dulberg000162 is the first page and there's roughly 14 pages. Do you see that document?

A. Yes.

MR. FLYNN: This is 14?

MS. WILLIAMS: It should be Exhibit 13 -- 13 or 14. I think I have it as 13. Yes, okay. And this -- I'm looking at paragraph 15 or at least I'm trying to look at paragraph 15.

Q. Okay. In paragraph 15 it looks like there was a question about the homeowner's insurance and the McGuires respond with their personal liability and their medical liability, do you see that?

A. Yes.



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Q. Okay. Now that you see that, do you recall whether you ever got a copy of that policy?
A. I don't -- You mean the dec pages or the whole policy?
Q. Either. Did you get a copy of the dec pages?
A. I have no idea.
Q. And you have no idea whether you got a copy of the whole policy?
A. Yeah, don't know.
Q. But they are representing what their insurance was and the liability there, correct, or their liability coverage there?
A. That's what it appears.
Q. Okay. And these -- This was -- looks like this was responded to based on the McGuires' signature on roughly the 12th page of the document. It looks like it was August 6th of 2012.
A. That's what it appears.
Q. Yeah. So prior to when they would have made the settlement offers, correct?
A. That's what it appears.
Q. Okay. Did you ever talk to Paul about those -- the limits of the insurance policy and how

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that may be important in his case?
A. I suspect we talked about the policy, yeah.
Q. Okay. Prior to any settlement discussions?
A. Yeah.
Q. Okay. But you've already testified you didn't -- You don't know if you -- You don't know if you obtained a copy. What about Gagnon's insurance policy, did you ever obtain a copy of that?
A. I don't know. I don't know.
Q. Okay. Did you issue interrogatories to Mr. Gagnon?
A. I'm sure I did.
Q. Let me upload this. Would they have been in Popovich's file if you --
A. Yes.
Q. Okay. So I can tell you, I don't recall seeing any documents issued by you. I'm going to upload a document that appears to be interrogatories issued by McGuires' counsel in the case. I'm going to upload it right now. It's Exhibit 14 and Answers to Co-Defendant Interrogatories and it is stamped Dulberg00178. Do you see that document?
A. Yes.
Q. It appears that these were issued by

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Co-Defendants, in other words, the McGuires, does that seem accurate to you?
A. Yes.
Q. So would you have issued interrogatories in addition to what the McGuires' counsel issued?
A. It's probable.
Q. Okay. Do you recall one way or the other today as we sit here?
A. Not other than it's probable I did.
Q. I have not seen those in discovery, so if they exist, we'd ask that they be produced. Do you ever recall talking to Paul about the policy limits of the Gagnon insurance policy?
A. It's a topic that frequently comes up. I don't have an independent recollection.
Q. Would you have any memos or notes on that?
A. I could. I may. I don't have an independent recollection of that.
Q. Okay. And, again, that would have been in the file that -- in Thomas Popovich's file?
A. Correct.
Q. In your knowledge and experience not related to the Dulberg case but just in your general knowledge and experience, are there any situations

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where a homeowner may be strictly liable for someone doing work on their property?
MR. FLYNN: I'm just going to object to the hypothetical being inaccurate and incomplete, also calls for an expert opinion. While this witness is a lawyer, I won't necessarily -- I don't expect to call him as an F-2 or F-3 witness in the case.
THE WITNESS: So you're asking if a homeowner can be strictly liable for an injury?
BY MS. WILLIAMS:
Q. Right.
A. In general terms, not with regard to this case?
Q. No, in general terms. I'm just asking in general terms in your -- based on your experience and knowledge of injury cases.
A. I mean, I think -- Not in Paul's case, but I think I could probably think of something that maybe could be -- as products strict liability, there's hazardous materials strict liability, there's different issues that potentially factually if they're applicable could apply, but not in Paul's case.
Q. Okay. Just in general, what kind of


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hazardous -- When you say hazardous, are you talking about hazardous chemical-type cases?

A. There's a string of cases when you're dealing with hazardous chemicals and hazardous materials, like a bomb or something like that, things like that.

Q. Okay. Okay. Are there any, like, hazardous actions? Could something be considered, like, some type of action be considered hazardous?

A. What do you mean by action? Activity?

Q. Yeah, like, I'm trying to give you an example because I'm just trying to understand it more than anything else. Yeah, is there an activity that you could be doing on your property, I don't know, like, what about tearing down your home, would that be considered -- would that be something that could be hazardous?

A. There would have to be statutory authority for that and there isn't.

Q. Okay. Okay. Okay. So generally for strict liability there has to be some type of statutory authority for that?

A. Or common law. Yeah. They have a particular fact pattern.

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Q. Okay. But this case particularly is simply a negligence case. Paul's case against the McGuires was a simple negligent failure to control case in your opinion?

A. That's what was pled.

Q. Okay. Did you ever make any -- ever consider pleading any other allegations?

MR. FLYNN: Object to the form.

THE WITNESS: I don't -- No. Not that I recall.

MS. WILLIAMS: Okay. Can we take about a 4-minute break?

MR. FLYNN: Sure.

MS. WILLIAMS: Let's just take -- I just want to take a quick break and review my notes and I want to give everybody an opportunity to kind of stretch for a second. I'm going to go on mute.

MR. FLYNN: Okay.

(Whereupon, a break was taken, after which the following proceedings were had:)

MS. WILLIAMS: Let's go back on the record. Okay, thank you everyone. Okay, just a little bit more here.

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Q. On -- When you were talking to Paul about settlement in the general timeframe of November-December 2013, did you ever suggest at that time that he seek alternative counsel or any recommendation related to that?

A. I think that did come up.

Q. Do you recall what your advice to him was or what the discussion was?

A. I think, you know, we always talk about the risks of not settling and further down the road what, you know, having to try the case and having to try prove the case or getting a motion for summary judgment, having the costs exceed the benefits and all that, and I think my position with Paul, since he didn't give a relatively very good deposition, my thought was we were going to have a tough time, an uphill battle, and he can always seek other counsel if he doesn't agree with me.

Q. And you just stated that you thought Paul didn't give a very good deposition, that may not have been your exact language, but roughly that the deposition wasn't great. Can you explain what -- as you recall it, what about the deposition was problematic?

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A. I mean, he even agreed with me, but he just doesn't do a very good job.

Q. You mean -- Can you expand on that a little bit?

A. As a witness, as I recall, again, it's been quite some time, as I recall he was -- his testimony wasn't given -- wasn't strong, it wasn't definite, it didn't have credible points and some points were incredible when compared to other -- other testimony. I mean, there's just a lot -- there was a lot of problems with his testimony.

Q. Okay. Do you recall the circumstances that Paul described as to why he came to the McGuires'?

A. I think he was either going to pick up something or drop something off.

Q. Okay.

A. I don't really recall. I'm just thinking back now.

Q. Okay. Do you recall whether he was asked to come over to help with the tree, to help take down the tree? Was that the purpose of his visit?

A. I don't recall that.

Q. Would it matter as for liability whether it was or wasn't?


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A. As by who? As to whose liability?
Q. I'm sorry, his and McGuires' liability.
A. As to how he got there?
Q. Whether he was -- Whether he was invited for the purpose of assisting with the removal of the tree.
MR. FLYNN: Object to the form. Just invited by whom?
THE WITNESS: Yeah, that's a complicated question, but I don't think --
BY MS. WILLIAMS:
Q. Let me clarify if I can. Okay. So my question was does it matter if the McGuires invited Paul to their residence to remove the tree on that -- on the June -- roughly June, I believe, 2011 date?
MR. FLYNN: Object to the hypothetical.
THE WITNESS: I don't think it matters.
BY MS. WILLIAMS:
Q. Okay. Would it matter if they were paying Paul?
A. That's not the issue. The issue is Dave.
Q. Okay. So the relationship between the McGuires and Paul is somewhat irrelevant?
A. I'm just saying the issue really that --

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about liability is Dave's relationship with them.
Q. Because Dave is the one that controlled the chain saw that injured Paul, is that accurate?
A. He was the one hired to do the work or asked to do the work, however, whatever that background was.
Q. And Caroline and William McGuire both testified that they had never used a chain saw; is that correct?
A. I think that's accurate. I'd have to refresh my memory, but that sounds right.
Q. Okay. Do you remember discussing bankruptcy with Paul?
A. I don't remember that.
Q. Do you remember that Paul filed for bankruptcy? Do you recall that?
A. I saw a -- Maybe I didn't see one. I remember there was some sort of bankruptcy matter. I don't know the dates or when it came up.
Q. Okay. Do you recall if you advised Paul to file for bankruptcy?
A. I don't advise people to file for bankruptcy.
Q. All right. So you would not have advised

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Paul to file for bankruptcy?
A. Would not.
Q. Okay. And then sometime after the McGuire settlement but before the -- but while the Gagnon -- the claims against David Gagnon were still pending you withdrew from the case; is that correct?
A. The law firm did. I -- Again, he hired the law firm.
Q. Sure. Sure. I'm sorry. The Popovich firm withdrew?
A. Right.
Q. And I -- Let's see -- I think we're on Exhibit 14.
THE REPORTER: 15.
MS. WILLIAMS: 15, okay.
Q. I have, I think, one more and then -- Okay, I am uploading Exhibit 15, Dulberg Mast Dep Exhibit 15. It's a motion to withdraw and it's four pages and on the first page it has a Dulberg versus Gagnon case caption and file stamped March 13, 2015. Do you have that document?
A. Yeah.
Q. And this is the Popovich's firm motion to withdraw as counsel for Paul Dulberg in the Dulberg

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versus Gagnon-McGuire case, correct?
A. Yes.
Q. And you drafted or caused this motion to be drafted and filed?
A. Yes.
Q. And was it granted that same day it was filed?
A. I'm sure it had to be noticed up.
Q. Okay. On the notice of motion it looks like it was noticed for March 13, filed on March 13, but sent to the service list on March 5th, does that seem accurate?
A. That's what it says.
Q. But at any rate, you withdrew sometime in roughly March of 2015?
A. It appears that way. Again, I don't have an independent recollection of the date.
Q. Okay. Okay. That's fine. And I didn't see it -- an order actually showing the exact date of when you withdrew. Can you explain why you withdrew from the case?
A. The short version is just we had a difference of opinion.
Q. Can you give me the long version or slightly


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longer?
A. Well, we have difference of opinion but Paul was a bit difficult, so I just had to -- there were a couple times that I told him I was going to withdraw and then he begged me not to and so I didn't, but then ultimately he -- it got pretty -- it got pretty tough. He was saying some unfavorable, unflattering things and I just decided we're not going to get anywhere, I'm going to move on.
Q. Okay, so you -- the client relationship broke down and you withdrew?
A. Yes.
Q. Okay. Was there anything about Gagnon's liability or your thoughts on his liability that would have caused you to withdraw?
A. That was another aspect of it. Paul was looking for the stars and the moon and I didn't see it.
Q. And when you say Paul was looking for the stars and the moon, you mean -- Well, what do you mean by that?
A. He was looking for a lot of money.
Q. Okay, and what was your opinion as to David Gagnon's liability in the case?

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A. I didn't think much of the liability issue. I thought it was going to be a long, tough haul given that --
Q. And --
A. -- Paul was going to be our only witness on our side pretty much.
Q. Okay, and there were no other witnesses other than Paul and David; is that correct?
A. Correct.
Q. And what about -- Anything related to, like, the actual injury, the doctors' depositions or anything like that?
A. That all -- It was the whole ball of wax. The doctors weren't supporting his claim. Dave was saying he's a liar, he tried to bribe him. There was just a lot of -- a lot of bad stuff, not enough good stuff.
Q. Okay, and then at that point you and Paul disagreed and Paul retained alternative counsel?
A. Right.
Q. Okay. Was there anything else about the case that you can recall right now that gave you pause as to the liability either to the McGuires or David Gagnon?

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A. Anything other than what? Pretty much everything was not good.
Q. Okay. I mean, anything that we haven't really discussed here today. We've talked about Paul's testimony, Gagnon's testimony a little bit, the McGuires, the premises liability. We talked -- You mentioned the doctors' depositions. Is that sort of the general gamut of it?
A. That's the whole case.
Q. Okay. Have you ever had any other chain saw liability cases other than this particular case?
A. I'm sure I have. I don't -- If you're going to ask me to name a date, I don't know. I mean, it's not a common issue, but it comes up from time to time.
Q. Okay. Did you state -- Did you seek out a liability expert, a chain saw liability expert, during the time you were representing Paul?
A. No.
Q. Is there a reason for that?
A. That's always a possibility. It's always a consideration, but I had to consider even more whether we could even get to prove a credible case and that was my first object, my first -- my first

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tier. It doesn't do any good to hire an expert if you don't have a good case.
Q. Okay. Okay. If you were going to take the case to trial, at that point would you have hired an expert, chain saw expert?
A. For this case, I don't know. I'd have to look at it again and see what we need to prove, what they're arguing. There's -- As I recall, they weren't arguing the chain saw -- They weren't arguing. He didn't get hit with the chain saw. So I'm not real sure. I'd have to think whether we need to prove -- what we need to prove, anything more than that.
Q. Okay.
A. It was more what happened, who caused it to happen, not that it happened.
Q. Okay. Is there a difference between an independent contractor and an employee?
A. In terms of what? In terms of duty or what?
Q. Right. In terms of the supervisor's duty. So if the Gagnons -- If Gagnon was, and this is a hypothetical, if Gagnon was an employee of his parents as opposed to an independent contractor, would there be a liability difference?


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MR. FLYNN: Object to the hypothetical. It's inaccurate and incomplete.
THE WITNESS: That's a very complicated question, even though it doesn't sound like one. It depends on lots of things.
BY MS. WILLIAMS:
Q. Okay. We've already talked about an independent contractor. So just in your experience and knowledge, what is a supervisor's duty as to an employee? That's actually a really terrible question. Let's strike that question.
Is there a difference -- Is there a difference between the control aspect of -- Would an -- Let me start again. This is a complicated question, more complicated than I'm anticipating right now. Okay.
We've generally established that in order for an -- someone who hires an independent contractor to be liable for the actions of that independent contractor, they would have to control the work. In a situation, an employer-employee situation, is that control element also present when considering liability? Does the employer have to control the work of the employee in the same way?

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A. I think there are --
MR. FLYNN: I just want to raise an objection for the record. I object to the form. I think that the premise of the question indicated that we already established some legal precedent. I don't think that's the case. I don't think that he's testified to that, so, again, I'll just object to the form. But if you can --
THE WITNESS: You're asking me to compare two different theories without a fact pattern, but there's a lot to each issue and it's hard to just say, well, if you have this, then you have that. There's a lot of different facts that apply, but now I'm forgetting what you asked initially about the employer-employee question.
BY MS. WILLIAMS:
Q. So I guess my question to the point of is an employer liable for their employees in a different way than a homeowner would be liable for an independent contractor?
A. I think --
Q. Based on -- You go ahead.
A. I think under the law there are different elements to those actions.

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Q. And there are --
A. Go ahead.
Q. So there would be different elements if something was an employer-employee situation, that would be different law, different case law?
A. Yeah, there's a different cause of action.
Q. Okay.
A. Different elements potentially have to be pled and proved.
Q. Okay. But in this case you were trying to prove -- In Dulberg's case against the McGuires and Gagnon you were trying to show that -- The theory of the case was that Gagnon was not an employee, but an independent contractor, and the McGuires had to control him in order to be liable?
A. Well, that's ultimately what it appeared. You followed the evidence, you follow the facts, so if it turned out it was employee-employer-employee relationship, that's a different evaluation.
Q. Okay. So but, for the most part, you were -- your evaluations of the liability were based on an independent contractor analysis?
A. Well, that's where it went because of the evidence.

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MS. WILLIAMS: Okay. I'm going to go on mute for just a second so you guys don't hear me shuffling papers, but I think I'm almost finished here or may be finished.
MR. FLYNN: Okay.
BY MS. WILLIAMS:
Q. Okay. Just a couple more questions and then we'll wrap things up here. When did you first advise Paul that you didn't think the claims against Gagnon were going to be very strong?
A. Probably day one.
Q. Before the settlement with the McGuires?
A. Yeah.
Q. And did you discuss that several times prior to that McGuire settlement?
A. Like I said, we discussed those issues every time we'd meet, liability issues, damages issues.
Q. Do you recall any particular instances, like maybe after Paul's deposition, after David's deposition, did that stick out in your mind at all?
A. Discussing what, the issues of liability against Gagnon?
Q. Yes.
A. Those are probably something we talked about


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every visit.
Q. Okay. So we discussed this a little bit before, but I believe the testimony was that the McGuires testified that they purchased the chain saw and I believe you said yes, that was your recollection as well; is that correct?
A. That sounds right. I just don't have an independent recollection at this point.
Q. Okay. If the McGuires -- Let's assume that -- Just for the purposes of this, let's assume that the McGuires did -- it was their chain saw, they purchased it and let Gagnon use it on their property. Would they have any duties to share the manual of that chain saw with Gagnon or provide any other education as to the use of the chain saw to Gagnon?
A. All right, so you're asking me to make a judicial decision whether they had a duty or not?
Q. No, I'm asking you in your experience with these types of cases is there any duty there for them.
A. All right, so a legal duty?
Q. Right. Right. And -- Go ahead, George.
MR. FLYNN: Yeah, I'll just object. I mean, there isn't any evidence that Gagnon asked for a

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manual, for one, but as far as him providing legal opinions not based on the facts of this case, I'm just going to caution him not to provide what could be considered an expert opinion.
THE WITNESS: You don't want me to answer?
MR. FLYNN: It's up to you. I don't know if you can.
THE WITNESS: I don't remember the question. You're asking me should the McGuires have given Gagnon the manual to the chain saw?
BY MS. WILLIAMS:
Q. Yes.
A. Sure, if he asked for it or if they wanted to give it to him.
Q. Are there any other warnings that they should have provided?
A. See, I mean, you're asking me to -- I get the question, but I'm saying you're asking me to evaluate the conduct of both parties and interpret something and I don't know that that's my position as a witness, but should they have warned him? You know, sure, go ahead and warn him, but obviously when you take on a piece of equipment that you're skilled and experienced in operating, you should be able to

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operate it effectively yourself safely.
Q. Sure. Okay. And --
A. So I mean --
Q. Okay. But today you're not giving an opinion one way or the other whether they had a duty to provide warnings, whether they had a duty to provide the manual, fair enough?
A. Yeah, legal wise, no, I'm not giving you a legal opinion on that.
MS. WILLIAMS: Okay. Okay, I don't think I have anything further.
MR. FLYNN: I actually have just a few follow-ups to that.
MS. WILLIAMS: Sure.
EXAMINATION
BY MR. FLYNN:
Q. Hans, is your understanding based on the evidence that there were only two eyewitnesses to Mr. Dulberg's accident, correct?
A. Correct.
Q. That was Mr. Dulberg himself and David Gagnon?
A. Correct.
Q. And did you have an understanding as to how

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the evidence and testimony shook out as to each gentleman's version of the accident and how it occurred?
A. Well, as I said before, I thought Paul's case was going to be very difficult to prove based on the testimony of everybody, credibility issues, and the lack of evidence to support and prove.
Q. David Gagnon's testimony regarding the facts surrounding the accident differed from Paul Dulberg's version of the facts, correct?
A. Correct.
Q. You took that into account in your evaluation and analysis of the case?
A. Definitely.
Q. Did you also take into account your professional analysis of Paul Dulberg's performance as a witness at his discovery deposition?
A. Definitely.
Q. You didn't think he made a very good witness for himself, did he?
A. He even admits he didn't and I don't think he -- I think -- that was one of the worst -- that was one of my worst fears with this case. I had lots of cases and on a scale of weak witnesses, he's


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probably up at the top, and I'm not putting him down, that's just a reality and I think he even acknowledged that reality.

Q. Okay. Not everyone is a professional witness?

A. Right.

Q. Okay. Generally speaking, your evaluation of the case hinged in part on whether the McGuires controlled the manner and method of the use of the chain saw, correct?

A. Right.

Q. Do you have any recollection as to what the McGuires were doing while the work was being done?

A. They were inside the house, just another day to them. They weren't even -- I don't think even paying attention to what was going on outside.

Q. Did Mr. McGuire testify that he was watching television inside the house while David was working on the tree?

A. They were both inside as I recall.

Q. Your recommendation or suggestion that Mr. Dulberg settle the case for $5,000 was based on your analysis of the entire case, including the risks and benefits of going forward and potentially losing

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the case at trial, correct?

A. Yes.

Q. Did you have any way to predict whether the case would result in a verdict on behalf of the plaintiff in the case against the McGuires?

A. I'm sorry?

Q. Did you have any -- Did you have any certainty as to whether Mr. Dulberg could prevail at trial on liability against the McGuires?

A. I would have staked a lot that we would not have recovered in the case and just something that didn't come up with the direct is they didn't offer the arbitrator to me. That was something that was later decided. I talked to them about that. They did not offer that to me, so that was not an option to me.

Q. So you were -- Based on your professional judgment, you suggested that you attempt to settle the matter as opposed to taking it to trial versus the McGuires, correct?

A. Right.

MR. FLYNN: Okay. That's all I have.

MS. WILLIAMS: I have no follow-up.

THE REPORTER: Signature?

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THE WITNESS: I'll waive signature.

MS. WILLIAMS: We'll order the original, E-tran.

MR. FLYNN: I'll take a regular and a mini copy.

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DECLARATION UNDER PENALTY OF PERJURY

I, HANS MAST, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 25, 2020; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____, 20__, at _____, Illinois.

_____

HANS MAST



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STATE OF ILLINOIS }
} SS:
COUNTY OF C O O K }

I, Barbara G. Smith, Certified Shorthand Reporter and Notary Public in and for the County of Cook, State of Illinois, do hereby certify that on the 25th of June, A.D., 2020, the deposition of the witness, HANS MAST, called by the Defendants, was taken remotely before me, reported stenographically and was thereafter reduced to typewriting through computer-aided transcription.

The said witness, HANS MAST, was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.

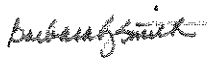
I further certify that the foregoing is a true, accurate and complete record of the questions asked of and answers made by the said witness, at the time and place hereinabove referred to.

The signature of the witness was waived by agreement.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.



Witness my official signature and seal as Notary Public, in and for Cook County, Illinois on this 7th day of July, A.D., 2020.



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

Exhibit 1
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith



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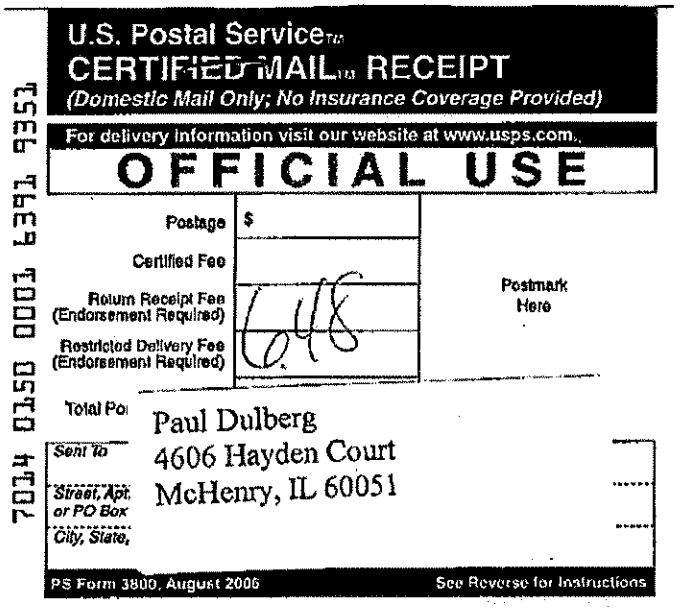

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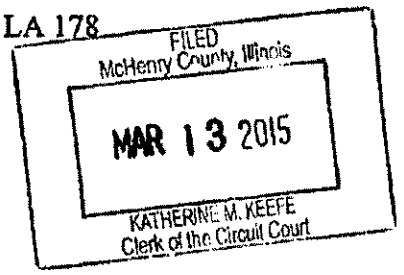
IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually,<br><br>Defendants. | ) | No. 12 LA 178 |




**MOTION TO WITHDRAW AS COUNSEL**

NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.

2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.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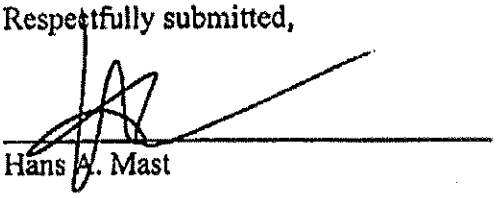
WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,



Hans A. Mast

**LAW OFFICES OF THOMAS J. POPOVICH**
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070



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Exhibit 2
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,<br><br>Defendants. | ) | No.: 12LA178 |

**COMPLAINT**

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

**Count I**

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 204 ON 11/8 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ON
20 , AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.



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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.





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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.





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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.





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## Count II

**Paul Dulberg vs. Caroline McGuire and Bill McGuire**

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.





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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.





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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
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(815) 344-3797
ARDC No. 06203684





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STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,<br><br>Defendants. | ) | No.: |

AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.

2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
Page 251 of 464

# MEMORANDUM

TO: Tom, Marla, Diana and Alarie

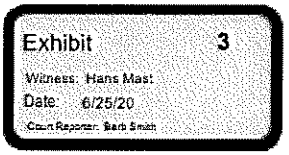
FROM: Hans

DATE: December 5, 2011

SUBJECT: **PAUL DULBERG - NEW CLIENT**

HAM
B/C the accident occurred on their premises, their H.O. med-pay will cover the bills.

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.




Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took and EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return



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to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn $12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans

S:\Main\DULBERG, PAUL\Memos\Memo re new client 12-5-11.wpd



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3416 W. Elm Street
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www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED

October 22, 2013

**VIA FACSIMILE: 815/226-7701**

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

**RE:** ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

**HANS A. MAST**

smq

Exhibit 4
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085



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** Transmit Conf.Report **

P.1 Oct 22 2013 12:24pm
LAW OFFICE T POPOVICH Fax 1-815-344-5280

| Fax/Phone Number | Mode | Start | Time | Page | Result | Note |
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The Law Offices of Thomas J. Popovich P.C.

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McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kokinak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

October 22, 2013

**VIA FACSIMILE: 815/226-7701**

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

**RE:** ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085



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XFINITY Connect

hansmast@comcast.ne

+ Font Size -

**Re: Medical depositions**

**From :** Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

**Subject :** Re: Medical depositions

**To :** Paul Dulberg <pdulberg@comcast.net>

**Cc :** Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon’s acts.
Both of these issues are strongly contested in your case.
As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.
As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.
Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn’t really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.
Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury.
Think about these issues. I will provide you Dr. Sagerman’s summary soon.
Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans,Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind.I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.Let me know,Thanks,Paul

Paul Dulberg847-497-4250Sent from my iPad

Exhibit 5
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 5, 2013 at 9:46:33 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: 3 pm meeting**

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

http://www.sdmmag.com/articles/print/success-stories-in-integrating-video-surveillance

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> no chance, sorry
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
> Subject: Re: 3 pm meeting
> Also,
> Any chance the hospital (centegra) has video of their parking lots?
> This could disprove David's claim of talking before entering the ER.
> Thanks,
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> No need to bring anything, your mom is welcome...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
>> Subject: 3 pm meeting
>> Hi Hans,
>> Curious if I should bring anything with me at 3 pm?
>> Mind if my Mom comes along?
>> Thanks and see you soon,
>> Paul
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad

Exhibit 6
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

XFINITY Connect

hansmast@comcast.ne

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**Re: Dave's Best and oldest friend John**

**From :** Paul Dulberg <pdulberg@comcast.net> Tue, Nov 19, 2013 02:29 AM

**Subject :** Re: Dave's Best and oldest friend John

**To :** Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>
> Sent from my IPhone
>
>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>
>> Only 5, That's not much at all.
>> Is this a take it or leave it or do we have any other options?
>>
>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>
>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.
>>
>> They all left me out in the yard screaming for help while they were busy making sure they were covered.
>>
>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.
>>
>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.
>>
>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.
>>
>> I'm not happy with the offer.
>>
>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.
>>
>> Paul
>>
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad
>>
>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>>>
>>> Im waiting to hear from John. I tried calling him last week, but no one answered.
>>>
>>> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

Exhibit 7
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith



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some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>>>
>>> Let me know what you think..
>>>
>>> Hans
>>> ----- Original Message -----
>>> From: Paul Dulberg <pdulberg@comcast.net>
>>> To: Hans Mast <hansmast@comcast.net>
>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
>>> Subject: Dave's Best and oldest friend John
>>> Hans,
>>> Just spoke with John Choyinski again about talking with you.
>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
>>> I believe he will try and call sometime tomorrow.
>>> Paul
>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.
>>> Paul Dulberg
>>> 847-497-4250
>>> Sent from my IPad

---



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CICERO, FRANCE, BARCH & ALEXANDER, P.C.
A Professional Corporation
Attorneys at Law
6323 EAST RIVERSIDE BOULEVARD
ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700
FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

**Case:** *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

**Issued For Settlement Purposes Only**

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of $5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipating any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,

RONALD A. BARCH

RB:mj\37ltr.HAM
cc Tom Malatia (Claim No. 13-2779-11)
Encl.

Exhibit 8
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

# MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

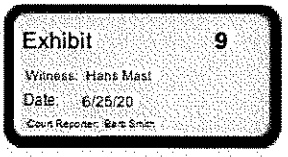
SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans



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# MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGuric's and he is willing to take their $5,000 settlement offer.

Exhibit 10
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Sara Smith



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www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED 12/27

December 26, 2013

**VIA FACSIMILE: 815/226-7701**

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

**RE:** ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Mr. Barch:

Please be advised that we will accept your $5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Exhibit 11
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

*Waukegan Office*
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085



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debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dizon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").

283 Ill.App.3d 126

669 N.E.2d 645

**Fernando LAJATO, Plaintiff–Appellant,**

**v.**

**AT & T, INC., Defendant–Appellee, and Third Party Plaintiff (Quinn Delivery Service, Inc., Third Party Defendant).**

**No. 1–95–0447.**

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured when loading telephone company's battery hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

1. **Judgment** ⇐321, 386(1)

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2–1203.

2. **Motions** ⇐39

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2–1203.

3. **Appeal and Error** ⇐344

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

4. **Judgment** ⇐186

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2–1203; Sup. Ct.Rules, Rule 104.

5. **Appeal and Error** ⇐893(1), 1073(1)

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court



did not need to [illegible] consider merit of [illegible] mary judgment [illegible] appellate court [illegible]

6. Negligence ⇐
Independent [illegible] personal injury [illegible] theory of premis[illegible] injured in [illegible] condition of defec[illegible]

7. Appeal and E[illegible]
Appellate [illegible] mary judgment [illegible]

8. Judgment ⇐
Negligence ⇐
To withstand [illegible] must in acti[illegible] must allege fact[illegible] defendant owed [illegible] breached that [illegible] proximately resulted [illegible]

9. Negligence ⇐
Telephone [illegible] made duty [illegible] care its battery [illegible] independent [illegible] knew when had [illegible] of loosening [illegible] usual. Exercise [illegible] must, and ther[illegible] phone company [illegible] grappling was [illegible] contractor [illegible] safety of strai[illegible] at Torts § 323.

10. Negligence
Whether [illegible] was [illegible] by [illegible] Torts § 323

11. Bailment
Telephone [illegible] gratuitous ba[illegible] independent [illegible] motor on bat[illegible] motor was [illegible] where contrac[illegible] or than inadv[illegible]

Exhibit 12
Witness: Rana Mist
Date: 6/25/20

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d not need to remand to allow trial court to nsider merit of motion, as grant of sum- ary judgment required de novo review by ppellate court to determine question of law.

**Negligence ⇐36**

Independent contractor could not base rsonal injury action against defendant on eory of premises liability, where he was jured in bed of his truck and not due to any ndition of defendant's premises.

**Appeal and Error ⇐893(1)**

Appellate review of order granting sum- ary judgment is de novo.

**Judgment ⇐185(2)**

**Negligence ⇐1**

To withstand motion for summary judg- ent in action based in negligence, plaintiff ust allege facts sufficient to show that de- ndant owed him a duty, that defendant reached that duty, and that his injury proxi- ately resulted from that breach.

**Negligence ⇐20**

Telephone company did not voluntarily ndertake duty to properly maintain and se- re its battery hoist for transport, where dependent contractor, who was injured by ist when loading it for transport as result loosening of strap securing motor, had tal discretion in preparing and moving ist, and there was no evidence that tele- one company had strapped motor, that rapping was undertaken as protection for ntractor, or that contractor relied upon fety of strapping. Restatement (Second) Torts § 323.

**Negligence ⇐136(14)**

Whether a duty has been voluntarily ndertaken is question of law to be deter- ined by court. Restatement (Second) of orts § 323.

**Bailment ⇐35**

Telephone company was not liable as ratuitous bailor for injuries sustained by dependent contractor when strap securing otor on battery hoist loosened when con- ractor was loading hoist for transport, here contractor presented no evidence oth- r than inadmissible hearsay rumors to show either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

**12. Appeal and Error ⇐169**

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

**13. Bailment ⇐9, 21**

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

**14. Judgment ⇐185(1)**

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

**15. Pleading ⇐236(6)**

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

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Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.



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William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based upon the undisputed facts, it was clear that [illegible] owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own expertise to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately [illegible] pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor and hoist accessories suspended from the middle of the frame. The hanging motor and accessories could be pulled to one side of the hoist frame and secured thereto with a nylon strap and a chain, both of which were permanently attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and the chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10-15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that brief conversation, plaintiff had no further discussions with anyone, AT & T employees or otherwise, until after the accident. [illegible]

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intiff approached the hoist, he observed t its motor and accessories were already apped and secured to the hoist's frame. also testified that he personally examined strap to ensure that the hanging appara- was firmly secured to the frame of the st with the nylon strap and the motor ain before attempting to move the hoist. intiff then wheeled the hoist to the back his truck and onto his truck's hydraulic lift form, which he had lowered to ground- el in order to lift the hoist into his truck. er raising the lift and the hoist from und-level up to the truck's bed, plaintiff bed into the truck bed and began to pull hoist into the bed.

Plaintiff further testified that while pulling hoist into the truck, the strap around the or and hoist accessories loosened for rea- beyond his knowledge, permitting the or and the accessories to swing free and weight of the hoist to shift towards him. ediately thereafter, the hoist fell onto tiff, causing him various injuries. Plain- stated that there were no known wit- es to the accident. He also stated that t, two months after the accident, he d from an AT & T installer that certain laborers at AT & T had told him that plaintiff's accident, they would not use hoist because it was unsafe, and that AT ultimately shipped the hoist back to the facturer.

addition to plaintiff's deposition testimo- AT & T submitted the Quinn–AT & T ery contract in support of its motion for mary judgment. That contract reveals Quinn, through its own independent con- tors, performed moving services for de- ant AT & T. The contract required n to

eceive, pick up, load, transport, unload, d deliver telephone equipment and other terial (the "Material"), and perform the er services provided for in this agree- ent as ordered by [AT & T] from April 1, 87 to March 31, 1989."

contract further provided that Quinn or gents

hall have the sole and exclusive care, ustody and control of the Material from the time it is tendered to [Quinn], [Quinn's] agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court



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sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

## *I. JURISDICTION:*

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood*, 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1–3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or, if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2–1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2–1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer*, 208 Ill. App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencl–Tufo Chevrolet*, 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho–Deen, Inc. v. Michel*, 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2–1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer.*

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30–day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2–1203, the timely filing of a certificate of service is



jurisdictional, [illegible] reconsider cannot [illegible] timely filed, then [illegible] case, filed more tha[n] entry of the summa[ry] be untimely pursu[ant] leave this court w[ith]out tion.

The rule is clea[r] certificate of service of a motion to reco[nsider] been specifically pr[ovided] preme Court Rule [303] which provides at pa[rt]

"(b) Filing of Pap[ers] Pleadings subseq[uent] written motions, a[nd] to be filed shall be a certificate of co[unsel] copies have been s[erved] have appeared * *

* * *

(d) Failure to del[iver] required by this r[ule] impair the jurisd[iction] the person of any party may obtain and the court sh[all] party to reimburse the expense thereo[f]. (d) (Emphasis adde[d]

Thus, under Rule [303] deliver or serve copi[es] jurisdiction of the co[urt] applied to post-trial [motions] *nage of Collins*, 154 Dec. 109, 506 N.E.2[d] *Kollath v. Chicago T* Ill.App.3d 353, 321 N[.E.2d] held that the failure [to] vice with a post-trial date the motion or re[ply]

Defendant contends addresses the failure of the motion but do[es] are to file a certificat[e] motion is devoid of failure to serve will p[rejudice] certificate, unless the [court] pare himself. Thus, if serve notice does n[ot]

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[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

> "Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

## *II. MERITS:*

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)).[1]

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2–1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 598 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. *E.g., Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 478, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.*, 271 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

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jurisdictional, without which the motion to reconsider cannot be deemed to have been timely filed, then the notice of appeal in this case, filed more than three months after the entry of the summary judgment order, would be untimely pursuant to Rule 303(a) and leave this court without appellate jurisdiction.

The rule is clear that the absence of a certificate of service will not vitiate the filing of a motion to reconsider. This matter has been specifically preempted by Illinois Supreme Court Rule 104 (134 Ill.2d Rule 104), which provides at parts (b) and (d) as follows:

"(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

* * * * * *

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to deliver or serve copies does not impair the jurisdiction of the court. This rule has been applied to post-trial motions in *In re Marriage of Collins*, 154 Ill.App.3d 655, 107 Ill.Dec. 109, 506 N.E.2d 1000 (1987) and in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which held that the failure to include proof of service with a post-trial motion will not invalidate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the failure to file a certificate of service. This contention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to perjure himself. Thus, if the failure to actually serve notice does not impair jurisdiction, then *a fortiori*, the failure to serve a certificate of service will not impair the validity or timeliness of the motion. See *In re Marriage of Collins*.

Defendant's reliance on *Vlahakis v. Parker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357–58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.



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(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 605 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evidence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overridingly, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11-13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill.App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).



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[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2-1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(g) (West 1994)) provides as follows:

"(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 629 N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 394, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

"MR. JOHNSON [Plaintiff's attorney]: I set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [*sic*] case, that once undertakes a duty to do something, they do so negligently, and someone is injured they are absolutely liable.

* * * * * *

If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [*sic*] undertaking is not proper here



There will be no
position."

The court denied p
stating that "It's a
motion [to amend]."

We first note tha
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*Mankin v. Bucher*

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There will be no new deps. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record could be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 87 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 2, 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there is ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would dictate for summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248 Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur.* The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2–1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville.* Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance



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of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut.*

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, Illinois Practice, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City Belleville.* As previously noted, the fa submitted here are insufficient to raise su an inference. Hence, we find that the tr court's denial of the motion to amend was an abuse of discretion. See *Regas v. Asso ated Radiologists, Ltd.*, 230 Ill.App.3d 9 172 Ill.Dec. 553, 595 N.E.2d 1223 (19 (where a cause of action cannot be sta even after amendment, leave to am should be denied).

For the foregoing reasons, the judgment the Circuit Court of Cook County is affirm

McNULTY, P.J., and HOURIHANE, J. concur.

283 Ill.App.3d 112
669 N.E.2d 655

**The PEOPLE of the State of Illinois, Plaintiff-Appellee,**

**v.**

**Vernetta CASSELL, Defendant-Appellant.**

**The PEOPLE of the State of Illinois, Plaintiff-Appellee,**

**v.**

**Curlee SIMMONS, Defendant-Appellan**

**Nos. 1-94-2782, 1-95-1380.**

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Cir Court, Cook County, John J. Moran, J., aggravated criminal sexual assault, and defendant was convicted of additional cri of home invasion and aggravated kidnapp Defendants appealed. The Appellate Co McNulty, P.J., held that: (1) circuit co had adequate basis for its determination t victim was not entitled to assert privile



gainst self-incrimination; ficient evidence that defer reat of force in order t urse with victim to sup ggravated criminal sexua s sufficient evidence th confined victim to supp pping conviction; (4) enied effective assistan efendant who drove vehi ault occurred was cri the assault; and (6) e emergency room nurse that victim identified d who dragged her fr rmless error.

Affirmed.

1. Witnesses ⇐297(13.1)
Trial court had adeq on for aggravated cri its determination th led to assert Fifth A nst self-incrimination t did not conduct he ther victim's testimon , where, in response t s as to why she wan e, victim never expres of being charged wit she could not remem rly. U.S.C.A. Const.

2. Witnesses ⇐297(1)
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3. Witnesses ⇐297(1)
Although witness i ilege to refuse to an to incriminate him ured by Fifth Amend se instances where wi se to believe he or self or herself to pro swers. U.S.C.A. Cons

4. Witnesses ⇐297(1)
Once witness asser endment privilege no f or herself, trial cou

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laintiff approached the hoist, he observed t its motor and accessories were already apped and secured to the hoist's frame. e also testified that he personally examined e strap to ensure that the hanging appara- was firmly secured to the frame of the st with the nylon strap and the motor ain before attempting to move the hoist. laintiff then wheeled the hoist to the back his truck and onto his truck's hydraulic lift form, which he had lowered to ground- el in order to lift the hoist into his truck. er raising the lift and the hoist from ound-level up to the truck's bed, plaintiff bed into the truck bed and began to pull hoist into the bed.

Plaintiff further testified that while pulling hoist into the truck, the strap around the or and hoist accessories loosened for rea- beyond his knowledge, permitting the r and the accessories to swing free and weight of the hoist to shift towards him. ediately thereafter, the hoist fell onto tiff, causing him various injuries. Plain- stated that there were no known wit- s to the accident. He also stated that two months after the accident, he d from an AT & T installer that certain laborers at AT & T had told him that plaintiff's accident, they would not use hoist because it was unsafe, and that AT ultimately shipped the hoist back to the facturer.

addition to plaintiff's deposition testimo- AT & T submitted the Quinn–AT & T ry contract in support of its motion for ary judgment. That contract reveals Quinn, through its own independent con- ors, performed moving services for de- nt AT & T. The contract required n to

eceive, pick up, load, transport, unload, d deliver telephone equipment and other terial (the "Material"), and perform the her services provided for in this agree- nt as ordered by [AT & T] from April 1, 87 to March 31, 1989."

contract further provided that Quinn or gents

hall have the sole and exclusive care, ustody and control of the Material from the time it is tendered to [Quinn], [Quinn's] agents or servants, until it is delivered to and accepted by [AT & T] * * *."

In his response to AT & T's motion for summary judgment, plaintiff argued that AT & T had voluntarily assumed and breached a duty to him to keep its premises safe and to maintain the hoist such that it would not do harm to those moving it. In support of his position, plaintiff attached additional excerpts from his own deposition, pointing to his testimony that the AT & T hoist's motor and accessories were already secured to the frame of the hoist by the nylon strap and the motor chain when he arrived at the site to move the hoist. He also referred to his testimony that there was no motor lock securing the motor to the frame, and that the motor and accessories would not have swung free after the strap loosened if there had been such a motor lock.

In a hearing on July 27, 1994, the trial court granted AT & T's motion for summary judgment with prejudice. Later at that same hearing, the trial court heard plaintiff's oral request for leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 1LCS 5/2–1005(g) (West 1994)), where plaintiff argued that he should be allowed to amend his complaint to show that AT & T voluntarily undertook to secure the hoist and did so negligently. The court denied plaintiff's motion to amend, stating as its reason that "[i]t's an '89 case."

On August 25, 1994, within 30 days of the July 27 order granting summary judgment and denying leave to amend, plaintiff filed a motion to reconsider. However, plaintiff did not serve AT & T with that motion until September 18, 1994, at which time he transmitted that motion to AT & T via facsimile at AT & T's request. No notice of motion was served upon AT & T until November 9, 1994, and plaintiff did not file a certificate of service for that motion until November 17, 1994.

AT & T subsequently filed a motion objecting to plaintiff's motion to reconsider, arguing that the trial court had no jurisdiction to hear it based on plaintiff's failure to file a proof of service within 30 days of the July 27 order. On January 13, 1995, the trial court



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debridement and skin grafting. In *Fomond*, a two-and-one-half-year-old girl sustained third-degree burns that required at least seven surgeries, including two skin grafts and continued physical therapy even several years after receiving the burns. In *Negrete*, a 17-month-old baby boy sustained burns from hot water, resulting in permanent scarring across 60% of his body and, due to the burning of his genital area, possible permanent damage to his reproductive capacity. In *Rogers*, the defendant poured grain alcohol on top of the female victim's head and then threw a lit match at her, causing her head, face, chest and pants to ignite.

In light of the above-cited case law, I would reverse defendant's conviction for heinous battery.

Defendant was properly convicted of aggravated battery against a child, however, no sentence was imposed for that crime. If a reviewing court reverses a conviction on which the sentence was imposed, it can remand for sentencing on a conviction on which no sentence was imposed. Such process has been approved in *People v. Dixon*, 91 Ill.2d 346, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982) and *People v. Frantz*, 150 Ill.App.3d 296, 300, 103 Ill.Dec. 649, 501 N.E.2d 966 (1986) ("[i]f the reviewing court acts to affirm the incomplete judgment of conviction, the reviewing court then must remand the cause for imposition of sentence").

283 Ill.App.3d 126

669 N.E.2d 645

**Fernando LAJATO, Plaintiff–Appellant,**

**v.**

**AT & T, INC., Defendant–Appellee, and Third Party Plaintiff (Quinn Delivery Service, Inc., Third Party Defendant).**

**No. 1–95–0447.**

Appellate Court of Illinois,
First District, Fifth Division.

Aug. 9, 1996.

Independent contractor who was injured when loading telephone company's battery hoist for transport brought negligence action against telephone company. The Circuit Court, Cook County, Anthony J. Bosco, J., granted summary judgment for telephone company. Contractor appealed. The Appellate Court, Gordon, J., held that: (1) contractor's motion for reconsideration was timely; (2) telephone company had not voluntarily undertaken duty to properly maintain and secure battery hoist for transport; (3) telephone company was not liable as gratuitous bailor; and (4) trial court did not abuse its discretion by denying contractor's motion to amend his complaint.

Affirmed.

**1. Judgment ⇐321, 386(1)**

Posttrial motion must be filed within 30 days of final judgment or trial court will lose jurisdiction to modify or vacate final order which it entered after lapse of 30 days. S.H.A. 735 ILCS 5/2–1203.

**2. Motions ⇐39**

Motion to reconsider is posttrial motion, and therefore falls within purview of post-judgment motions which must be filed within 30 days after challenged judgment is entered. S.H.A. 735 ILCS 5/2–1203.

**3. Appeal and Error ⇐344**

Only if posttrial motion is timely filed will it extend time for filing notice of appeal. Sup.Ct.Rules, Rule 303(a)(1).

**4. Judgment ⇐186**

Motion to reconsider filed within 30 days of entry of summary judgment was timely, although no certificate of service was filed until well after 30 days of entry of summary judgment. S.H.A. 735 ILCS 5/2–1203; Sup. Ct.Rules, Rule 104.

**5. Appeal and Error ⇐893(1), 1073(1)**

Although trial court did not entertain motion for reconsideration of summary judgment in erroneous belief that it did not have jurisdiction to hear motion, appellate court

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d not need to remand to allow trial court to nsider merit of motion, as grant of sum- ary judgment required de novo review by ppellate court to determine question of law.

**Negligence ⇐36**

Independent contractor could not base ersonal injury action against defendant on eory of premises liability, where he was ured in bed of his truck and not due to any ndition of defendant's premises.

**Appeal and Error ⇐893(1)**

Appellate review of order granting sum- ary judgment is de novo.

**Judgment ⇐185(2)**

**Negligence ⇐1**

To withstand motion for summary judg- ent in action based in negligence, plaintiff ust allege facts sufficient to show that de- ndant owed him a duty, that defendant reached that duty, and that his injury proxi- ately resulted from that breach.

**Negligence ⇐20**

Telephone company did not voluntarily dertake duty to properly maintain and se- re its battery hoist for transport, where dependent contractor, who was injured by ist when loading it for transport as result loosening of strap securing motor, had al discretion in preparing and moving ist, and there was no evidence that tele- one company had strapped motor, that apping was undertaken as protection for ntractor, or that contractor relied upon fety of strapping. Restatement (Second) Torts § 323.

**Negligence ⇐136(14)**

Whether a duty has been voluntarily dertaken is question of law to be deter- ined by court. Restatement (Second) of rts § 323.

**Bailment ⇐35**

Telephone company was not liable as ratuitous bailor for injuries sustained by dependent contractor when strap securing otor on battery hoist loosened when con- actor was loading hoist for transport, here contractor presented no evidence oth- than inadmissible hearsay rumors to show either defect in hoist or that telephone company knew or should have known of any dangerous propensities in hoist.

**12. Appeal and Error ⇐169**

Contentions not raised in trial court are waived on appeal, even in summary judgment case.

**13. Bailment ⇐9, 21**

Gratuitous bailor may be liable for physical harm caused by use of chattel when he knows or has reason to know that chattel is or is likely to be dangerous when put to use for which it was supplied, has no reason to believe that those for whose use chattel is supplied will realize its dangerous condition, and fails to exercise reasonable care to inform user of its dangerous condition or of facts which make it likely to be dangerous.

**14. Judgment ⇐185(1)**

Unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment.

**15. Pleading ⇐236(6)**

Trial court did not abuse its discretion by denying motion of independent contractor, who was injured when loading telephone company's battery hoist for transport, to amend his complaint to allege more specifically facts that there was voluntary undertaking by telephone company, after trial court granted summary judgment for telephone company, where issue was not that complaint was deficient in its framing of issues but that evidence presented in support of voluntary undertaking theory failed to establish genuine issue of material fact, and amendment would be prejudicial to telephone company in that amendment was sought on eve of trial and five years after inception of lawsuit, with no explanation as to why contractor never before attempted to develop facts necessary to withstand telephone company's summary judgment motion.

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Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London, Harvey L. Walner & Associates, Chicago (Alvin R. Becker, Harvey L. Walner, Christopher A. White, of counsel), for Appellant.



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William F. DeYoung, Loretto M. Kennedy, Carole C. Tubbesing Burke, Weaver & Prell, Chicago, for American Telephone & Telegraph.

Justice GORDON delivered the opinion of the Court:

This is an action for damages brought by the plaintiff, Fernando Lajato, arising from injuries he incurred while working as an independent contractor for third-party defendant Quinn Delivery Service, Inc. (Quinn) to move a battery hoist owned by defendant AT & T. AT & T filed a contingent third-party complaint against Quinn, not at issue in this appeal, seeking indemnification pursuant to the delivery service contract between Quinn and AT & T, in the event plaintiff recovered a judgment in his tort action against AT & T. AT & T subsequently filed a motion for summary judgment against plaintiff which the trial court granted. In that order, the court also denied plaintiff's oral motion requesting leave to amend his complaint. Subsequently, plaintiff filed a motion to reconsider, which the court ultimately struck by reason of its alleged lack of jurisdiction to hear it. Plaintiff appeals from the orders granting summary judgment to AT & T, denying his motion to amend his complaint, and refusing to hear his motion to reconsider. AT & T has moved to dismiss this appeal for lack of appellate jurisdiction.

In November 1989, plaintiff filed a complaint against AT & T, wherein he alleged that on July 1, 1988, he was on the premises of AT & T on behalf of Quinn in order to move an AT & T battery hoist. The complaint further alleged that while performing that task, the hoist fell upon him, causing him injuries for which he sought damages. The complaint averred that AT & T was negligent in its failure to maintain, inspect, and repair the battery hoist, and for AT & T's failure to warn plaintiff of the propensity of the hoist to fall. In April 1990, AT & T filed its answer, specifically denying each basis for recovery alleged in plaintiff's complaint. The matter was scheduled for trial in June 1995.

On April 25, 1994, AT & T filed a motion for summary judgment, alleging that, based upon the undisputed facts, it was clear that [illegible] owed no duty of care to plaintiff with respect to his injuries. In support of its motion, AT & T submitted excerpts of the deposition testimony of plaintiff and a copy of the delivery services contract between AT & T and Quinn. In his deposition, plaintiff testified that on the date of the accident, July 1, 1988, he was making pick-ups and deliveries of telephone equipment at various AT & T locations as an independent contractor for Quinn. He stated that he had received instructions from Quinn via radio to go to an AT & T property in Rolling Meadows, Illinois, the scene of the accident, to pick up a battery hoist and to transport it to another AT & T location in Rockford, Illinois. Approximately 99% of plaintiff's delivery work for Quinn involved pick-ups and deliveries of AT & T equipment. The plaintiff stated that AT & T did not direct him in his moving work, but rather, allowed him to use his own expertise to determine how each move would be accomplished.

Plaintiff further testified that the battery hoist, which weighs approximately [illegible] pounds, was used to lift batteries weighing approximately 300 pounds up onto shelves. Plaintiff described the hoist as being rectangular in shape, on wheels, and consisting of a large, black metal frame with a motor and hoist accessories suspended from the middle of the frame. The hanging motor and accessories could be pulled to one side of the hoist frame and secured thereto with a nylon strap and a chain, both of which were attached to the hoist, in order to stabilize the hoist during transport and when not in use to perform its battery-lifting function. It was plaintiff's customary practice to inspect the hoist to ensure that the motor and accessories were firmly secured with the strap and the chain prior to moving the hoist. Plaintiff had moved this particular hoist on at least 10–15 different occasions.

Plaintiff's deposition further revealed that when he reached the AT & T Rolling Meadows location, an AT & T employee directed him to the hoist, and that after that brief conversation, plaintiff had no further discussions with anyone, AT & T employees or otherwise, until after the accident.

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sustained AT & T's objection, finding that it had no jurisdiction to hear plaintiff's motion to reconsider, and therefore did not address the merits of that motion. On January 25, 1995, within 30 days of the trial court's January 13 order, plaintiff filed his notice of appeal, both from that order and from the July 27, 1994 order granting summary judgment and denying plaintiff leave to amend.

Plaintiff contends on appeal that the trial court erred in granting summary judgment because by improperly securing the battery hoist for transport, AT & T negligently performed a voluntary undertaking, and because as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that the trial court abused its discretion in denying him leave to amend his complaint after the grant of summary judgment.

*I. JURISDICTION:*

Before reaching plaintiff's contentions on appeal, we must first address defendant's motion to dismiss this appeal for want of appellate jurisdiction. *Bell Federal Savings & Loan Ass'n v. Bank of Ravenswood*, 203 Ill.App.3d 219, 148 Ill.Dec. 559, 560 N.E.2d 1156 (1990). In its motion to dismiss, AT & T contends that plaintiff's failure to file a proof of service with its August 25, 1994 motion to reconsider prevents this court from reviewing either of the trial court's July 27 or January 13 orders. Defendant argues, somewhat obliquely, that plaintiff's motion to reconsider should not be considered as being timely filed, because it was not accompanied by a proof of service, and as a result, the trial court was correct in stating that it had no jurisdiction to consider it. Consequently, defendant would urge that the motion to reconsider did not have the effect of extending the time for filing plaintiff's notice of appeal beyond the initial 30 day period following entry of the summary judgment order. See Illinois Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)) (discussed more fully below). We disagree.

[1-3] Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days after the entry of the final judgment from which the appeal is taken, or, if a timely post-trial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending post-trial motion. (134 Ill.2d R. 303(a)(1)). Under section 2-1203 of the Illinois Code of Civil Procedure, a post-trial motion must be filed within 30 days of a final judgment. 735 ILCS 5/2-1203 (West 1994). Otherwise, the trial court will lose jurisdiction to modify or vacate the final order which it entered after the lapse of 30 days. *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 83 Ill.Dec. 332, 470 N.E.2d 290 (1984); *In Matter of Application of County Treasurer*, 208 Ill. App.3d 561, 153 Ill.Dec. 528, 567 N.E.2d 486 (1990). A motion to reconsider is a post-trial motion (*Elmhurst Auto Parts v. Fencl-Tufo Chevrolet*, 235 Ill.App.3d 88, 175 Ill.Dec. 771, 600 N.E.2d 1229 (1992)), and therefore "falls within the purview of post-judgment motions which must be filed within 30 days after the challenged judgment is entered." *Sho-Deen, Inc. v. Michel*, 263 Ill.App.3d 288, 290, 200 Ill.Dec. 729, 732, 635 N.E.2d 1068, 1071 (1994). Only if a post-trial motion is timely filed pursuant to section 2-1203 will it extend the time for filing the notice of appeal under Rule 303(a). *In Matter of Application of County Treasurer.*

[4] Thus, the question as to whether the appellant's notice of appeal was filed beyond the 30 day period allowed under Rule 303(a), thereby depriving this court of its jurisdiction, depends upon whether the failure to file a certificate of service vitiated the filing of the plaintiff's motion to reconsider. If we determine that the filing of plaintiff's motion to reconsider on August 25 within 30 days after the July 27 summary judgment order was timely, notwithstanding the failure to file an accompanying certificate of service within that 30-day period, then plaintiff's notice of appeal from both the July 27 and the January 13 orders was timely. This would follow under Rule 303(a), since the notice of appeal was filed on January 25, within 30 days after the trial court's disposition on January 13 of plaintiff's motion to reconsider. On the other hand, if the trial court was correct in its determination that under section 2-1203, the timely filing of a certificate of service is



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dictional, without which the motion to consider cannot be deemed to have been ely filed, then the notice of appeal in this e, filed more than three months after the try of the summary judgment order, would untimely pursuant to Rule 303(a) and ve this court without appellate jurisdic-n.

The rule is clear that the absence of a tificate of service will not vitiate the filing a motion to reconsider. This matter has en specifically preempted by Illinois Su-me Court Rule 104 (134 Ill.2d Rule 104), ich provides at parts (b) and (d) as follows:

"(b) Filing of Papers and Proof of Service. Pleadings subsequent to the complaint, written motions, and other papers required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared * * *.

* * * * * *

(d) Failure to deliver or serve copies as required by this rule *does not in any way impair the jurisdiction of the court* over the person of any party, but the aggrieved party may obtain a copy from the clerk and the court shall order the offending party to reimburse the aggrieved party for the expense thereof." 134 Ill.2d R. 104(b), (d) (Emphasis added).

Thus, under Rule 104(d), the failure to liver or serve copies does not impair the isdiction of the court. This rule has been plied to post-trial motions in *In re Mar-ge of Collins*, 154 Ill.App.3d 655, 107 Ill. ec. 109, 506 N.E.2d 1000 (1987) and in *ollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d 353, 321 N.E.2d 344 (1974), which eld that the failure to include proof of ser-ce with a post-trial motion will not invali-ate the motion or render it untimely.

Defendant contends that Rule 104(d) only addresses the failure to actually serve copies of the motion but does not address the fail-ure to file a certificate of service. This con-tention is devoid of any rationale since a failure to serve will preclude the filing of a certificate, unless the movant seeks to per-jure himself. Thus, if the failure to actually serve notice does not impair jurisdiction, then *a fortiori*, the failure to serve a certifi-cate of service will not impair the validity or timeliness of the motion. See *In re Mar-riage of Collins*.

Defendant's reliance on *Vlahakis v. Par-ker*, 3 Ill.App.3d 126, 278 N.E.2d 523 (1971) (abstract of op.) and *Ingrassia v. Ingrassia*, 156 Ill.App.3d 483, 109 Ill.Dec. 68, 509 N.E.2d 729 (1987) is misplaced. Although *Vlahakis* reached a contrary result, it is clear that that opinion did not purport to in any way consider or confront the impact of Rule 104(d) in its determination. That opinion has therefore been distinguished and rejected on that basis in *Kollath v. Chicago Title and Trust Co.*, 24 Ill.App.3d at 357–58, 321 N.E.2d at 348 ("Rule 104(d) renders a failure to comply with Rule 104(b) * * * non-jurisdictional * * * [and] the only cases decided since enactment of rule 104(d) which reached a contrary result [, including *Vlahakis v. Parker*,] did not consider that provision at all"). Likewise, the opinion in *Ingrassia* does not purport to consider rule 104(d) in its determination. Moreover, *Ingrassia* does not purport to deal with the validity or timeliness of the filing of a post-trial motion, but, rather, with the sufficiency of the notice of that motion when given to the opposing party only a few hours before the hearing on the motion. Hence, *Ingrassia* is not in point, since here there is no question that defendant had actual knowledge of the pendency of plaintiff's motion to reconsider well in advance of the scheduled hearing date on that motion.

Consequently, plaintiff's August 25 motion to reconsider, and therefore his January 25 notice of appeal, were seasonably filed, notwithstanding that no certificate of service was filed until long after 30 days had passed since summary judgment was entered on July 27. Since the August 25 motion was timely, the notice of appeal filed on January 25 complied with Rule 303(a) since it was filed within 30 days after the trial court disposed of the motion to reconsider, albeit on jurisdictional grounds, on January 13. Accordingly, our jurisdiction to review both the July 27 and January 13 orders of the trial court remains unimpaired.



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[5] Defendant next would urge that if we determine that the January 13 order is reviewable, we should confine our review solely to the correctness of the trial court's denial of its jurisdiction over the motion to reconsider. Defendant contends that if we find that the trial court's jurisdictional determination was erroneous, we should remand the matter to the trial court to allow the trial court to first consider the merit of that motion. We disagree for the same reasons as articulated in *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 167 Ill.Dec. 225, 587 N.E.2d 494 (1992). There, the court stated as follows:

> "Defendant initially urges us, without citation to authority, to remand this matter to the circuit court because that court did not address the merits of plaintiff's motion. This argument betrays a misperception of the nature both of the question presented and of our review. As noted above, we consider summary judgment orders *de novo*: we, like the circuit court, must decide only whether the parties' pleadings and other submissions present an issue of triable fact and if not, whether plaintiff is entitled to judgment as a matter of law. This is a question of law, not of fact." *Myers v. Health Specialists, S.C.*, 225 Ill.App.3d 68, 76, 167 Ill.Dec. 225, 231, 587 N.E.2d 494, 500 (1992).

Here, too, the grant of summary judgment is subject to *de novo* review, requiring our *de novo* determination whether the submissions of the parties presented triable issues of fact and if not whether defendant was entitled to a judgment as a matter of law. Thus, here, as in *Myers*, we may consider this appeal on its merits without the necessity of a remand.

## *II. MERITS*

[6] As noted earlier, plaintiff contends on appeal that the trial court erred in granting summary judgment because the facts are sufficient to create an inference that AT & T voluntarily assumed a duty to properly secure the battery hoist for transport, a duty which was breached as a result of AT & T's negligence. Additionally, plaintiff contends, for the first time on appeal, that there was error in granting summary judgment because the facts are sufficient to create an inference that as a gratuitous bailor, AT & T knew the hoist was dangerous yet failed to inform plaintiff of its dangerous condition. Plaintiff also contends that even if summary judgment was properly entered in favor of AT & T under the issues framed by the existing complaint, the trial court abused its discretion in denying him leave to amend his complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)).[1]

[7, 8] We first address plaintiff's contention that the trial court erred in entering summary judgment pursuant to the issues framed by the existing complaint. Summary judgment is proper when the pleadings, depositions and affidavits on file, construed in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. See generally 735 ILCS 5/2–1005 (West 1994); *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill.App.3d 851, 204 Ill.Dec. 814, 642 N.E.2d 715 (1994); *Torres v. City of Chicago*, 261 Ill.App.3d 499, 197 Ill.Dec. 985, 632 N.E.2d 54 (1994); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill.App.3d 1051, 175 Ill.Dec. 169, 599 N.E.2d 1183 (1992). Appellate review of an order granting summary judgment is *de novo*. *E.g., Hesselink v. R.L. Perlow Corp.*, 265 Ill.App.3d 473, 202 Ill.Dec. 36, 637 N.E.2d 575 (1994); *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill.App.3d 899, 200 Ill.Dec. 225, 635 N.E.2d 564

1. As previously noted, at the trial level, plaintiff urged liability both on the basis of premises liability and the law governing voluntary undertakings. Plaintiff has conceded on appeal that he cannot base his action against AT & T upon a theory of premises liability as a matter of law, due to the holding in *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994), insofar as he incurred his injuries in the bed of his truck, and not due to any condition of AT & T's premises. See also *Jackson v. Hilton Hotels Corp.* 273 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995) (in action based on premises liability, no duty to plaintiff existed where plaintiff failed to show that his injuries were caused by any condition of the premises).

(1994). To withstand a motion for summary judgment in an action based in negligence, a plaintiff must allege facts sufficient to show that the defendant owed him a duty, that defendant breached that duty, and that his injury proximately resulted from that breach. See *DiBenedetto v. Flora Township*, 153 Ill.2d 66, 178 Ill.Dec. 777, 605 N.E.2d 571 (1992); *Ziemba v. Mierzwa*, 142 Ill.2d 42, 153 Ill.Dec. 259, 566 N.E.2d 1365 (1991).

[9, 10] With respect to plaintiff's contention concerning AT & T's duty arising from its purported voluntary undertaking, section 323 of the Restatement (Second) of Torts provides as follows:

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323, at 135 (1965).

See generally, *Cross v. Wells Fargo Alarm Services*, 82 Ill.2d 313, 45 Ill.Dec. 121, 412 N.E.2d 472 (1980); *Jackson v. Hilton Hotels Corp.*, 277 Ill.App.3d 457, 214 Ill.Dec. 31, 660 N.E.2d 222 (1995). Whether a duty has been voluntarily undertaken is a question of law to be determined by the court. *Gouge v. Central Illinois Public Service Co.*, 144 Ill.2d 535, 163 Ill.Dec. 842, 582 N.E.2d 108 (1991); *Jackson v. Hilton Hotels Corp.*

In the instant case, plaintiff has failed to allege facts sufficient to establish in the first instance that defendant voluntarily assumed or undertook any duty to properly maintain and secure the battery hoist for transport. First, it is undisputed that AT & T had neither control nor influence over the manner in which plaintiff, an independent contractor retained by Quinn (who was also an independent contractor), readied or moved the hoist, and that plaintiff had total discretion in preparing and moving the hoist. Moreover, plaintiff did not submit any evidence that AT & T strapped the motor to the hoist, nor any evidence regarding whether the strapping was undertaken as protection for the plaintiff. Lastly, and more overridingly, even if we were to presume that the strapping was effected by AT & T, there is no evidence whatsoever submitted by plaintiff that he relied upon the safety of that strapping. In fact, the record is clear that plaintiff himself checked the strapping of the motor to ensure it was fastened securely prior to moving the hoist, as was his customary practice when moving that particular hoist.

[11–13] Plaintiff urges that even if there is no basis for liability under a theory of voluntary undertaking, there is a basis established for liability under a theory of gratuitous bailment. In that regard, he contends that there is a genuine issue of material fact that AT & T, as a gratuitous bailor of the hoist, breached a duty to plaintiff to provide a safe hoist or to warn plaintiff of its dangers. We first note that contentions not raised in the trial court are waived on appeal, even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill.App.3d 637, 640, 350 N.E.2d 242, 245 (1976) ("This rule of waiver applies even in a summary judgment case"); *Wilson v. Gorski's Food Fair*, 196 Ill.App.3d 612, 143 Ill.Dec. 477, 554 N.E.2d 412 (1990). However, even if the argument were preserved, we note that there was no evidence presented that AT & T breached a duty to plaintiff as a gratuitous bailor of the hoist.

"[A] gratuitous bailor may be liable for physical harm caused by the use of his chattel when he knows or has reason to know that the chattel is or is likely to be dangerous when put to the use for which it is supplied; has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and fails to exercise reasonable care to inform the user of its dangerous condition or of the facts which make it likely to be dangerous." *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 913, 196 Ill.Dec. 24, 30, 629 N.E.2d 569, 575 (1994).



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[14] Plaintiff has not produced evidence as to any specific defect either in the design or manufacture of the hoist itself which would indicate that AT & T had actual or constructive knowledge that the hoist was unsafe when it was handed over to plaintiff. Plaintiff himself did not testify as to the condition of the hoist except to say that the strap loosened. The only other evidence that plaintiff has presented consists of unsubstantiated hearsay statements. In that regard, plaintiff testified in his deposition to a conversation which took place after the accident with an AT & T installer who told plaintiff that certain other fellow employees had stated that after plaintiff's accident they refused to use the hoist because it was unsafe, and that AT & T ultimately returned the hoist to its manufacturer. However, plaintiff was unable to identify those other AT & T employees, and he did not provide any further detail regarding the specific contents of their statements. Such unsubstantiated hearsay statements cannot be considered in a ruling on a motion for summary judgment. See *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill.App.3d 391, 113 Ill.Dec. 888, 515 N.E.2d 1047 (1987) (in deciding a motion for summary judgment, court should ignore personal conclusions, opinions and self-serving statements and consider only facts admissible in evidence under the rules of evidence); *Seefeldt v. Millikin National Bank of Decatur*, 154 Ill.App.3d 715, 107 Ill.Dec. 161, 506 N.E.2d 1052 (1987) (although a complaint may purport to raise an issue of material fact, summary judgment is appropriate if such issue is not further supported by evidentiary facts, and in determining the genuineness of a fact, a court should ignore personal conclusions and opinions and consider only admissible facts).

Plaintiff's reliance on *Pagano* is not well taken. There, the court on appeal did find an issue of fact as to whether a defective dolly supplied by the defendant to help move certain barrel drums of ink rendered the defendant liable under a theory of gratuitous bailment. However, in that case, plaintiff gave direct testimony as to specific, observable defects in the dolly which, if believed, would establish that the dolly was defective. Here, aside from the inadmissible hearsay rumors which were reported, the plaintiff himself presented no evidence to show either a defect in the hoist or that AT & T knew or should have known of any dangerous propensities in the hoist. Consequently, the evidence presented here was not effective to support a counterinference for purposes of summary judgment.

[15] Plaintiff next contends that the trial court erred in its refusal in its July 27 order to allow him leave to amend his complaint to more specifically allege facts that there was a voluntary undertaking and that it was implemented negligently. We disagree.

Section 2–1005(g) of the Illinois Code of Civil Procedure (735 ILCS 5/2–1005(g) (West 1994)) provides as follows:

"(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms."

The allowance of an amendment to the pleadings is in the trial court's discretion, and reversible error can only be found if there is a manifest abuse of discretion. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992). See also *Misselhorn v. Doyle*, 257 Ill.App.3d 983, 195 Ill.Dec. 881, 629 N.E.2d 189 (1994); *Eyman v. McDonough District Hospital*, 245 Ill.App.3d 391, 184 Ill.Dec. 502, 613 N.E.2d 819 (1993).

As noted, on July 27, immediately after the trial court entered summary judgment against him, plaintiff made an oral motion to amend his complaint, as follows:

"MR. JOHNSON [Plaintiff's attorney]: [I] set it out to specifics that they undertook the duty to secure the hoist and they negligently performed that duty and as a result Plaintiff was injured based upon the *Nelson v. Pippen, Phillips* [*sic*] case, that when undertakes a duty to do something, they do so negligently, and someone is injured they are absolutely liable.

* * * * * *

If the fact that the Court feels that the premises liability count cannot stand does not mean then that a negligent voluntary [*sic*] undertaking is not proper be-



There will be no ... position."

The court denied ... stating that "It's a ... motion [to amend]."

We first note that ... proposed amended ... record on appeal, ... before the trial ... offers of new evidence ... the voluntary undertaking ... already been argued ... failure to include ... and supporting facts ... could be found to ... court of his right ... request for leave ... *Mendelson v. Bro...* 81 App.3d 605, 181 ... 37 (1982) (plaintiff ... amended complaint ... appellate record ... court's ability to ... posed amendment ... theory against de... waiver of right to a ... request for leave to ... v. Norbut*, 271 ... 618, 618 N.E.2d ... discretion in deny... amend complaint w... to amend yet fai... amendment to trial ...

Notwithstanding ... to review the amen... by proposed, we w... erection by the trial ... leave to amend. A ... was ample evidence ... support its conclus... case as revealed in ... submissions would ... which could allege ... Moreover, by the ... complaint were am... allege a voluntary ... by the plaintiff, th... plaint would be su... facts already submi... indicate for summa... ...son v. Burton ...

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There will be no new deps. That's what the evidence is through the Plaintiff's deposition."

The court denied plaintiff's motion to amend, stating that "It's an '89 case. I'll deny the motion [to amend]."

We first note that plaintiff never made the proposed amended complaint a part of the record on appeal, except for his oral proposal before the trial judge which, without any offers of new evidence, essentially duplicates the voluntary undertaking theory which has already been argued and rejected. Plaintiff's failure to include the proposed amendment and supporting facts therefor in the record could be found to constitute a waiver in this court of his right to have the denial of his request for leave to amend reviewed. See *Mendelson v. Ben A. Borenstein & Co.*, 240 Ill.App.3d 605, 181 Ill.Dec. 114, 608 N.E.2d 97 (1992) (plaintiff's failure to tender amended complaint or to include it in the appellate record diminished the appellate court's ability to determine whether the proposed amendment would provide a viable theory against defendant, and constituted waiver of right to a review of the denial of his request for leave to amend). See also *Ignar v. Norbut*, 271 Ill.App.3d 522, 207 Ill.Dec. 9, 648 N.E.2d 285 (1995) (no abuse of discretion in denying motion for leave to amend complaint where movant orally moved to amend yet failed to submit proposed amendment to trial court).

Notwithstanding waiver, even if we were to review the amendment which plaintiff orally proposed, we would find no abuse of discretion by the trial court in denying plaintiff leave to amend. As already discussed, there was ample evidence before the trial court to support its conclusion that the facts in this case as revealed in the summary judgment submissions would not permit a pleading which could allege a valid cause of action. Moreover, by the same token, even if the complaint were amended to more specifically allege a voluntary undertaking as requested by the plaintiff, the allegations of the complaint would be superseded by the extrinsic facts already submitted which as noted would dictate for summary judgment. See *Werckenthein v. Bucher Petrochemical Co.*, 248 Ill.App.3d 282, 188 Ill.Dec. 332, 618 N.E.2d 902 (1993) (where allegations in nonmovant's complaint are contravened by movant's extrinsic submissions in summary judgment proceedings, extrinsic submissions control); *East Side Fire Protection District v. City of Belleville*, 221 Ill.App.3d 654, 164 Ill.Dec. 192, 582 N.E.2d 755 (1991) (nonmovant must controvert proofs offered by movant in support of motion for summary judgment and cannot merely rest on pleadings); *Seefeldt v. Millikin National Bank of Decatur*. The issue here is not simply that plaintiff's complaint is deficient in its framing of the issues, but that, as discussed, the testimony and evidence presented in support of his negligent voluntary undertaking theory are deficient, and fall short of establishing a genuine issue of material fact such that judgment should not be entered as a matter of law on that theory of action.

Plaintiff's reliance on *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992) is not well taken. In *Loyola*, the court on appeal set forth four factors to determine whether the trial court had abused its discretion in denying a section 2–1005(g) amendment, including whether the proposed amendment would cure the defective pleading, whether it would cause prejudice or surprise to other parties, whether it was timely, and whether previous opportunities to amend the pleading could be identified.

Applying these factors in order, in the instant case the question of whether plaintiff's proposed amendment would cure the defective pleading is not relevant, because as already discussed, AT & T succeeded in its motion for summary judgment not because plaintiff's complaint was improperly pleaded, but because the evidence presented at summary judgment shows no genuine issue of material fact regarding the allegations in the complaint. *Werckenthein v. Bucher Petrochemical Co.*; *East Side Fire Protection District v. City of Belleville*. Taking the second and third *Loyola* factors together (whether there would be prejudice or surprise to AT & T and whether the proposed amendment was timely), the record is ample to support the trial court's determination that the allowance



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of an amendment would in fact be prejudicial to AT & T, insofar as the amendment was being sought on the eve of trial, five years after the inception of this lawsuit, with no explanation from plaintiff as to why he never before attempted to develop the facts which would be necessary to withstand AT & T's motion for summary judgment. See *Mendelson v. Ben A. Borenstein & Co.* (no abuse of discretion in denying leave to amend following grant of summary judgment where proposed amendment was sought beyond the pleading stages). See also *Ignarski v. Norbut.*

The final *Loyola* factor is whether plaintiff had sufficient prior opportunities to amend. To that extent, we note that plaintiff indeed had substantial opportunities to amend. Although plaintiff complains that AT & T never gave him notice of any deficiency in his complaint which would require amendment because AT & T never filed a motion to dismiss prior to filing its motion for summary judgment, it is axiomatic that a party can amend its pleading on its own motion. See 3 R. Michael, Illinois Practice, ch. 26, at 446 (West 1989). The case of *Evans v. United Bank of Illinois, N.A.*, 226 Ill.App.3d 526, 168 Ill.Dec. 533, 589 N.E.2d 933 (1992), upon which plaintiff relies, does give credence to plaintiff's contention under the fourth *Loyola* factor that the failure of AT & T to challenge his pleadings prior to its motion for summary judgment deprived plaintiff of any prior opportunity to amend. However, we note that in *Evans* the court on appeal did not rely on that factor alone in finding that the trial court abused its discretion in denying the plaintiff in that case leave to amend, but found that *all* of the *Loyola* factors supported that plaintiff's motion for leave to amend.

In any event, even if plaintiff were correct in his reliance upon *Evans*, we need not consider its application here. As already discussed, the issue here is not whether the allegations of the complaint were sufficient to state a cause of action based upon a voluntary undertaking theory, but whether the facts adduced were sufficient to create an inference to support such allegations. See *Werckenthein v. Bucher Petrochemical Co.; East Side Fire Protection District v. City Belleville.* As previously noted, the fa submitted here are insufficient to raise su an inference. Hence, we find that the tr court's denial of the motion to amend was an abuse of discretion. See *Regas v. Asso ated Radiologists, Ltd.*, 230 Ill.App.3d 9 172 Ill.Dec. 553, 595 N.E.2d 1223 (19 (where a cause of action cannot be sta even after amendment, leave to am should be denied).

For the foregoing reasons, the judgment the Circuit Court of Cook County is affirm

McNULTY, P.J., and HOURIHANE, J. concur.

283 Ill.App.3d 112

669 N.E.2d 655

**The PEOPLE of the State of Illinois, Plaintiff-Appellee,**

**v.**

**Vernetta CASSELL, Defendant-Appellant.**

**The PEOPLE of the State of Illinois, Plaintiff-Appellee,**

**v.**

**Curlee SIMMONS, Defendant-Appellan**

**Nos. 1-94-2782, 1-95-1380.**

Appellate Court of Illinois, First District, Fifth Division.

Aug. 9, 1996.

Rehearing Denied Sept. 11, 1996.

Defendants were convicted in the Cir Court, Cook County, John J. Moran, J., aggravated criminal sexual assault, and defendant was convicted of additional cri of home invasion and aggravated kidnapp Defendants appealed. The Appellate Co McNulty, P.J., held that: (1) circuit co had adequate basis for its determination th victim was not entitled to assert privile



Cite a

against self-incrimination: ficient evidence that defe threat of force in order to course with victim to sup aggravated criminal sexua was sufficient evidence tha confined victim to supp napping conviction; (4) denied effective assistan defendant who drove vehi assault occurred was cri for the assault; and (6) e of emergency room nurse that victim identified d and who dragged her fr harmless error.

Affirmed.

**1. Witnesses ⇐297(13.1)**

Trial court had adequ motion for aggravated cri for its determination th entitled to assert Fifth A against self-incrimination court did not conduct he whether victim's testimon ver, where, in response t tions as to why she wan age, victim never expres fear of being charged wit that she could not remem clearly. U.S.C.A. Const.

**2. Witnesses ⇐297(1)**

Privilege against guards against compulsor leading to establish U.S.C.A. Const.Amend. 5

**3. Witnesses ⇐297(1)**

Although witness ir privilege to refuse to an tend to incriminate him secured by Fifth Amend those instances where wi cause to believe he or himself or herself to pro answers. U.S.C.A. Const

**4. Witnesses ⇐297(1)**

Once witness asser Amendment privilege no self or herself, trial cou

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appointed to you and we will not ask questions until he has been appointed—"I told him, without his attorney I wouldn't talk to him and that would be it. That he didn't have to say anything." (He said he didn't want a lawyer.) (5) If you decide to answer now with or without a lawyer, you have the right to stop questioning at any time or stop questioning and consult a lawyer—"I told him, if I start talking to you and it becomes apparent to you that you suddenly think you want an attorney to tell me and we will stop right there and we won't ask any further questions at that point. In other words, he could stop me from asking anything, at any time and I will just stop and leave the room." (He said he still wanted to talk to me.)

Dickett testified that she gave defendant the *Miranda* warnings one at a time, speaking slowly. After each one she asked defendant if he understood and he said he did. She testified that she told him the word attorney meant lawyer and instead of the phrase, "appoint a lawyer", she told him the court would give him a lawyer.

In contrast to this questioning by Kill and Dickett, Smith testified that she interviewed defendant on December 15, 1989, six months after the fire. In questions she posed which were intended to determine whether or not he could intelligently waive what are commonly known as "Miranda rights or Miranda warnings" she would ask him "what does this mean, and then I would say what the particular right was" and his reaction would be to "look around, scratch his head and draw a blank. He didn't say anything." From these reactions she concluded that "he didn't understand what these rights meant."

The contrast in the manner in which the police officer and assistant State's Attorney advised the defendant and the form of the questions posed to the defendant by the psychologist lead us to the conclusion that the record does not support the trial court's conclusion that defendant did not understand his rights and therefore did not knowingly and intelligently waive them. The court's grant of defendant's motion to suppress is not supported by the record.

Here we find the defendant was advised of his right to remain silent and his right to have an attorney present in language he could understand. He was advised that anything he told the officer could be used against him in court. Defendant then stated that he wanted to tell the police about the fire. He repeated the story to the officer and to the assistant State's Attorney in a coherent manner. Although he was asked to do so, he chose not have his statement taken down verbatim in writing. Since he was unable to read, he could not verify what a written statement contained.

While the State has a heavy burden to show that a defendant has waived his constitutional rights in a knowing, intelligent and voluntary manner, (*Brownell*, 79 Ill.2d at 516, 38 Ill.Dec. 757, 404 N.E.2d 181) we find the State has met that burden. We find the weight of the evidence establishes that defendant waived his *Miranda* rights in a knowing and intelligent manner. For all of the foregoing reasons the order of the trial court granting defendant's motion to suppress his statements is reversed.

REVERSED.

RAKOWSKI, P.J., and EGAN, J., concur.

217 Ill.App.3d 952
578 N.E.2d 33

**Byong K. CHOI, Plaintiff-Appellant,**

v.

**COMMONWEALTH EDISON COMPANY, Defendant-Appellee.**

**No. 1-89-2177.**

Appellate Court of Illinois, First District, Third Division.

July 10, 1991.

Rehearing Denied Aug. 26, 1991.

Independent contractor's employee brought action against owner of nuclear

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power plant to recover for injuries sustained when he slipped and fell on wet concrete floor. The Circuit Court, Cook County, Dean Sodaro, J., granted summary judgment for owner, and employee appealed. The Appellate Court, Cerda, P.J., held that owner's duty to maintain safe workplace did not include mopping up water that accumulated on floor when snow and ice from pipes used in construction project melted onto floor, causing puddles of water.

Affirmed.

**1. Judgment ⇐185(2)**

Although plaintiff does not have to try his case on defendant's motion for summary judgment, he must provide factual basis which would arguably entitle him to judgment.

**2. Appeal and Error ⇐949**

Determination that summary judgment is appropriate will not be reversed absent abuse of trial court's discretion such that plaintiff's right to fundamental justice is violated.

**3. Negligence ⇐32(2.10)**

Landowner owed duty to independent contractor's employee to maintain reasonably safe workplace.

**4. Negligence ⇐50**

Landowner's duty to independent contractor's employee to maintain reasonably safe workplace did not extend to taking precautions against water tracked inside from natural accumulation outside.

**5. Negligence ⇐2, 10**

Duty is determined by considering number of factors, including foreseeability of harm, likelihood of injury, magnitude of burden of guarding against it, consequences of placing that burden on defendant, public policy, and social considerations.

**6. Negligence ⇐29, 44**

Landowner owes no duty where natural accumulation of snow, ice or water exists on outside or is tracked into building by pedestrian traffic.

**7. Negligence ⇐28**

Property owner has duty and may be liable in negligence when injuries are result of unnatural or artificial accumulation of snow, ice or water, or natural condition aggravated by owner's use of area and creation of condition.

**8. Negligence ⇐50**

Duty owed by owner of nuclear power plant to independent contractor's employee to provide reasonably safe workplace did not include duty to mop up water that accumulated on concrete floor when snow and ice from pipes being brought in from outside for use in construction project melted onto floor, causing puddles of water, where there was no evidence that owner did anything to aggravate that condition, but instead condition was continuation of natural accumulation.

---

Lane and Munday, Thomas J. Nathan, Chicago, for plaintiff-appellant.

Johnson, Cusack and Bell, Ltd., John W. Bell, Michael B. Gunzburg and Thomas H. Fegan, Chicago, for defendant-appellee.

Presiding Justice CERDA delivered the opinion of the court:

Plaintiff, Byong K. Choi, brought this action against defendant Commonwealth Edison Company seeking recovery for injuries sustained when plaintiff fell on a concrete floor while working at a construction site. The trial court granted defendant's motion for summary judgment. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment because a genuine issue of material fact exists. In addition, he argues that the trial court erred by failing to recognize defendant's duty to provide a safe workplace for workmen engaged in construction work on its premises and by failing to extend that duty to include taking precautions against the accumulation of water inside the building.

On January 10, 1979, plaintiff Choi was employed by Universal Power Piping, Inc. (UPP) as a welder at the Dresden Nuclear Power Plant, which is owned by defendant



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Commonwealth Edison Company. UPP was a subcontractor hired by Commonwealth Edison to complete installation of a decontamination flushing system in the Reactor 1 building. Plaintiff was working on the third-floor turbine deck receiving pipes brought in from the outside by UPP employees. While stored outside, the pipes became encrusted with snow and ice. Once inside, the pipes were raised from the ground floor to the third-floor turbine deck area by an overhead crane, which was operated by a Commonwealth Edison employee. Then, the pipe was taken from the crane, placed on a cart, and moved through the interlock hatch to the reactor building by UPP employees, including plaintiff. Snow and ice melted from the frozen pipes, forming puddles of water on the deck wherever the pipes were transported. Plaintiff was working in this manner all day prior to the accident.

As plaintiff and a co-worker were carrying a pipe, approximately 20 feet long and 10 inches in diameter, plaintiff slipped on water that was on the concrete floor. He fell backward, hitting his back on a pipe, and a floor spacer fell across his mid-section, causing injuries.

Previously, the appellate court upheld the trial court's summary judgment order for defendant regarding a Structural Work Act (Ill.Rev.Stat.1983, ch. 48, pars. 60 through 69). (*Choi v. Commonwealth Edison Co.* (1984), 129 Ill.App.3d 878, 85 Ill.Dec. 17, 473 N.E.2d 385.) In plaintiff's second amended complaint, he alleged that defendant was guilty of several negligent acts in its supervision of the construction work. Defendant filed a motion for summary judgment, arguing that under Illinois law, it had no duty to take precautions against natural accumulations of snow, ice or water that were tracked into a building. Defendant noted that the UPP foreman's deposition stated that he did not inform Edison of the condition because it was the duty of the contractor's own employees to clean up after themselves. Defendant pointed out that the snow came from pipes that plaintiff and his co-workers had brought in and carried to the area.

In response to defendant's motion for summary judgment, plaintiff argued that defendant owed him a duty to maintain a reasonably safe work place because it retained control over the construction work performed by UPP employees and could stop the work in progress for safety or other reasons. Plaintiff also argued that defendant breached that duty by failing to provide a reasonably safe workplace and by failing to stop work that was being performed in an unsafe manner. In addition, plaintiff contended that the melted snow and ice that caused the unsafe condition did not accumulate naturally, was not transported into the building by pedestrian traffic, and was caused by defendant's refusal to allow the pipes to be brought into the building and cleaned off before being transported to the work area. Plaintiff notes that the deposition of Commonwealth Edison's superintendent stated that Commonwealth Edison employees had the responsibility to clean snow and ice which came into the building, had the authority to stop work being performed in an unsafe manner, and regularly inspected the area.

Concluding that the facts were essentially undisputed, the trial court ordered summary judgment for defendant. The trial court stated that there was a common law duty of an occupier of land to exercise reasonable care for the safety of people lawfully on the premises, but that duty did not extend to a building owner being required to mop up water from an accumulation of snow, ice or water brought inside a building construction site. The trial court indicated that it would be an impossible burden placed on an owner of a building construction site to require following the independent contractor's employees around, mopping up every drip of water brought in from the outside. The trial court further ruled that Commonwealth Edison did not create the dangerous condition, but merely failed to clean up a mess which is common whenever building materials from the outside of a building are moved into a building.

The trial court analogized this case to *Lohan v. Walgreens Co.* (1986), 140 Ill.App.3d 171, 173, 94 Ill.Dec. 680, 488 N.E.2d 679, which ruled that a landowner has no duty to clean up snow, ice or water that is

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tracked into a building from a natural accumulation on the outside. The trial court made no finding whether the accumulation inside the building was natural or unnatural, but did state that the water began as a natural accumulation of snow and ice on the pipes outside, and was brought into the building the same way as people tracking it on their feet. The trial court did not consider the expert's affidavit and deposition because it was not factually based. The expert did not actually examine the premises, the court noted, but merely looked at photographs.

After the trial court denied plaintiff's motion to reconsider, plaintiff appealed the summary judgment order. Plaintiff's argument emphasizes that Commonwealth Edison owed him a duty to maintain a safe workplace even though he was employed by an independent contractor hired by Commonwealth Edison. He asserts that the duty included mopping up water that accumulated on the building's floor when snow and ice from the pipes melted onto the floor, causing puddles of water. Plaintiff relies on cases holding that the landowner owes a duty to the employee of an independent contractor if the owner retains sufficient control over the contractor's work. *Claudy v. City of Sycamore* (1988), 170 Ill.App.3d 990, 120 Ill.Dec. 812, 524 N.E.2d 994; See *Haberer v. Village of Sauget* (1987), 158 Ill.App.3d 313, 110 Ill.Dec. 628, 511 N.E.2d 805; *Tsourmas v. Dineff* (1987), 161 Ill.App.3d 897, 113 Ill.Dec. 758, 515 N.E.2d 743; *Weber v. Northern Illinois Gas Co.* (1973), 10 Ill.App.3d 625, 295 N.E.2d 41; *Pasko v. Commonwealth Edison Co.* (1973), 14 Ill.App.3d 481, 302 N.E.2d 642. These cases state that the duty owed is to maintain a reasonably safe workplace.

Even if the water began as a natural accumulation on the outside, plaintiff asserts, Commonwealth Edison's intervening acts caused the water to be unnaturally accumulated on the inside of the building. In the alternative, plaintiff states, the condition was aggravated by Commonwealth Edison because it would not allow the pipes to be stored inside where the snow and ice could be safely removed after it melted. Furthermore, plaintiff argues, the pipes were brought in from the outside and loaded onto an overhead crane operated by a Commonwealth Edison employee. The overhead crane then took the pipes to the third floor of the building, where UPP employees transported the pipes through a tunnel into the reactor building. By the time the pipes reached the third floor, the snow and ice was melting, and water from the pipes was dripping on the floor. It is on that water that plaintiff fell and injured himself.

Defendant responds that the water was a natural accumulation tracked in from the outside by UPP employees, including plaintiff. It asserts that this situation should be treated the same as a natural accumulation tracked in from the outside by pedestrian traffic, thus creating no duty by the landowner.

Defendant relies on two types of cases: those concerning natural accumulations of snow, ice or water outdoors and those concerning snow, ice or water tracked into a building from the outside, whether tracked in by pedestrians' shoes, coats or umbrellas. In *Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679, the plaintiff slipped and fell on water that had been tracked from the outside into the common hallway of the defendants' stores. The appellate court ruled that the owners did not have a duty to continuously remove the tracks left by customers who had walked through the natural accumulations of snow or water outside, tracking them inside. Even if the owner has knowledge that the accumulation caused a dangerous condition, the court stated, there is no duty if the accumulation is natural. (*Lohan*, 140 Ill.App.3d at 173, 94 Ill.Dec. 680, 488 N.E.2d 679.) See also *Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 131 Ill.Dec. 471, 538 N.E.2d 846 (summary judgment in favor of defendant store affirmed where plaintiff slipped and fell on water located within store); *Shoemaker v. Rush–Presbyterian–St. Luke's Medical Center* (1989), 187 Ill.App.3d 1040, 135 Ill.Dec. 446, 543 N.E.2d 1014 (hospital had no duty to clean up natural accumulation of water tracked into hospital on pedestrians' coats and umbrellas); *Serritos v. Chicago Transit Authority* (1987), 153 Ill.App.3d 265, 106 Ill.Dec. 243, 505 N.E.2d 1034 (city transit authority had no duty where plain-



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tiff fell on snow and slush covered steps of bus owned and operated by defendant).

[1, 2] The purpose of summary judgment is to determine whether a triable issue of fact exists. (*Haberer*, 158 Ill.App.3d at 316, 110 Ill.Dec. 628, 511 N.E.2d 805.) It may be granted if the pleadings, exhibits, affidavits, and depositions on file establish that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (Ill.Rev. Stat.1985, ch. 110, par. 2–1005(c); *Branson v. R & L Investment, Inc.* (1990), 196 Ill. App.3d 1088, 1090, 143 Ill.Dec. 689, 554 N.E.2d 624.) Although the plaintiff does not have to try his case, he must provide a factual basis which would arguably entitle him to judgment. (*Handy*, 182 Ill.App.3d at 972, 131 Ill.Dec. 471, 538 N.E.2d 846.) The determination that summary judgment is appropriate will not be reversed absent an abuse of the trial court's discretion such that the plaintiff's right to fundamental justice is violated. *Breeze v. Payne* (1989), 181 Ill.App.3d 720, 727, 130 Ill.Dec. 386, 537 N.E.2d 453.

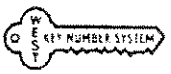
[3–5] Commonwealth Edison owed plaintiff the duty to maintain a reasonably safe workplace, but it did not extend to taking precautions against water tracked inside from a natural accumulation outside. Duty is determined by considering a number of factors: the foreseeability of harm (*Breeze*, 181 Ill.App.3d at 727, 130 Ill.Dec. 386, 537 N.E.2d 453), the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations. *Dealers Service & Supply Co. v. St. Louis National Stock.* (1987), 155 Ill.App.3d 1075, 1080, 108 Ill.Dec. 664, 508 N.E.2d 1241.

[6, 7] In Illinois, a landowner owes no duty where a natural accumulation of snow, ice or water exists on the outside or is tracked into a building by pedestrian traffic. (*Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679.) However, a property owner does have a duty and may be liable where the injuries are a result of an unnatural or artificial accumulation, or a natural condition aggravated by the owner's use of the area and creation of the condition. (*Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 971, 131 Ill. Dec. 471, 538 N.E.2d 846.) To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. (*McCann v. Bethesda Hospital* (1979), 80 Ill.App.3d 544, 549, 35 Ill.Dec. 879, 400 N.E.2d 16.) Plaintiff made no such showing in this case.

[8] Therefore, summary judgment for defendant was proper. The water in the nuclear power plant was a continuation of a natural accumulation. There was no evidence presented that Commonwealth Edison did anything to aggravate the condition. To require an owner of a construction site to follow workmen around and immediately clean up any melting snow, ice or water that had been brought in from the outside would be too high a burden.

Affirmed.

WHITE and GREIMAN, JJ., concur.




217 Ill.App.3d 958
578 N.E.2d 37

**FISTER/WARREN, successor in interest to Charles L. Fister and Associates, Inc., a corporation; Charles L. Fister and Robert J. Warren, Plaintiffs–Appellants/Counter–Defendants–Appellees,**

v.

**BASINS, INC., a Wyoming corporation, and Georgia Marble Company, a Georgia corporation, Defendants–Appellees/Counter–Plaintiffs–Appellants.**

**Nos. 1–90–2260, 1–90–2882.**

Appellate Court of Illinois, First District, Sixth Division.

July 12, 1991.

Rehearing Denied Aug. 30, 1991

Stock sellers brought action against buyer of corporation and corporation, seek-

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

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,<br><br>Defendants. | ) | Case No. 12 LA 178 |

**ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE**

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

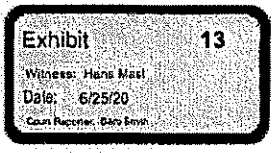
Defendants, BILL McGUIRE AND CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

**ANSWER:**

| | |
|---|---|
| William "Bill" McGuire | Carolyn McGuire |
| 1016 W. Elder Avenue | 1016 W. Elder Avenue |
| McHenry, IL 60051 | McHenry, IL 60051 |
| Married: Carolyn | Married: Bill |
| DOB: July 29, 1952 | November 26, 1946 |

Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.



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2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

**ANSWER:** David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

**ANSWER:** See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

**ANSWER:** Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

**ANSWER:** See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

**ANSWER:** See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

**ANSWER:** See response to Interrogatory No. 2.



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8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

| | | |
|---|---|---|
| **Before:** | William "Bill" McGuire<br>1016 W. Elder Avenue<br>McHenry, IL 60051 | Carolyn McGuire<br>1016 W. Elder Avenue<br>McHenry, IL 60051 |
| | David Gagnon<br>39010 90th Place<br>Genoa City, WI 53128 | Paul Dulberg<br>4606 Hayden<br>McHenry, IL 60051 |
| **At Time Of Occurrence:** | David Gagnon<br>39010 90th Place<br>Genoa City, WI 53128 | Paul Dulberg<br>4606 Hayden<br>McHenry, IL 60051 |
| **After:** | William "Bill" McGuire<br>1016 W. Elder Avenue<br>McHenry, IL 60051 | Carolyn McGuire<br>1016 W. Elder Avenue<br>McHenry, IL 60051 |
| | David Gagnon<br>39010 90th Place<br>Genoa City, WI 53128 | Paul Dulberg<br>4606 Hayden<br>McHenry, IL 60051 |

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

**ANSWER:** On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.



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10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:

a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;

b. Who owned the chain saw at the time of Plaintiff's alleged injury;

c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

**ANSWER:**

a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.

b. Bill McGuire was the owner of the chain saw on the date of the occurrence.

c. David Gagnon had Bill McGuire's permission to use the chain saw.

11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:

a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;

b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;

c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

**ANSWER:**

a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not known how often he has used chain saws in the past.

b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.



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c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

**ANSWER:**

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

**ANSWER:**

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

**ANSWER:** See response to Interrogatory No. 11.



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15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.
Auto-Owners Insurance Company
Policy No. 48-010-965-01
Eff.: May 9, 2011 thru May 9, 2012
Personal Liability (Each Occurrence): $300,000.00
Medical Payments (Each Person): $1,000.00

16. Do you have any information:

(a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;

(b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
b. See answer to Interrogatory No. 16(a).
c-d. No.



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17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

**ANSWER:** None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;
(b) The place of such conversations and/or statements;
(c) All persons present for the for the conversations and/or statements;
(d) The matters and things stated by the person in the conversations and/or statements;
(e) Whether the conversation was oral, written and/or recorded; and
(f) Who has possession of said statement if written and/or recorded.

**ANSWER:** (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

**ANSWER:** See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

**ANSWER:** Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

**ANSWER:** Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.



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22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

(a) The subject matter on which the opinion witness is expected to testify;
(b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
(c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
(d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

**Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:**

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.



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Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.

e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.

f. Investigation continues.



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**Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.**

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

**Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.**

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

**ANSWER:** None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

**ANSWER:** None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

**ANSWER:** See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

**ANSWER:** On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.



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28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

**ANSWER:** See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

**ANSWER:** To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

**ANSWER:** To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)



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STATE OF ILLINOIS )
) SS
COUNTY OF WINNEBAGO )

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire

Subscribed and sworn to before
me on the 6TH day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 08/07/14



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STATE OF ILLINOIS )
) SS
COUNTY OF WINNEBAGO )

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire

Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 05/07/14



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 9/6/12.

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)



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0245281968.1/SKO/ACCARDO/PAA

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

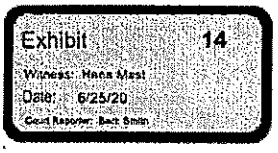
Plaintiff(s),

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendant(s).

CASE NO. 12LA000178




## ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

**ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128**
**DOB: 4/3/1697**

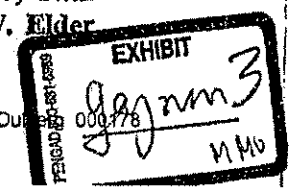
2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

**ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.**

3. State the full name and present or last known address (indicating which) of each person who:

(a) Witnessed or claims to have witnessed the occurrence in question.
(b) Was present or claims to have been present at the scene immediately before said occurrence.
(c) Was present or claims to have been present immediately after said occurrence.
(d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

**ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder**

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**Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.**

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

**ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.**

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

**ANSWER: I do not know.**

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

**ANSWER: I do not know.**

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

**ANSWER: I do not know.**

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

**ANSWER:** The accident occurred in ~~front~~ BACK of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

**ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.**

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

**ANSWER: He was helping me trim a tree by holding a branch.**

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

**ANSWER: I was cutting through a branch with the chainsaw.**



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14. State with particularity the address for David Gagnon on June 28, 2011.

**ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.**

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

**ANSWER: I asked him to help me trim the tree at my parents' home.**

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

**ANSWER: I was trimming a tree for my parents.**

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

**ANSWER: N/A**

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

**ANSWER: N/A**

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

**ANSWER: N/A**

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

**ANSWER: None.**

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

**ANSWER: No.**

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.



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(b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.

(c) For each controlled expert witness, identify:

(i) the subject matter on which the witness will testify;

(ii) the conclusions and opinions of the witness and the bases therefor;

(iii) the qualifications of the witness; and

(iv) any reports prepared by the witness about the case.

ANSWER: **David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128**— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

**Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050**—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

**Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051**— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.



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Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

DAVID GAGNON





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I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-558-9821

By: _____
PERRY A. ACCARDO
Firm No.: 46878
E-MAIL ADDRESS:
ILLINOISLEGAL@ALLSTATE.COM
Attorney Bar No.: 6228720
Attorney for Defendant(s):
David Gagnon



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IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually,<br><br>Defendants. | ) | No. 12 LA 178 |

COPY

**NOTICE OF MOTION**

TO: *VIA FIRST CLASS MAIL:*
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

*VIA CERTIFIED MAIL:*
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

**AFFIDAVIT OF SERVICE**

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.

Hans A. Mast, Attorney for Plaintiff

**LAW OFFICES OF THOMAS J. POPOVICH, P.C.**
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

Exhibit 15
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith



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ORD

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

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,<br><br>Defendants. | ) | Case No. 12 LA 178 |

FILED
McHenry County, Illinois
JAN 2 2 2014

**GOOD FAITH FINDING AND ORDER OF DISMISSAL**

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.

2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.

EXHIBIT
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EXHIBIT H



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3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.

4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.

DATED: _____

JUDGE Thomas A. Meyer

Prepared by:
Ronald A. Barch
Cicero, France, Barch & Alexander, PC
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February 17, 2016

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Subject: Findings and Conclusions for Dulberg v. Gagnon and McGuire

After reviewing the Depositions of Mr. Dulberg and Mr. Gagnon and the chainsaw owner's manual, the following observations and conclusions were made:

Mr. Dulberg was cut on the forearm (bottom) by a chainsaw while helping Mr. Gagnon limb a pine tree on the property of Mr. Gagnon's parents – Bill and Carol McGuire. While power tools such as this chainsaw make work more efficient, they carry hazards such as experienced in this incident. Manufacturers and retailers of power equipment go to great lengths to reduce the dangers associated with such equipment through training and warnings listed in owner's manuals. The chainsaw in this incident appears from a photograph to be a EFCO MT3500 purchased by the McGuires close to the date of the incident and probably was a new saw and probably equipped with an owner's manual. Depositions from both Mr. Gagnon and Mr. Dulberg indicated that they received no additional chainsaw training. Therefore, the owner's manual and their field experience were the primary sources of instructions for the safe use of the saw.

Mr. Gagnon was the only operator of the saw and, therefore, was responsible for its use. While the saw was appropriate for the tasks involved, there are safe and unsafe activities that could have taken place. The owner's manual shows 2 bar lengths for this saw – 14 and 16 inches. It appears that the McGuires chose the 16 inch bar. For the work involved, the shorter bars would have been safer and might have prevented or reduced the injury. It appears that Mr. Gagnon performed some unsafe acts which lead to Mr. Dulberg being cut. Also, Mr. and Mrs. McGuire who owned the saw apparently did not heed the warnings posted on page 2 of the owners manual which states: "Allow persons only who understand this manual to operate your chainsaw."

Cuts with chainsaws cause more damage than those caused by power or hand tools having a thinner blade such as that of a table saw. Chainsaws are designed to take out a "kerf" of about ¼ -inch, so if someone is cut, the sides of the cut are separated by this gap (or kerf) removing a chunk of meat and causing excessive bleeding and organ damage.

From the depositions, there is no mention of safety apparel – hard hat with ear and eye protection, safety chaps or pants nor safety gloves. (See page 7 of the owners manual for proper safety apparel.)



**EXHIBIT I**



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Proper safety apparel may have eliminated or reduced the severity of the injury.

Mr. Gagnon and the McGuires' goal was to remove a tall pine tree (40 – 50 feet in height) in their yard without damaging their buildings. From depositions, Mr. Gagnon chose to delimb this tree as it stood in a vertical position. According to Mr. Dulberg, Mr. Gagnon did this by climbing and cutting off limbs as he climbed the tree using limb stubs as a ladder where he placed his feet. In the owner's manual on page 9, it tells to never cut limbs from a ladder or a tree and always cut from a firm foundation or platform. Not having seen the exact circumstances, it cannot be stated unequivocally, but my recommendations would have been to fell the tree first before trying to remove any limbs higher than could be reached safely from the ground. Once the tree has been felled on the ground, the secondary limbs could have been removed while the primary limbs were still attached to the main bole. Bucking the primary limbs into firewood lengths could also be done in a safer fashion with them attached to the bole. Doing the work in this fashion would have eliminated the conditions of where Mr. Dulberg was cut. From Mr. Gagnon's deposition, there was room to fell the pine tree with its described height.

The EFCO MT3500 has a number of features designed to operate it safely. The handle where the accelerator trigger is located has a throttle trigger lockout device that must be depressed before the engine can accelerate which means that Mr. Gagnon had a tight hold on the trigger handle when the saw accelerated before cutting Mr. Dulberg. Mr. Dulberg states in his deposition that he was holding the butt end of a primary limb, and Mr. Gagnon was removing the secondary limbs moving from the tip of that primary limb toward the butt. The accident occurred after Mr. Gagnon removed the last secondary limb and was moving toward him with the saw. The saw accelerated with the bar and chain moving upward contacting the bottom of Mr. Dulberg's arm.

There was no mention of the chain brake being used. The MT3500 has a lever mounted just forward of the front handle. This lever serves to stop and lock the cutting chain movement when pushed forward; when in the rear position, the chain travels freely on the bar. On page 8 of the owners manual, it is recommended that the chain brake be set whenever the operator moves from place to place. Also, the bar should be facing to the rear of the direction of travel so that the sawyer would not fall on the bar and chain if he were to trip and fall. This applies directly to this incident. If Mr. Gagnon had set his chain brake and/or put the bar in a rearward position as he finished cutting the last secondary limb, Mr. Dulberg would not have been cut.

The MT3500 comes with a saw chain designed to reduce kickback. Kickback is a violent upward action of a chainsaw bar when the chain on the upper quadrant of the bar's tip comes in contact with an object. While this chain does not completely eliminate kickback, it helps. It is assumed here that the chain supplied by the manufacturer had not been replaced. In addition, if the saw chain had come in contact with some object that caused a kickback, the chain brake would have instantly stopped the chain as the bar traveled vertically and Mr. Gagnon's hand activated the chain brake. This brake activation would probably have protected Mr. Dulberg. Therefore, it is doubtful that a kickback occurred.

Page 7 of the owner's manual recommends that other people (bystanders) be kept at least 35 feet from someone operating a chainsaw. This is because the chainsaw operator should be focusing his attention on his task, not bystanders. Chainsaws are noisy and anyone around them should be wearing ear protection thus muffling emergency calls for help. It is recommended that bright clothing be worn by all bystanders and operators to help operators see people who might inadvertently move into the danger



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zones. This distance of 35 feet may be a bit overcautious, but the intent is to keep bystanders beyond the reach of the saw, limbs or trees being cut. The operator is the person in control of his saw and responsible for whatever results from his cutting. When trees are being felled, bystanders should be beyond the height of the tree; 2 tree heights is the recommended distance. If this rule had been followed, Mr. Dulberg would not have been cut.

Page 7 of the owner's manual has some additional recommendations that might apply to this incident. Cutting with chainsaws is fatiguing even for professional sawyers who use their saws everyday. For the occasional operator, chainsaw work can be very exhaustive. In this incident, Mr. Gagnon not only used a chainsaw when he was not accustomed to using one, but he also climbed a tree and delimbed it as he climbed. By the time Mr. Gagnon stop limbing and started removing secondary limbs from the primary limbs, he must have been very fatigued even with frequent breaks as described by Mr. Dulberg. The warning of the owner's manual not to cut when fatigued is very important in that fatigue impairs judgment, reduces response time and probably impairs reflexive actions. Simply put, we make mistakes when we are tired.

Another factor of this incident may have been a loose chain. New saw chains stretch when first used. This saw was probably new; this may have been its first application. The owner's manual discussed how to tension the chain on page 17 and describes proper break-in of the chain. The chain should have been tightened after the engine had become warm and later after some use. A loose chain might jump off the bar. Pertinent to this incident was that a loose chain will not decelerate as fast as a properly tightened one. Without the chain brake engaged, the chain continues to travel along the bar until it naturally comes to a stop. Mr. Dulberg said he tried to move away from the saw chain but could not escape its travel path. With a properly tensioned chain, it may have stopped before contacting his arm or at least been traveling at a slower speed and caused less damage to his arm.

After the review of the above evidence, it is my opinion that Mr. Gagnon was fully responsible for this accident and his parents – the McGuires – were also somewhat responsible by letting their son, Mr. Gagnon, use their chainsaw – a potentially dangerous tool – without enforcing the warnings and instructions available in the owner's manual. Mr. Gagnon was in full control of the saw and Mr. Dulberg was his assistant. Mr. Gagnon could have prevented this accident by following the instructions given in the owner's manual. The instructions in the owner's manual are quite clear and unambiguous, and if followed, would have prevented this accident. Mr. Gagnon admits that he was relatively inexperienced in the use of chainsaws, and therefore, should have been more careful while using such a potentially dangerous tool.

Respectfully submitted,

Bobby L Lanford

Dr. Bobby L. Lanford, PhD





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Date: 10/5/2020 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, for their motion to compel Plaintiff to answer written discovery, state as follows:

1) On November 28, 2017, Plaintiff Paul Dulberg ("Dulberg") filed a complaint for legal malpractice against Defendants, more than two years after Defendants withdrew their appearance for Dulberg in his personal injury action against Defendant David Gagnon in *Dulberg v. Gagnon*, Case No. 12 LA 178 in the Circuit Court of McHenry County, Illinois (the underlying complaint), which arose out of a chainsaw accident.

2) At the time of the original filing in the instant matter, Plaintiff was represented by the Gooch Law Firm, and the complaint against Popovich was signed by Thomas W. Gooch, III. (Complaint, Ex. A)

3) In ¶20 of Exhibit A, Dulberg invoked the "discovery rule" in an attempt to toll the two year statute of limitations for legal malpractice claims under 735 ILCS 5/13-214.3. He alleged that Mast and Popovich had provided Dulberg false and misleading information in



**GROUP EXHIBIT J**

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connection with his settlement in the premises liability case with Gagnon's co-defendants, Bill and Carolyn McGuire in the premises liability case, and that Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016.

4) The Gooch firm withdrew from representing Dulberg in the instant case, and the Clinton Law Firm substituted as his counsel, with attorney Julia Williams as the primary handling attorney.

5) On December 6, 2018, Dulberg filed his second amended complaint in this case (Ex., B) filed by the Clinton Law Firm. As compared to Exhibit A, Dulberg's allegations regarding the "discovery" on his cause action against Popovich are slightly different. In ¶¶ 56 and 57 of his second amended complaint, Dulberg alleges that he did not learn that false and misleading information had been provided to him until the mediation in December 2016 based on the expert opinions that Dulberg retained for the mediation.

6) Dulberg gave a discovery deposition in this case on February 19, 2020 (Ex. C). Dulberg was questioned about the "discovery" of his cause of action against Popovich and his law firm beginning on page 106 of his deposition (See also, page 108 where plaintiff Dulberg testified that his attorney at the time, Randy Boudin had told him to seek an independent opinion from an attorney that handles malpractice matters, and that Dulberg received that opinion on or about December 16, 2016 from Thomas Gooch.) Dulberg again confirmed that Gooch provided him with the legal opinion on December 16, at page 112 of his deposition. See also, pp. 113 and 114.

7) At Dulberg's deposition, Ms. Williams asserted the attorney-client privilege on behalf of her client relative to Gooch's advice in December 2016, but over the objection allowed



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Dulberg to testify concerning the substantive the discussions. The substantive testimony was sparse and vague. At p. 126 of his deposition, Dulberg agreed that his discussion with any malpractice lawyer in December 2016 is responsive to interrogatory no. 1 from Hans Mast (Ex. D). At p. 127 of his deposition, Dulberg responded to the following question:

Q: How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A: Yes.

Q: That's what you've alleged here in this complaint.

A: Yes.

8) On July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December of 2016, including the following production requests. (Ex. E)

9) On July 30, 2020, Julia Williams, then Dulberg's counsel requested 28 days to respond to Popovich's supplemental request for production. Counsel for Popovich agreed, but then received notice of the Clinton Law Firm's motion to withdraw on August 18, 2020.

10) On September 10, 2020, this Honorable Court granted the Clinton Law firm's motion to withdraw as Dulberg's counsel. Dulberg currently has a *pro se* appearance filed on his own behalf.

11) The attorney-client privilege exists to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information. *Waste Management, Inc. v. International Surplus Lines Ins. Co.*, 144 Ill. 2d 178, 190 (1991); *Daily v. Greensfelder, Hemker & Gale, P.C.*, 2018 IL App (5th) 150384, ¶1122-23. However, it is not unconditional, and it is the privilege, not the duty to disclose, that is the exception. Id. Illinois adheres to a strong policy of encouraging disclosure, with an eye toward



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ascertaining that the truth which is essential to the proper disposition of a lawsuit. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 35; Daily, 2018 IL App (5th) 150384 at ¶ 23. Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." *Waste Management, Inc.*, 144 Ill. 2d at 190; Daily, 2018 IL App (5th) 150384, ¶ 23.

While the Illinois Supreme Court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists where the client voluntarily injects into a case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications. *Center Partners, Ltd.*, 2012 IL 113107 at ¶ 35; Daily, 2018 IL App (5th) 150384 at Irri 24-25. The Illinois Supreme Court in *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.* illustrated that the test in determining whether the exception exists is whether or not the communications in question are necessary to resolve the truthfulness of a factual or legal issue that was introduced by the client holding the privilege. 189 Ill. 2d 579 (2000). Furthermore, when a plaintiff places at issue in a case the extent to which multiple attorneys representing it proximately caused its alleged damages, all communications between the plaintiff and its attorneys are discoverable "to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of plaintiff's claims." *Daily*, 2018 IL App (5th) 150384 at ¶¶31- 32 (finding that the "at-issue" exception applied because "there is an issue of whether [plaintiffs' attorneys] contributed to the cause . . . and the relative contribution of each to the plaintiffs' damages").

12) In *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004), the Plaintiff's husband met with an attorney 4 days after her medical procedure (in March 1999) that was the subject of a medical malpractice claim. The claim was untimely filed, and the doctor sought production of



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records relative to the husband's meeting with the attorney. The patient asserted that production would violate the attorney-client privilege. The court affirmed the trial court's finding that the privilege was waived when she voluntarily injected the statute of limitations issue into her case, alleging she did not discover her medical malpractice claim until June 1999. This case is on point and binding.

13) At pages 133-142 of his deposition, Dulberg admitted that he communicated in writing with Gooch regarding Popovich's breaches of the standard of care, and the bases for same.

14) Based on all of the above, Dulberg has placed the discovery of his malpractice claim "at issue" and must produce any and all communications which form the basis for his "discovery" of his malpractice claims, and the bases for his argument that the 2 year statute of limitations should be tolled.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their motion to compel Plaintiff to answer written discovery and produce requested documents and that Plaintiff be required to answer the outstanding written discovery and produce all documents requested in Exhibit D within 14 days of the presentation of this motion, deny any and all objections to said production, including any objection based on the attorney-client privilege, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

*/s/ George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC



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

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

**NOTICE**

**THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.**

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



**EXHIBIT A**

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

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

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.



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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the



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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

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

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III



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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

ALI-STATE LEGAL®

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CORY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CITY CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT
B
ALL-STATE LEGAL

NOTICE
PURSUANT TO LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 12 28 2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM
ON 20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, RAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
9416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06208684



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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kobliak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT
C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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## GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released



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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public



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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D



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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

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

**SECOND AMENDED COMPLAINT AT LAW**

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

**COUNT I**
**LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



**EXHIBIT B**

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

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

**B. Relevant Facts**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing



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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

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

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

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

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



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Respectfully submitted by,

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

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
A

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CORY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/28/2012 AT 9:00 AM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__ AT ____ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
Deposition
2

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06209684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

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

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> —— Original Message ——
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Konrad

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
Snyder D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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## GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No: 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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o. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2016 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of ccarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

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**Pamela Walker**

**From:** McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
**Sent:** Monday, December 10, 2018 1:37 PM
**To:** George K. Flynn; Pamela Walker
**Subject:** 17LA000377 - 2 Documents Filed

# 17LA000377

## DULBERG, PAUL VS MAST, HANS, ET AL

| | |
|---|---|
| Doc Type | **COAA** |
| Description | **COMPLAINT - AMENDED** |
| Date Filed | **12/6/2018** |
| Image Link | View Document Image |

| | |
|---|---|
| Doc Type | **NOTF** |
| Description | **NOTICE - FILING** |
| Date Filed | **12/6/2018** |
| Image Link | View Document Image |

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End of Message



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

PAUL DULBERG, )
Plaintiff, )
vs. ) 17 LA 377
THE LAW OFFICES OF THOMAS J. )
POPOVICH, P.C., and HANS MAST, )
Defendants. )

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

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PRESENT:
THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

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(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

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Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's



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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

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case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.



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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a



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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to – Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate



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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?



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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary – we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't – I'll give you – we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of



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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between –
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate –
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an



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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to –
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating –
A. One.
Q. Let me finish the question.
– investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss – I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.



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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't – I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from



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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like – I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he –
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they – I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of



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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what – and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family – his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said – I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for –
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down –
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability –
A. Yes.
Q. – Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law –
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by – I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and – I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to



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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you –
A. Yes.
Q. – in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both



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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or –
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe – he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which – where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for



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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately –
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 – I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law



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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if – just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for – he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion –
A. I can't –
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.



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Q. Did you meet with Hans and some third person –
A. Yes.
Q. – at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires – strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are –
A. I believe I asked him – I don't know – it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.



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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.
Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?
A. I believe so.
Q. Did you review and approve the allegations in this complaint?
A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.
Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?
A. Yes.
Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.
The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?
A. He was verbally granted authority to investigate, yes.
Q. Who did you want him to investigate a settlement with?
A. The McGuires.
Q. Just the McGuires or the McGuires and –
A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."
Q. Did you grant him authority to investigate a settlement with David Gagnon as well?
A. I don't know if I did or not, off the top of my head, but that would have been much later.
Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?
A. Eventually did I tell him that?
Q. Yes.
A. Yes.
Q. When did you tell him that?
A. I want to say just before Christmas in December of 2013.
Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?
A. Right.
Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?
A. I'd like to see the letter, but yeah, I believe so.
Q. I believe it's –
A. I believe he had to mail it a couple times because I didn't get it.
MR. FLYNN: Let's mark Exhibit 5.
(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.
Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?
A. That's what it says.
Q. In the letter did he ask you to – it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."
A. Right, but I believe it was just a release – it was all tied into one.
Q. This letter is unsigned. Did you receive the letter unsigned?
A. Did I receive this unsigned?
Q. Yes.
A. Yes.
Q. Have you ever seen a signed copy of this letter?
A. No.
Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?
A. Exhibit D?
Q. Correct.
MS. WILLIAMS: Turn the page.



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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it –
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and –
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.



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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much – it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier – strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?



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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were — not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his —
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that



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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?



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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and -- let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.



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Q. This –
A. We're talking – this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a



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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail –
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you –
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.



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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries –
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the – I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.



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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B -- I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.



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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the – following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think – December 8th was the mediation; is that right?



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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure –
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for – to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to – if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and –



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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me – I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information



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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report – I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't – you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention – it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against –

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A. A valid case, yes.

Q. – Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December – in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.



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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental – in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So –
MR. FLYNN: That particular one I agree with you is not phrased as calling for –
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely – I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think – I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.



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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me –
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding –
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks – Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.



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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you – strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your – their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him –
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to



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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not – whenever we started – whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint



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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely – you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against –
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case –
A. Yes.
Q. – at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich – I'm

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sorry – Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you – the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that – like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.



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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean – that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.
(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)
* * * * *

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STATE OF ILLINOIS )
) SS:
COUNTY OF DUPAGE )

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto



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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Piloggi

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404

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EXAMINATION


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|---|---|---|
| PAUL DULBERG | | |
| Examination by Mr. Flynn | 3 | 6 |
| Examination by Ms. Williams | 142 | 4 |


E X H I B I T S


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| Exhibit No. 6 | 79 | 12 |
| Exhibit No. 7 | 84 | 8 |
| Exhibit No. 8 | 87 | 10 |
| Exhibit No. 9 | 91 | 2 |
| Exhibit No. 10 | 101 | 9 |
| Exhibit No. 11 | 114 | 10 |
| Exhibit No. 12 | 125 | 2 |
| Exhibit No. 13 | 125 | 5 |




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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANT HANS MAST'S**
**INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

**DEFINITIONS & INSTRUCTIONS**

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of



**EXHIBIT D**

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illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

## INTERROGATORIES

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

**ANSWER:**

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

**ANSWER:**

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

**ANSWER:**



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4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

**ANSWER:**

Respectfully submitted,

*/s/ George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
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** FILED ** Env: 9649054
McHenry County, Illinois
17LA000377
Date: 7/2/2020 9:30 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO:** Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: */s/ George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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**EXHIBIT E**

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## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

*/s/ George K. Flynn*
One of their Attorneys



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
Page 409 of 464

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF**

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. by and through its attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 214, respectfully requests Plaintiff, Paul Dulberg, to produce within 28 days at the law offices of Karbal, Cohen, Economou, Silk & Dunne, LLC, 150 South Wacker Drive, Suite 1700, Chicago, Illinois 60606, the following photographs, documents, objects, and other tangible things:

**SUPPLEMENTAL PRODUCTION REQUESTS**

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

**RESPONSE:**

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

**RESPONSE:**



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

**RESPONSE:**

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their representation of you or provision of legal services to you.

**RESPONSE:**

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

**RESPONSE:**

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition from February 19, 2020.

**RESPONSE:**

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

**RESPONSE:**

Respectfully submitted,

*/s/ George K. Flynn*



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
Page 412 of 464

**George Flynn**

**From:** George Flynn
**Sent:** Thursday, September 17, 2020 4:06 PM
**To:** Paul Dulberg
**Subject:** RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Thank you.

Pursuant to Illinois Supreme Court Rule 201(k), please advise when the supplemental discovery answers and documents will be served. As I indicated in court on September 10, I plan to file a motion to compel very soon if we do not receive the sworn answers and all responsive documents.

Best regards,

-----Original Message-----
From: Paul Dulberg <Paul_Dulberg@comcast.net>
Sent: Thursday, September 17, 2020 11:19 AM
To: George Flynn <gflynn@karballaw.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear Mr Flynn,

Please find the attached files named 2020-09-17_Appearance Pro se.pdf and 2020-09-17_ProofOfDelivery.pdf

I have filed these with the McHenry County Clerk via the i2file web site.

Thank you,
Paul

Paul Dulberg
847-497-4250

**GROUP EXHIBIT F**



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

## George Flynn

**From:** George Flynn
**Sent:** Saturday, August 29, 2020 8:59 PM
**To:** Julia Williams
**Cc:** Ed Clinton; Mary Winch; Linda Walters
**Subject:** Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

> On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).
>
> I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.
>
> I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).
>
> The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.
>
> Please feel free to contact me if you would like to discuss this matter.
>
> Very truly yours,



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Thursday, July 30, 2020 10:07 AM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
**Subject:** Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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

Begin forwarded message:

**From:** Linda Walters <lwalters@KARBALLAW.com>
**Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)**
**Date:** July 2, 2020 at 11:11:39 AM CDT
**To:** "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
**Cc:** George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

**CONFIDENTIALITY NOTE:**
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

## George Flynn

**From:** George Flynn
**Sent:** Thursday, July 30, 2020 10:12 AM
**To:** Julia WIlliams
**Cc:** Ed Clinton; Mary Winch
**Subject:** Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Hi Julia. Yes, agreed.

On Jul 30, 2020, at 10:07 AM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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

Begin forwarded message:

**From:** Linda Walters <lwalters@KARBALLAW.com>
**Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)**
**Date:** July 2, 2020 at 11:11:39 AM CDT
**To:** "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
**Cc:** George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

Thank you.

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg>

P: (312) 431-3641

<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png>

F: (312) 431-3670

<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png>

E: lwalters@KARBALLAW.com

**CONFIDENTIALITY NOTE:**
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<2691756v1 - Supplemental Request for Prod. to Plaintiff.PDF>
<2691837v1 - Notice of Service of Discovery Documents -- Supplemental RTP to Plaintiff (FS).PDF>



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

## George Flynn

**From:** George Flynn <gflynn@karballaw.com>
**Sent:** Tuesday, September 1, 2020 10:31 AM
**To:** Julia Williams
**Cc:** Ed Clinton; Mary Winch; Linda Walters
**Subject:** RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

Thank you. I understand the position you and your firm are in. I will plan to either file a motion to compel, or advise the court of our intentions to file a motion on September 10.

Stay safe.

Very Truly Yours,

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

**CONFIDENTIALITY NOTE:**
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

**From:** Julia Williams <juliawilliams@clintonlaw.net>
**Sent:** Monday, August 31, 2020 8:45 AM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>; Linda Walters <lwalters@KARBALLAW.com>
**Subject:** Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

I will certainly pass this along to our client.

Unfortunately, because we are withdrawing, we are not comfortable answering discovery when another counsel may be appearing. Mr. Dulberg is seeking new counsel and would like to have his new counsel answer. I expect that we will be withdrawing on September 10, 2020. The court will grant Mr. Dulberg 21 days to find alternative counsel. Based upon this, it is unlikely that any answers to supplemental discovery will be prepared prior to the end of September.



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

Thank you again for your time and courtesy in this case. It has been nice to work with you as well.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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

On Aug 29, 2020, at 8:58 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

**CONFIDENTIALITY NOTE:**
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On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.

I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).

The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.

Please feel free to contact me if you would like to discuss this matter.

Very truly yours,

**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Thursday, July 30, 2020 10:07 AM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
**Subject:** Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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

Begin forwarded message:

**From:** Linda Walters <lwalters@KARBALLAW.com>



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

**Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)**
**Date:** July 2, 2020 at 11:11:39 AM CDT
**To:** "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
**Cc:** George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

**CONFIDENTIALITY NOTE:**
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

<image002.png><image003.png><image001.jpg>



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

** FILED ** Env: 14019112
McHenry County, Illinois
17LA000377
Date: 7/13/2021 1:29 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND TO REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021 ORDER ON DEFENDANTS' MOTION TO COMPEL**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Supplement Defendants' Motion to Compel and To Request Hearing on Plaintiff's Compliance with April 6, 2021 Order on Defendants' Motion to Compel, state as follows:

1) Defendants are bringing this motion to supplement their prior Motion to Compel and request a hearing on Plaintiff's compliance with the Court's April 6, 2021 Order (attached as Ex. A).

2) The Defendants never received a file-stamped copy of the draft order which their counsel submitted to the Court for entry on April 2, 2021 (see Group Ex. B, April 2, 2021 email from Linda Walters, and attached Order). Defendants never received a response, nor received electronic notice of the entry of the Order on April 6, 2021, and accordingly did not diary the June 14, 2021 hearing, and thus did not appear.



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

3) In the Court's April 6, 2021 Order granting Defendants' motion to compel, the Court ordered the Plaintiff to serve a supplemental answer to Mast's Interrogatory No. 1, and amend its responses to Popovich's Supplemental Request. The Court further ordered, "Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

4) On June 1, 2021, the Plaintiff served Exhibit C (Plaintiff's Amended Additional Answer to Defendant Hans Mast's Interrogatory to Plaintiff Paul Dulberg), and Exhibit D (Plaintiff's Amended Additional Response to Defendant The Law Offices of Thomas J. Popovich, P.C.'s Supplemental Request for Production). Dulberg also produced fourteen pages of bates labeled records (See Ex. E).

5) The Plaintiff has not complied with the Court's April 6, 2021 Order. Accordingly, Defendants respectfully request that the Court strike the non-responsive portions of Exhibits C, D, and E and close written discovery.

6) With respect to Exhibit C, Dulberg provide a "non-answer." Dulberg was ordered to specifically answer each discovery request. Mast's Interrogatory No. 1 states as follows: Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. Dulberg's amended additional answer does not describe how there was a breach of the standard of care, he simply identifies a discovery date (December 12, 2016) based upon a binding mediation order. He does not describe the breach of the standard of care, or how, specifically, he became aware of it. He simply writes, "He knew the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016." He does not describe the



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
Page 424 of 464

discussion or explain how the standard of care was breached, or why his discussion with Tom Gooch enlightened him as to the breach.

7) Moreover, Popovich's supplemental requests for production are aimed specifically at identifying how Dulberg "discovered" his breach of the standard of care, and when he recognized damages as a result of same. In Exhibit D, Dulberg's amended additional response, Dulberg simply attaches various pages from pleadings in this case. He does not attach any discoverable materials, such as emails, letters, etc. Instead, he is simply regurgitating his position in this case. As previously argued in Defendants' Motion to Compel and at hearing, if Dulberg has no documents responsive to the discovery requests, and he has no basis for a tolling of the statute of limitations in this case, then his answer should simply state, "none." Enough is enough. Dulberg's non-responses to this discovery requests should be stricken, and he should be barred attempting to present any additional evidence in support of his tolling theory.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their Motion to Supplement Defendants' Motion to Compel and set hearing on Plaintiff's compliance with April 6, 2021 Order on Defendants' Motion to Compel, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

*/s/ George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

**ORDER**

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| **Defendants.** | ) | |

**FILED**
APR - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

**ORDER**

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.


***Prepared by:***

| | |
|---|---|
| **Atty. No.** | **George K. Flynn ARDC #6239349** |
| **Name:** | **Karbal, Cohen, Economou, Silk & Dunne, LLC** |
| **Attorney for:** | **Defendants** |
| **Address:** | **150 S. Wacker Drive, Suite 1700** |
| **City:** | **Chicago, IL 60606** |
| **Telephone:** | **(312) 431-3700** |
| **E-Mail:** | **gflynn@karballaw.com** |


**....., 2021**

**ENTER:**

..... Thomas A. Meyer

eSigned by THOMAS A. MEYER 04/06/2021 09:09:24 RNOhbggY

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

**EXHIBIT A**

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

## Linda Walters

**From:** Linda Walters <lwalters@karballaw.com>
**Sent:** Friday, April 2, 2021 10:17 AM
**To:** proposedorders
**Cc:** contact@lawofficeofalphonsetalarico.com; George Flynn
**Subject:** RE: Paul Dulberg v. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (Circuit Court of McHenry County, IL Case No.: 17 LA 000377)
**Attachments:** 2868280v1 - Proposed Order (4-2-21).PDF; 2867639v1 - Proposed Order (4-2-21).DOCX

On behalf of George Flynn, attached is a copy of a proposed order in both word and pdf format relative to the above. All counsel of record have been copied on this email.

Thank you.
Linda Walters
Asst. to George Flynn

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

**CONFIDENTIALITY NOTE:**
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

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**GROUP EXHIBIT B**

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

## ORDER

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

*Prepared by:*
**Atty. No.** George K. Flynn
ARDC #6239349
**Name:** Karbal, Cohen, Economou, Silk & Dunne, LLC
**Attorney for:** Defendants
**Address:** 150 S. Wacker Drive, Suite 1700
**City:** Chicago, IL 60606
**Telephone:** (312) 431-3700
**E-Mail:** gflynn@karballaw.com

....., 2021
**ENTER:**

.....
**Judge** **Judge's No.**

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY TO PLAINTIFF PAUL DULBERG**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Answer to Defendant Hans Mast's Interrogatory #1 states as follows:

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

**ANSWER:** Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.



**EXHIBIT C**

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Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

**AMENDED ADDITIONAL ANSWER:** Dulberg discovered the pecuniary injury on December 12, 2016 based upon a binding mediation award and knew he had a legal malpractice case on December 16, 2016. He knew that the Defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

Dulberg discovered in the defendants' document disclosure, POP 000192, that Mast had in fact sent the McGuires' attorney a $7,500.00 offer on October 22, 2013 without Dulberg's knowledge and that was before the November 4, 2013 meeting in Mast's office when Mast first asked Dulberg if Mast could probe and see what was on the table for a possible settlement with the McGuires.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com



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## VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily belies the same to be true.

Paul Dulberg

June 1, 2021



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Response states as follows:

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746



**EXHIBIT D**

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their



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representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133, and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November 30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please see above)

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition



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from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022



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(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.

2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.

3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.

4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

## VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid



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that he verily belies the same to be true.

Paul Dulberg June 1, 2021



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LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

**B. Alleged Acts of Negligence**

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.



**EXHIBIT E**



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

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

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;



Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377
Page 6 of 24
Dulberg 001809

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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

## CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court



Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

## CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court



Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 13 of 32

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377 Dulberg 009016
Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 30 of 32
Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377
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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

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

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;



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LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl



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**From:** Randy Baudin II <randybaudin2@gmail.com>
**Subject:** award
**Date:** December 12, 2016 7:34:42 PM CST
**To:** pdulberg@comcast.net
1 Attachment, 45.2 KB

Congrats!!

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham. (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P/S | 75,000. |
| L N L | 75,000. |

Dulberg 002928

Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602
312.960.2260 • info@adrsystems.com • www.adrsystems.com



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: award**
**Date:** December 13, 2016 10:48:50 AM CST
**To:** paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Dulberg 002930

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| | |
|---|---|
| Comments/Explanation Medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P/S | 75,000. |
| L/L | 75,000. |

The Honorable James P. Etchingham, (Ret.)



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ADR systems

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The Honorable James P. Etchingham, (Ret.)



Received 09-16-2022 04:17 PM / Circuit Clerk Accepted on 09-16-2022 04:18 PM / Transaction #19526335 / Case #2017LA000377

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: award**
**Date:** December 13, 2016 10:46:50 AM CST
**To:** paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

From: Randy Baudin II <randybaudin2@gmail.com>
Date: December 12, 2016 at 7:34:42 PM CST
To: pdulberg@comcast.net
Subject: award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

| | | |
|---|---|---|
| Paul Dulberg | ) | |
| | ) | |
| | ) | |
| | ) | |
| v. | ) | ADR Systems File # 33391BMAG |
| | ) | |
| | ) | |
| David Gagnon | ) | |

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Dulberg 004884

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| Comments/Explanation | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
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| P.S | 75,000. |
| L N L | 75,000. |

The Honorable James P. Etchingham, (Ret.)



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STATE OF ILLINOIS )
) SS.
COUNTY OF McHENRY )

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

| | |
|---|---|
| PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, Defendants. | No. 17 LA 377 |

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 19th day of July, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by
MR. ALPHONSE A. TALARICO (via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN

On behalf of the Defendants.

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THE COURT: Counsel?

MR. FLYNN: No. 10, your Honor. I see Mr. Talarico. George Flynn on behalf of defendant/movant.

THE COURT: Dulberg versus Mast?

MR. FLYNN: Yes.

THE COURT: Okay. I saw Mr. Talarico. All right. Mr. Talarico?

MR. TALARICO: Yes, Judge. Good morning.

THE COURT: All right. Counselor here in court, what's going on?

MR. FLYNN: Good morning, your Honor. We brought a motion to supplement our motion to compel. The Court ruled on April 6th and granted defendant's motion to compel and set a June 14 compliance date.

THE COURT: Okay.

MR. FLYNN: I'm sorry. June 1st compliance date with a June 14 hearing. Somehow I don't believe we got a copy of the file stamped order and it didn't get diaried, so I believe the case was called on June 14 --

THE COURT: Okay.

MR. FLYNN: -- and a continue date August 19th.

THE COURT: You got inadequate compliance, is

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that ultimately --

MR. FLYNN: That's our position, yes.

THE COURT: All right. I'm going to pass this. We'll come back to it. And let me see if I can take a look at the compliance at issue.

Mr. Talarico, just hang in there. I'll be back at the end of the call.

MR. FLYNN: Thank you, your Honor.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Let's go to Dulberg. All right. Plaintiff's counsel for the record, if you could identify yourself.

MR. TALARICO: Good morning, your Honor. My name is Alphonse Talarico. I represent Paul Dulberg.

MR. FLYNN: And good morning again, your Honor. George Flynn on behalf of Popovich and Mast.

THE COURT: All right. So tell me what the issue is.

MR. FLYNN: Again, your Honor, the Court ruled on April 6th that the plaintiff was directed to provide the specific answers and responses to each interrogatory and production request. So we did

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receive supplemental production responses and a supplemental interrogatory answer. With respect to the supplemental production, there is one document that I consider to be responsive and that is new.

THE COURT: I'm sorry?

MR. FLYNN: There is one document that was produced and I consider it to be responsive and a new production. The rest of the documents that were produced, it's unusual. There are actual pleadings from this case that were attached as responsive documents to my discovery requests. I don't see how those -- which basically just set forth the plaintiff's position in this case in response to the various arguments we've made in motions.

THE COURT: Well, what is it you're looking for? What didn't you get?

MR. FLYNN: I'm looking to strike any of those documents --

THE COURT: Okay.

MR. FLYNN: -- that are not responsive.

THE COURT: Is it -- I mean, really is it necessary to go to the trouble of striking them if they're -- I mean, ultimately they're not going to be relevant as a discovery response.

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MR. FLYNN: Only -- I just want to make sure there aren't any additional documents that were --

THE COURT: Are there any additional documents, Mr. Talarico?

MR. TALARICO: Judge, I have no idea if -- it's our position we complied completely. We filed our answers on June 1st. If the Court had -- I don't know if the Court remembers, you had ordered us, plaintiff and defendant, to talk up through June 14th to see if there were any issues. The only response I got from the defendants was an e-mail with one word. As I told you on June 14th, the only word was, Thank you. Now I am totally surprised, 73 days later, Judge, and I don't know what else -- I want time to respond in writing, Judge. This is --

THE COURT: I don't -- I don't want to do that.

MR. TALARICO: This has been difficult.

THE COURT: This is --

MR. FLYNN: Yes, it has, Judge.

THE COURT: So what is it you -- what is it you are looking for? Because I have a representation on the record -- and I'm assuming there's an affidavit of compliance.

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MR. TALARICO: There is.

THE COURT: Okay. Then -- and he says, I've given you everything.

MR. FLYNN: That's fine with respect to the production response. Now there's the interrogatory answer.

THE COURT: All right. Tell me -- we're moving on to the interrogatory.

MR. FLYNN: And again, this goes to the statute of limitations on a legal malpractice case. The plaintiff is claiming that he didn't discover it until after the 2 years --

THE COURT: Could you keep your voice up a little?

MR. FLYNN: Sure. Plaintiff is arguing for a tolling of the statute of limitations on a legal malpractice case. He was asked in Interrogatory No. 1, Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

His response -- his amended additional response discusses his pecuniary injury, that only addresses damages. With respect to the breach of

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the standard of care and how he discovered it, he simply says he knew that the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

THE COURT: Okay.

MR. FLYNN: That describes the date. It doesn't describe how he became aware of it, what Gooch told him. Now, again, I know your Honor is aware of the deposition testimony in this case regarding that December 16 time period. If the answer is that Dulberg doesn't remember what Mr. Gooch told him, if Gooch said simply, You have a case, that's fine. That's what they should say. But I've already taken his deposition. There are no specifics that explain to me why Mr. Gooch crystallized this breach of the standard of care on December 16. But if this is all they have, then that's what he should say, is that I don't remember what Mr. Gooch told me.

THE COURT: I mean, he's -- I think he's complied. I'm not sure --

MR. FLYNN: What is the breach of the standard of care?

THE COURT: I'm sorry?

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MR. FLYNN: And what is the breach of the standard of care? That's what I've asked in the interrogatory. They don't say.

THE COURT: Well, I think that -- all right. I guess that is -- my reading on it, it's implied it's a statute of limitations. But --

MR. FLYNN: No, the statute of limitations is the issue in this case.

THE COURT: All right. What is the --

MR. FLYNN: The underlying personal injury case --

THE COURT: What is the breach? Did Mr. Gooch advise him what the breach was?

MR. TALARICO: Judge, all that Mr. Dulberg recalls was relayed in the responses. There were no recordings that were going on. Nothing was done in writing. I'm not sure how I can possibly respond anymore, to give anymore.

THE COURT: I have a representation that this is all there is.

MR. FLYNN: That's satisfactory to me. As long as when I file my summary judgment motion there's not some new discovery discussion as to --

MR. TALARICO: Judge --

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MR. FLYNN: -- what the breach was and what --

MR. TALARICO: I'm sorry. I hate to interrupt. Judge?

THE COURT: Yeah.

MR. TALARICO: We -- again, we were -- our response, I believe is in total compliance with the Court order of June 6th and your instructions on that day from the court record. And I'd like to respond in writing to establish that we did that.

THE COURT: No. No. I mean, you're -- you only need to respond in writing if we're going to have a hearing. If you want to file a brief that -- just in the file, that's fine, but I think we have a resolution today and I don't want to spend more time reading briefs resolving an issue that's moot. So I think this is resolved. What else is outstanding?

MR. FLYNN: I think that does resolve -- the representation resolves both issues, so --

THE COURT: I have -- you have advised -- well, you've advised that's all there is, so I'm finding you in compliance.

MR. TALARICO: Thank you, your Honor.

THE COURT: Okay. Is there anything else we need to do?

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MR. FLYNN: I suppose with respect to the summary judgment motion that I anticipate, Judge, there was one document that was produced in order to avoid a second deposition of Mr. Dulberg to authenticate this document, which is a letter from Attorney Thompson -- I'm sorry -- Attorney Ferris -- that goes to the issue of the statute of limitations. If Mr. Talarico would stipulate to the authenticity of this March 4, 2015 letter on the record, I don't need to send a request to admit for --

THE COURT: Can you hear all that?

MR. TALARICO: I heard it, Judge, but I'm not familiar with that document. A request to admit would be welcome.

MR. FLYNN: Fair enough.

MR. TALARICO: Just so I can see what it is.

THE COURT: That's fine. We're back again on August 19th. Do you want to delay that date in light of the fact you may be issuing a request to admit?

MR. FLYNN: I think that would make sense.

THE COURT: All right. So let's strike August 19th and tell me when it makes sense to come

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back.

MR. FLYNN: I'll need at least 30 days, so --

THE COURT: 60 days?

MR. FLYNN: A 60-day date would be great.

THE COURT: How's September 17th? That's a Friday.

MR. TALARICO: Fine with me, Judge.

MR. FLYNN: That works for me.

THE COURT: All right. So that will be at 8:45 and then we'll see what you guys want to do when you come back. And are you withdrawing your motion or ...

MR. FLYNN: I think that --

THE COURT: Or do you want me expressly to find compliance based on representations in open court?

MR. FLYNN: I'm not requesting a hearing any longer. I think we resolved the matter. So yeah, I'll withdraw it.

THE COURT: All right. Motion's withdrawn. The record still stands. I did find that you were in compliance and we'll deal with the next step whenever it comes up. But I will see you September 17th and if you could draft the order.

MR. FLYNN: I will. Thank you, your Honor.

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THE COURT: All right. Thank you.

Mr. Talarico, anything else?

MR. TALARICO: No, Judge, thank you for your time.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS )
) SS:
COUNTY OF McHENRY )

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: August 24, 2021

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# Exhibit 22

** FILED ** Env: 20826013
McHenry County, Illinois
2017LA000377
Date: 12/28/2022 3:23 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**

**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S RESPONSE TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT FILED IN VIOLATION OF 735 ILCS 5/2-619.1, 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. AND CONTRARY TO ILLINOIS SUPREME COURT PRECEDENT AND 735 ILCS 5/13-214.3(b)**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his RESPONSE TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT FILED IN VIOLATION OF 735 ILCS 5/2-619.1, 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 AND CONTRARY TO ILLINOIS SUPREME COURT PRECEDENT AND 735 ILCS 5/13-214.3(b) states as follows:



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**PREAMBLE :** Plaintiff's Response herein cannot follow the 22nd Judicial Circuit McHenry County, Illinois Local Rule 2.04 B.3.a because Defendant violated/ignored Local Rule 2.04 A.3.

ADDITIONALLY, DEFENDANTS' IMPROPERLY RELYING UPON 735 ILCS 5/13-214.3(b) as existed prior to the Illinois Supreme Court case *Suburban Real Estate Servs., Inc. v. Carlson. 2022 IL 126935,193 N.E.3d 1187, 456 Ill.Dec.779 (Ill. 2022)* and ignoring Plaintiff's Complaint and the undisputed facts, state that Plaintiff suffered that statute's precipitating pecuniary injury on January 29, 2014 the day he accepted a settlement based upon the representations of Defendant Hans Mast that Defendants Carolyn and William McGuire will be dismissed from the underlying case on a Motion for Summary Judgment and Plaintiff will receive nothing, further relying upon *Tilschner v. Spangler, 409 Ill.App.3d 988, 949 N.E.2d 688, 350 Ill.Dec. 896 Ill.App. 2011) No. 2-10-0111.* (A case in which Defendants herein appeared and lost) in the underlying case against Defendants Carolyn and William McGuire for $5,000.00, therefore misstating the law and the undisputed facts when they:

a) ignore the fact that Plaintiff has always relied on the binding arbitration award of $660,000.00 reduced by 15% because of Plaintiff's comparative fault as determined by Mediation Judge James P. Etchingham, (Ret.) on December 12, 2016 that was further reduced by the Binding Mediation Award being capped in a High-Low agreement not signed by Plaintiff in the amount of $300,000.00 as



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the day he suffered a pecuniary loss because of the settlement agreement he was convinced to sign by Defendant Hans Mast. (Please see Plaintiff's Exhibit SJR #1 attached);

b) ignore the fact that Defendants' citations prior to the entering of the Judgement with Opinion (with analysis) in *Suburban Real Estate Servs., Inc. v. Carlson. 2022 IL 126935* distinguished and construed 735 ILCS 5/13-214.3(b) as to when the required pecuniary loss happens;

c) ignore the fact that as Chief Justice Thomas stated in *Porter v. Decatur Memorial Hospital et al., 882 N.E.2d 583. 227 Ill.2d 343, 317 Ill.Dec.703 (Ill.2008) 104441* on [882 N.E.2d 590] <u>When this court construes a statute, that construction is considered a part of the statute itself unless and until the legislature amends it contrary to this court's interpretation.</u> *Miller v. Lockett, 98 Ill.2d 478, 483, 75 Ill.Dec.224, 457N.E.2d 14 (1983);*

d) ignore the fact that Plaintiff filed his original Complaint for Legal Malpractice on November 28, 2017 which was within (1) one year of suffering his pecuniary loss on December 12, 2016. (Please see Plaintiff's Exhibit SJR #2 attached).

**<u>VIOLATION OF 735 ILCS 5/2-619.1</u>**

In Defendants' **V. <u>ARGUMENT</u>** they improperly raise within their Motion for Summary Judgement a Motion To Dismiss based upon 735 ILCS 5/2-619(a)(5) That the action was not commenced within the time limited by law. Defendants fail to comply



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the requirements of 735 ILCS 5/2-619.1 which reads as follows:

(735 ILCS 5/2-619.1) (from Ch. 110, par. 2-619.1)
Sec. 2-619.1. Combined motions. Motions with respect to pleadings under Section 2-615,motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination. A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615, 2-619, or 2-1005. Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based.
(Source: P.A. 86-1156.)

Further responding, Plaintiff states that this a Motion To Dismiss based upon 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-614.3 was brought by these Defendants and denied on May 10, 2018. (Please see Plaintiff's Exhibit SJR #3 attached).

**VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3.**

Defendants fail to comply the requirements of VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. which reads as follows:

**2.04 MOTIONS FOR SUMMARY JUDGEMENT**
A. **Moving Party**. With each motion for summary judgment filed pursuant to 735 ILCS 5/2-1005, the moving party shall serve and file or cause to be received by the Circuit Court Clerk:
1. Any affidavits and other materials referred to in Supreme Court Rule 191,
2. A supporting memorandum of law not exceeding 15 pages,
3. A statement of material facts as to which the moving party contends there is no genuine issue that entitles the moving party to a judgment as a matter of law, and that also include: a description of the parties, and

The statement referred to in three (3) shall consist of short numbered paragraphs, including within each paragraph specific references to affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial or striking of the motion.

**DISPUTED MATERIAL FACTS**



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A) Plaintiff restates VIOLATION OF 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. above as if fully stated here as to why Plaintiff cannot contest Defendant's point by point statement of uncontested **Material** [emphasis added] facts but pursuant to 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 B.3.b. states that any alleged uncontested **Material** [ emphasis added] facts found within Defendants' non-compliant Motion For Summary judgment are denied as contested.

B) Pursuant to 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 B.3.b. Plaintiff now makes " A statement consisting of short numbered paragraphs of any additional facts that require the denial of summary judgment…" as follows:

B1) The material fact that Mast and Popovich entered into an attorney client relationship with Dulberg is contested based upon Defendants answer and affirmative defenses.

ANSWER: Defendants admit only that Popovich entered into an attorney client relationship with Dulberg. Defendants deny the remainder of the allegations contained in Paragraph 33. (Please see Plaintiff's Exhibit SJR #4 pg.6 ¶ 33 attached).

B2) The material fact that based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care is contested as established by Defendants' answer and affirmative defenses.

ANSWER: Paragraph 34 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in



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Paragraph 34. (Please see Plaintiff's Exhibit SJR #4 pg.6 ¶ 34 attached).

B3) The material fact that based upon the fact that Mast urged Dulberg to settle the claims against the McGuire's for $5,000 is contested as established by Defendants' answer and affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 38. (Please see Plaintiff's Exhibit SJR #4 pg.7 ¶ 38 attached).

B4) The material fact that on November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won'tsee [sic] any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as Group Exhibit C.) is contested as established by Defendants 'answer and affirmative defenses.

ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 39. (Please see Plaintiff's Exhibit SJR #4 pg.7 ¶ 39 attached).

B5) The material fact that on November 20, 2013, Mast emailed Dulberg urging him to



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accept the $5,000.00 otherwise “the McGuires will get out for FREE on a motion.” (See Emails attached as Group Exhibit C.) is contested as established by Defendants’ answer and affirmative defenses.

ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 40. (Please see Plaintiff’s Exhibit SJR #4 pg.7 ¶ 40 attached).

B6) The material fact that on or around December 2013 or January 2014, Mast met with Dulberg and again advised them [sic] there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing is contested as established by Defendants’ answer and affirmative defenses.

ANSWER: Defendants admit that on or around December 2013 or January 2014 Mast met with Dulberg, but deny that Mast told Dulberg he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing. (Please see Plaintiff’s Exhibit SJR #4 pg.7 and pg.8 ¶ 41 attached).

B7) The Material fact that Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires is contested based upon Defendants’ Answer and Affirmative defenses.



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ANSWER: Defendants deny the allegations contained in Paragraph 42.

(Please see Plaintiff's Exhibit SJR #4 pg.8 ¶ 42 attached).

B8) The Material fact that Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 43.

(Please see Plaintiff's Exhibit SJR #4 pg.8 ¶ 43 attached).

B9) The Material fact that Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. Exhibit D (Settlement) is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 44.

(Please see Plaintiff's Exhibit SJR #4 pg.8 ¶ 44 attached).

B10) The Material fact that Mast reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 47.

(Please see Plaintiff's Exhibit SJR #4 pg.9 ¶ 47 attached).



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B11) The Material fact that only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 55.

(Please see Plaintiff's Exhibit SJR #4 pg.10 ¶ 55 attached).

B12) The Material facts that Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

(a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

(b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

(c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;

(d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the



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assistance Dulberg by for example failing to obtain an expert;

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

(f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion." is contested because of Defendants' Answer and Affirmative defenses.

ANSWER: Defendants deny the allegations contained in Paragraph 58 and subparagraphs (a) through (f) inclusive.

(Please see Plaintiff's Exhibit SJR #4 pgs.10-11 ¶ 58(a)-(f) attached).

B13) The Material fact that as a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C. is contested because of Defendants' Answer and Affirmative defenses.



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ANSWER: Defendants deny the allegations contained in Paragraph 59.

(Please see Plaintiff's Exhibit SJR #4 pg.11 ¶ 59 attached).

B14) The Material facts contained in Defendants SECOND AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiff v. David Gagnon, et al., Defendants*, Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S.Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreedto a



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"high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

4. Accordingly, this matter is time-barred.

is contested pursuant to Plaintiff's Answers To Defendants' Affirmative Defenses.

(Please see Plaintiff's Exhibit SJR #5 pg.2 attached). (Please also see above)

**Wherefore,** Plaintiff Paul Dulberg prays that this Honorable Court finds that Plaintiff's non-compliance was caused by Defendants' non-compliance with 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. Plaintiff further prays that this Honorable Court denies Defendants' Motion for Summary Judgment based upon the undisputed facts regarding when Plaintiff's pecuniary loss occurred and when Plaintiff filed this action, the many disputed facts that a jury should hear, the current status of 735 ILCS 5/13-214.3(b) as to when the required pecuniary loss happens as construed by the Illinois Supreme Court in *Suburban Real Estate Servs., Inc. v. Carlson. 2022 IL,* Defendants' non-compliance with Illinois Statute requirements of 735 ILCS 5/2-619.1, Defendants' non-compliance with 22ND JUDICIAL CIRCUIT MCHENRY ILLINOIS LOCAL RULE 2.04 A.3. and for any other relief, in law or equity, that this Honorable Court deems right and just.

Respectfully submitted,

*/s/ Alphonse A. Talarico*



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Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

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ADR systems

# Binding Mediation Award

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.S | 75,000. |
| L N L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

EXHIBIT SJR # 1



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

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

NOTICE

THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT SJR #2



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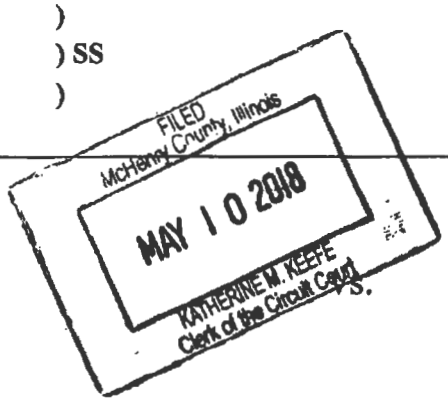
Ln. 6
ORD

# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury




Dulberg vs. Mast, et al

Date: 5-10-18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G Flynn

## ORDER

This matter before the Court on hearing on Defendants' combined Motion to Dismiss, both parties present by counsel, the Court fully advised in the premises

It IS ORDERED:

1. Defendants' 2-615 motion to Dismiss is granted, and the 2-619 Motion is denied
2. Plaintiff granted 28 days (6/7/18) to file a First Amended Complaint
3. Defendants granted 28 days (7/5/18) thereafter to Answer or otherwise plead
4. Matter is set for status of pleadings on July 20, 2018 at 9:00 am in 201.

Prepared by: S. Walczyk / Gooch Firm
Attorney for: Dulberg
Attorney Registration No.: 6315819 Judge:

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** FILED ** Env: 4230960
McHenry County, Illinois
17LA000377
Date: 3/11/2019 12:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW**

Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and KARBAL, COHEN, ECONOMOU, SILK, & DUNNE, LLC, for their Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law, state as follows:

**COUNT I**
**LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

**ANSWER: Defendants admit the allegations contained in Paragraph 1.**

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

**ANSWER: Defendants admit the allegations contained in Paragraph 2.**

EXHIBIT
SJR
#4



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3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

**ANSWER: Defendants admit only that Mast was an associate of The Law Offices of Thomas Popovich, P.C., and admit that he is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 4.**

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

**ANSWER: Defendants admit the allegations contained in Paragraph 5.**

**B. Relevant Facts**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 6.**

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

**ANSWER: Defendants admit the allegations contained in Paragraph 7.**

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

**ANSWER: Defendants admit the allegations contained in Paragraph 8.**

9. David Gagon [sic] is Caroline's son and William's stepson.

**ANSWER: Defendants admit the allegations contained in Paragraph 9.**



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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 13.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 14.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 15.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 16.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.**



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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.**

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

**ANSWER: Paragraph 19 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 19.**

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

**ANSWER: Paragraph 20 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 20.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.**

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

**ANSWER: Paragraph 22 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 22.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.**



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

**ANSWER: Defendants deny the allegations contained in Paragraph 24.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 29.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 30.**



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

**ANSWER: Defendants admit only that in May 2012, Dulberg hired Popovich to represent him in prosecuting his claims against Gagnon and the McGuires.**

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

**ANSWER: Defendants admit only that Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. Defendants deny the remainder of the allegations contained in Paragraph 32.**

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

**ANSWER: Defendants admit only that Popovich entered into an attorney client relationship with Dulberg. Defendants deny the remainder of the allegations contained in Paragraph 33.**

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

**ANSWER: Paragraph 34 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 34.**

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

**ANSWER: Defendants admit the allegations contained in Paragraph 35.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36.**

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



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**ANSWER:** **Defendants admit only that the allegations made in the complaint stand for themselves. Defendants deny the remainder of the allegations contained in Paragraph 37.**

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

**ANSWER:** **Defendants deny the allegations contained in Paragraph 38.**

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

**ANSWER:** **Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 39.**

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

**ANSWER:** **Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 40.**

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



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**ANSWER:** **Defendants admit that on or around December 2013 or January 2014 Mast met with Dulberg, but deny that Mast told Dulberg he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.**

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

**ANSWER:** **Defendants deny the allegations contained in Paragraph 42.**

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

**ANSWER:** **Defendants deny the allegations contained in Paragraph 43.**

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

**ANSWER:** **Defendants deny the allegations contained in Paragraph 44.**

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

**ANSWER:** **Defendants admit only that if information regarding Gagnon's insurance policy being limited to $100,000 was provided, it was gleaned from communications with defense counsel.**

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

**ANSWER:** **Defendants admit the allegations contained in Paragraph 46.**



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

**ANSWER: Defendants deny the allegations contained in Paragraph 47.**

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

**ANSWER: Defendants admit only that Dulberg authored emails contained in Group Exhibit E. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 48.**

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

**ANSWER: Defendants admit only that Popovich continued to represent Dulberg into 2015, and that Mast was the primary handling attorney. Defendants deny the remainder of the allegations contained in Paragraph 49.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 51.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52.**

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



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**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53.**

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

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 55.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 56.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 57.**

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

(a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

(b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;



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(c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;

(d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

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

(f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

**ANSWER: Defendants deny the allegations contained in Paragraph 58 and subparagraphs (a) through (f) inclusive.**

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

**ANSWER: Defendants deny the allegations contained in Paragraph 59.**

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, respectfully request that this Court grant judgment in their favor, and against Plaintiff, and for any further relief that this Court deems fair and proper.



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## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE: CONTRIBUTORY NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that any damages awarded to Plaintiff, be reduced by Plaintiff's proximate share of liability or, if such share is more than 50%, be barred in its entirety.



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## SECOND AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiff v. David Gagnon, et al., Defendants*, Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

4. Accordingly, this matter is time-barred.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that Plaintiff be completely barred from recovery under the statute of limitations.



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## AFFIRMATIVE DEFENSES

## THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause of Dulberg's damages.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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Attorneys for Defendants
gflynn@karballaw.com



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## AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Hans Mast, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

Hans Mast

Subscribed and sworn to before me
this 1st day of March 2019.

Notary Public

JOANN MORRISON PAXTON
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
October 04, 2022



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## AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Thomas J. Popovich, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

The Law Offices of Thomas J. Popovich, P.C.

By: _____
Thomas J. Popovich

Subscribed and sworn to before me
this _____ day of January, 2019.

_____
Notary Public



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served electronically via the Clerk's Office e-filing system and by emailing a copy to counsel of record on the 11th day of March 2019 before the hour of 5:00 p.m. as follows:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/ Linda Walters

Linda Walters



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** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

**AFFIRMATIVE DEFENSES**
**FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2.

EXHIBIT
SJR
#5

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3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

**SECOND AFFIRMATIVE DEFENSE**
**STATUTE OF LIMITATIONS**

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.



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**ANSWER:** Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

## AFFIRMATIVE DEFENSES
## THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
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juliawilliams@clintonlaw.net



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# Exhibit 23

** FILED ** Env: 21117254
McHenry County, Illinois
2017LA000377
Date: 1/19/2023 3:38 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REPLY IN SUPPORT OF THEIR MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST, by and through their attorneys, Karbal Cohen Economou Silk & Dunne, LLC, for their REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT, state as follows:

## I. INTRODUCTION

Plaintiff's Response confuses allegations made at the pleading stage of litigation, and facts established in the record (here mainly by virtue of sworn deposition testimony). On its face, Dulberg's legal malpractice complaint is untimely filed. The record demonstrates that Dulberg can never meet his burden of proving an exception to the applicable two-year statute of limitations. Defendants' motion for summary judgment under 735 ILCS 5/2-1005 establishes that Dulberg can never prove a late "discovery" of his allegedly wrongfully caused injury.[1] As will be discussed below, the only legal analysis contained in Dulberg's response, relies on an inapplicable "transactional" malpractice case, *Suburban Real Estate Servs. Inc. v. Carlson*, 2022 IL

[1] Defendants' Motion is brought under 735 ILCS 5/2-1005, and not under 735 ILCS 5/2-619.1 as suggested by Plaintiff.



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126935. Dulberg's case arises out of litigation – not transactional work. Plaintiff's alleged injury was incurred at the time of settlement and dismissal of the McGuire litigation.

## II. UNDISPUTED MATERIAL FACTS

The undisputed material facts of the case are properly cited in Defendants' Motion at pages 5-9, with specific citations to exhibits and page numbers. Additional citations to pleadings are recited in the "Statement of Claim" section at pages 2-4 of Defendants' motion. Plaintiff disputes the citations by making a general denial at Response page 5, ¶A. Defendants submit that their factual citations are evident and stand for themselves.

In section B of Dulberg's Response, he attempts to argue that some disputed material fact prevents the entry of summary judgment. In support, he recites certain allegations contained in the pleadings, as opposed to the facts adduced in depositions or affidavits. He fails to provide any analysis or explanation as to how any of these alleged facts constitute a genuine issue of material fact that has any relevance to the alleged late discovery of his claims, and which would prevent the court from entering summary judgment for the defendants.

## III. ARGUMENT

Dulberg does virtually nothing to discuss any of the testimony cited by Defendants, apply the facts, or analyze the law cited by Defendants. Instead, Dulberg references the case of *Suburban Real Estate Services, Inc. v. Carlson,*, 2022 IL 126935 and references a "a pecuniary loss" as an issue in that case. However, there is no analysis or application to the facts here. In any event, *Suburban Real Estate* involves alleged transactional legal malpractice, and is not on point with this case. However, the Illinois Supreme Court in *Suburban Real Estate Services, Inc.* analyzed the "injury" component in a legal malpractice claim, in view of the two year statute of limitations. The court distinguished between transactional malpractice, and malpractice arising out of



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litigation. The court engaged in an extensive analysis of the "injury" component of the two year statute of limitations. "Thus, to discern when a claim accrues, we identify the injury and then determine when the injury was discovered or should have been discovered." *Suburban Real Estate Services* at [*P16] The court discussed legal malpractice actions arising out of litigation, or the "case within a case." "As this court has explained, no injury exists, and therefore no actionable claim arises, unless and until the attorney's negligence results in the loss of the underlying cause of action." *Suburban Real Estate Services* at *P19, citing *Tri-G, Inc. v. Burke Bosselman and Weaver*, 222 Ill. 2d 218 (2006). Importantly, the Illinois Supreme Court then wrote, "Thus, the injury does not accrue, and the statute of limitations does not begin to run until a judgment or settlement or dismissal of the underlying action." (emphasis added) *Suburban Real Estate Services* at *P19.

Here, a portion of the underlying case was settled and dismissed – the very portion of the case complained of here by Dulberg. The dismissal order attached as Exhibit H to Defendant's Motion for Summary Judgment is dispositive of Dulberg's claims. The order included a good faith finding of settlement, and was final and appealable. The injury sustained is the loss of the ability to further recover anything from the McGuire's over the $5,000 settlement Dulberg approved. The injury was incurred when the settlement was finalized and the McGuire's were dismissed.

Dulberg fails to analyze any of the cases cited in Defendants' motion that stand for the proposition that he was on reasonable notice to inquire further as to the existence of a cause of action. Nor does he squarely address the facts cited, or really any arguments made in defendants' motion. The evidence cited by Defendants in their motion demonstrates that Dulberg deliberated over a settlement offer from the McGuires from at least November 2013, until he executed the settlement release on January 29, 2014. He admitted that Mast did not force him to accept the



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settlement. Exhibit E, p. 73. After the McGuires were dismissed, Dulberg and Mast continued to prosecute the case against Gagnon. However, Dulberg became disillusioned with Mast and Popovich, and even threatened legal malpractice as early as February 22, 2015. Dulberg then sought substitute counsel when Mast and Popovich withdrew. He always had the ability and opportunity to seek a second opinion about the McGuire settlement (before and after he agreed to it). All of these facts establish that Dulberg knew or should have known, or should have inquired as to whether Mast and Popovich breached the standard of care, and whether said breach caused him any injury.

Dulberg bears the burden of proving some alternative date of discovery of his injury and claims. His futile attempts at amending his complaint, and the well-documented evasive discovery responses clearly establish that Dulberg has not met and cannot meet his burden demonstrating a "late" discovery of his claims. Summary judgment must be entered in favor of Mast and Popovich.

## III. CONCLUSION

**WHEREFORE**, for the reasons stated herein and in THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION FOR SUMMARY JUDGMENT, pray that this Honorable Court grant their Motion for Summary Judgment, with prejudice, and for any further relief this court deems fair and proper.

Dated: January 19, 2023

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: */s/ George K. Flynn*
George K. Flynn (ARDC #6239349)

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gflynn@karballaw.com



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# Exhibit 24

** FILED ** Env: 21382269
McHenry County, Illinois
2017LA000377
Date: 2/8/2023 8:21 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS )
)
COUNTY OF McHENRY )

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

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

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable JOEL D. BERG, Judge of said Court of McHenry County, Illinois, on the 1st day of February, 2023, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE TALARICO, by
MR. ALPHONSE TALARICO, (Via Zoom)
On behalf of the Plaintiff;
KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendant.



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THE COURT: You are here on Dulberg against Mast?

MR. FLYNN: I am, Judge.

THE COURT: I have the other side here on that as well. Well, no. I have Mr. Dulberg here. I have Mr. Talarico as well. Mr. Talarico, are you ready for a hearing if I call it early, sir? I'm sorry, sir, you are muted. I'm not --

MR. TALARICO: Yes, your Honor.

THE COURT: Good morning. Are you ready for hearing a couple minutes early, sir?

MR. TALARICO: Absolutely.

THE COURT: Thank you very much. This is Dulberg against Mast, et al. I have Mr. Talarico present via Zoom as is Mr. Dulberg. Counsel, would you please state your name?

MR. FLYNN: Thank you, your Honor, George Flynn on behalf of the defendants.

THE COURT: Thank you, Mr. Flynn. We are before the Court for a hearing on pending motions. The one most notable is the summary judgment. What else are we hearing this morning, gentlemen?

MR. FLYNN: That's all we have, as far as I know, Judge.



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THE COURT: Good. Because that's all I read.

MR. TALARICO: That's all I know, Judge.

THE COURT: Now I feel way better. It just said pending motions. All I could find was summary judgment. I read the motion. I read the response. I read the reply. I have read all the attachments, as they were relevant. It's your motion.

MR. FLYNN: Thank you, Judge. And I wasn't sure I -- with Judge Meyer's standing orders, with respect to courtesy copies, I wasn't sure if the Court had a chance to review the briefs, but since your Honor has indicated that you have --

THE COURT: I have read everything. It's all based on a two-year statute of limitations on a lawsuit over a chain saw.

MR. FLYNN: That's exactly right. So I will be brief. The only case cited by the plaintiff in its response with respect to the accrual of the injury was a Suburban Real Estate case which is a transactional legal malpractice case, not a litigated matter. I think the -- all of the cases we have cited and including the dicta in that Suburban Real Estate case indicates that the accrual date in a litigated matter is the date of



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settlement, judgment or dismissal.

Here, we had a January 14 settlement that was consummated. There was a good faith finding and dismissal at that time. Mast and Popovich continued to represent Mr. Dulberg for another year or so and prosecuting the case against the other defendant in the case.

Dulberg became disillusioned with Mast, admitted that he was looking for additional counsel -- or substitute counsel even as early as July of 2014. Ultimately, Mast and Popovich withdrew in March of 2015. The case proceeded against Gagnon. There was a mediation in December of 2016 at which time he indicates now that he first became aware of his legal malpractice case.

Mr. Dulberg had every opportunity in discovery through interrogatories, production requests, I took his deposition. I asked him over and over again in several different ways how he first became aware of his injury and that it was wrongfully caused. The only response he could give was that a lawyer told him that he had a case. He couldn't provide any specifics. He has a burden of proving the -- a late discovery. He cannot meet it.



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He will never be able to meet it.

THE COURT: Do we know, by the way, how did he come to me because the lawyer, if I recall, was Mr. Gooch. So he was represented by I believe Mr. Balke if I recall correctly followed by Mr. Baudin.

MR. FLYNN: That's correct.

THE COURT: Where did Mr. Gooch come into this? Who shipped him off to Mr. Gooch to even get opinion, do we know?

MR. FLYNN: One of those two lawyers, I think, recommended that he seek an opinion from a lawyer, generally speaking, that handles legal malpractice cases. Whether it was a direct referral, I don't know if the evidence shows that. I think Mr. Dulberg testified that I believe it was Mr. Baudin recommended that he see a legal malpractice attorney.

So Mr. Gooch met with him. Allegedly provided an opinion that there was a case without any reason and then almost a year later filed a lawsuit. Again, first Mr. Dulberg raised privilege when I asked him how -- how and what -- how you became aware of this legal malpractice case, the



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injury and the wrongful causation, he claimed privilege. Finally, that was waived or otherwise disposed of, and then, he admitted he couldn't -- I said the legal opinion Dulberg received from Gooch was verbal. Gooch simply stated you have a case here. You have a valid case. When asked did he tell you exactly what they did wrong in connection with the representation, Dulberg said he probably did. I'm not recalling it right now. I'm pulling a blank. There are no specifics.

So again, the burden is his to prove a later discovery. He's not able to do that. I'm happy to answer any questions the Court has, but again, I'll rest on the briefs.

THE COURT: Thank you very much. Mr. Talarico, sir?

MR. TALARICO: Yes, sir. I'm -- what would you like me to address first? I guess we could start with the fact that defendant didn't follow the local rules, and therefore, plaintiff could not properly respond. And the local rule says that if they do not follow the local rules, you can strike the motion or deny it.

All I'm asking is deny the motion based on



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the fact that they did not follow the local rules.

THE COURT: I respectfully decline to do so, sir. A written motion could have been filed expressly asking for that relief. A response was filed that addressed it. I've read the response. I understand your concerns that by not following the local rules, they may have made it more difficult for us to suss out what are the disputed issues of material fact and what aren't. But I've been able to pretty much get a grip on everything the way it's been filed.

MR. TALARICO: All right. Thank you, Judge. The second thing is, again, we didn't follow the rules that (indiscernible) we didn't respond -- we responded generally. So I would like that the ruling you just made to extend to our response too.

THE COURT: Of course it does.

MR. TALARICO: Thank you, sir. Okay. Then, the next issue is the Suburban case. Plaintiff -- defendant, I'm sorry, defendant seems to indicate -- well, he does indicate that the reason that Suburban doesn't apply is that there is a difference between a transactional case and a litigation case. Now, I read the Suburban case many, many times over and the



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Supreme Court does not distinguish that their ruling is for one type of case or the other. What their ruling is is that the statute of limitation and they construed the exact specific statute does not begin until there is a pec -- pecuniary loss.

Prior to that, Mr. Dulberg would have brought an action, he would have had no damages. So that -- what that does is because the general rule and which has been voiced in -- by the Illinois Supreme Court Justice Thomas in the Porter case is that when the Supreme Court construes a statute, that becomes part of the statute until the -- the -- I can't think of the word, legislation -- legislature decides to change it. So what we have is the prior cases cited by Mr. Dulberg are not effective because he's citing it to the rule and not to the particular case we are talking about. The Suburban case says no damages, the statute does not begin to run. And that is part of the statute. It hasn't been changed.

Now, as to the last thing, we have raised many affirmative -- I mean, I'm sorry, many issues of material fact that are in dispute. But most important -- the clearest ones, Judge, are the



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defendant's affirmative defenses. There are four affirmative defenses which -- which plaintiff has denied all four.

Now, there is a recent case, if you'll hold on just one second, and I'll find it, but the indication -- it's not that recent, but it's -- the indication is that -- this is West Suburban Mass Transit versus Consolidated Rail Corporation. It's 1-89-2916. If this was done the Appellate Court but it was by the -- the opinion was by Justice McMorrow, who of course became Supreme Court judge, that summary judgment is not appropriate when there is affirmative defenses in dispute.

I think that pretty much sums it all, Judge. We have got many material facts in dispute, including four affirmative defenses which were denied specifically by plaintiff.

THE COURT: Respectfully, sir, merely saying something is in dispute does not make it so though, does it?

MR. TALARICO: Judge, I'm saying that the answer filed was it was in dispute.

THE COURT: So by filing a response to their affirmative defense denying the affirmative defense,



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you're telling me that that in and of itself is sufficient to defeat summary judgment.

MR. TALARICO: Yes, I am.

THE COURT: What if your client --

MR. TALARICO: I --

THE COURT: What if your client at subsequent depositions testifies inconsistent with the answer?

MR. TALARICO: In the case that I cited, Judge, the burden is upon the person, in effect, in this case the defendant, to eliminate that dispute. The dispute exists as he did not resolve that dispute.

THE COURT: So when did the cause of action arise?

MR. TALARICO: December 12, 2016, I believe.

THE COURT: Why on that date?

MR. TALARICO: Because there was an arbitrary -- a mandatory arbitration hearing which I included the -- the findings that showed that the judge -- the retired judge in that case evaluated it at $660,000, and Mr. Dulberg was not able to obtain anything close to that.

THE COURT: And why not?

MR. TALARICO: Well, for two reasons, one, because he settled first improperly for $5,000 with



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the landowner, and the second case is because he was instructed improperly to -- to sign -- well, he actually claims he never signed the agreement, but that there was an agreement to do a binding arbitration limited to the policy amount of 300,000.

THE COURT: Who entered into that agreement?

MR. TALARICO: That is a question of fact. I don't know, but Dulberg says he did not sign it and never wanted to.

THE COURT: When was the agreement entered into?

MR. TALARICO: I don't have the exact date, Judge. A few months before that. I can only say that that was -- that was during the time that Mr. Dulberg was in bankruptcy, and that was also part of the Baudin's instruction.

THE COURT: So the agreement to limit recovery to 300,000 was signed well after the Popovich firm was no longer representing Mr. Dulberg on this matter?

MR. TALARICO: Yes, that's true.

THE COURT: So how is his change in strategy somehow extend -- so in other words, what you're saying -- well, I'm trying to wrap my head around this. You are saying that that agreement your



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client never wished to enter into, he didn't sign, Popovich didn't sign, Mr. Mast didn't sign. His actual third attorney signed it, Mr. Baudin, not even Mr. Balke. But because that was somehow signed and in effect, then the cause of action against Mast and Popovich for legal malpractice is extended out to the date of the final mediation hearing because of an agreement and limitation on damages at the mediation hearing over which they had zero control?

MR. TALARICO: What I am saying, Judge, is the analysis in the Suburban case, the damages -- prior to that, Mr. Dulberg had no actual damages, therefore, he couldn't bring an action. He had nothing to say that Mast cost him this much or this much or Popovich cost him this much because that would -- that would have been stricken for -- they had no damages, so he had no cause of action.

The damages arrive -- arose on the days that Mr. Dulberg found out through the binding arbitration that the case was worth so much more than what he's going to get, and therefore -- that -- that enumerates the damages.

THE COURT: But respectfully, Mr. Talarico, and please correct me if I'm wrong because this is where



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I'm getting the disconnect, the but-for portion of this analysis but for the high-low agreement limiting damages to the policy amount of $300,000, he would have had a judgment for the entire $660,000 if Tom Popovich and Hans Mast had never even existed.

MR. TALARICO: I'm not clear on what you are asking, Judge. Could you --

THE COURT: What I'm asking is isn't the failure to recover the $660,000 as opposed to 300,000 attributable to the high-low agreement that was entered into well over a year or if not two or more years after Popovich and Mast were out of the case?

MR. TALARICO: Well, Judge, I -- first of all, he didn't enter into it. He's claimed over and over that that's not his signature. It was forged. There is many issues about that in the bankruptcy.

THE COURT: But again, counsel -- but again, my point being I don't really care if he signed it or didn't sign it. My point being that it is that agreement that limited his damages, and that agreement was entered into way after Popovich and Mast withdrew from this case, right?

MR. TALARICO: That's right, but --



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THE COURT: He so would have got -- so he would have gotten all 660,000 had that agreement not been entered into.

MR. TALARICO: Judge, but at -- before the judge ruled in that binding mediation, he had no idea how much the case was worth. They had told him it was worth $5,000 and then some. That -- that date -- that's the date when he knows when there was a factual pecuniary damage. He knows the case is worth much more than they told him and he's got numbers behind it. Before that, he had nothing to plead.

THE COURT: Respectfully, the case is worth that much against Mr. Gagnon, not necessarily against Mr. Gagnon's -- I believe it was his parents, the two people that settled out of it. The $660,000 is a finding of liability against Mr. Gagnon, isn't it?

MR. TALARICO: Yes, it is.

THE COURT: So how is it a finding of liability against the two people that were settled with?

MR. TALARICO: Because those people were settled with instructions by Mr. Mast that they could not win any money against them. His instructions were that they -- they would get out on summary judgment,



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he would get nothing, take $5,000 as a gift. He was over and over that that -- that that argument was made between Mast and between Dulberg, and some of those documents are part of what we filed.

THE COURT: All right. Anything else, Mr. Talarico?

MR. TALARICO: Not at the moment, Judge. Thank you.

THE COURT: Thank you, sir. Final word, please.

MR. FLYNN: Thank you, Judge. Just briefly with respect to the pecuniary loss, the loss or the injury, which is the language used in the statute, was in January of 2014 when the case against the McGuires, Bill and Caroline McGuire. Caroline was Gagnon's mother. Bill McGuire was the stepfather. That case was foreclosed in January of 2014. No recovery could have been had other than the $5,000 at that point in time. That's when there was an injury.

The question -- the second prong of the analysis is when did he have a reasonable belief that the injury was wrongfully caused. Dulberg had every opportunity, he admitted that he had talked to hundreds of lawyers. He could have asked Balke, he



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could have asked Baudin. He didn't ask any of them, allegedly.

Under Illinois law, he has a duty to investigate if he thinks there is an issue. He had -- he became disillusioned with Mast in 2014. Mast withdrew in March of 2015. Again, the injury is January 2014.

THE COURT: Thank you very much.

MR. TALARICO: Judge, may I say one thing?

THE COURT: You may.

MR. TALARICO: Thank you. The Supreme Court case, the Suburban case makes it clear that being alerted to a problem or alerted to malpractice is not sufficient enough until -- they use the specific word alerted and say that is not sufficient. There has to be a pecuniary loss.

So whether he talked to a thousand attorneys and whether they all told him all different things, he's alerted but he had to face a loss. That's all, Judge. Thank you.

THE COURT: Thank you. He was clearly alerted. Let's cut to the chase. He was hesitant -- he was hesitant to ever even sign the settlement agreement to the point where it took him over two months to do



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it. He clearly had his doubts. He clearly had his lack of faith. He signed the settlement agreement anyway. A year later, the attorneys withdrew. He went to another attorney, still raised the issue. Went to another attorney, still raised the issue. Met with hundreds of attorneys. He was clearly alerted.

When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. We don't know who that



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somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge.

But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? The pecuniary loss occurred when he only got $5,000. I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

The motion for summary judgment is heard. It is most respectfully allowed. Thank you very much, gentlemen.

MR. FLYNN: Thank you.

THE COURT: Both of you, outstanding. Even though they didn't comply with local rules, I will say gentlemen, to both of you, outstanding pleadings. Very thorough, very well written. I had no issues going through them. I spent three days going through all of them repeatedly, and you both made my job -- well, I'm not going to say easy, but you certainly did your jobs. And I very much



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appreciate your time. Thank you, gentlemen.

MR. FLYNN: Thank you, Judge. And for what it's worth, I apologize for not doing numbered paragraphs on the statement of facts. I did follow that format with Judge Meyer in another summary judgment motion that was granted. This case was originally before Judge Meyer. So --

THE COURT: I take no offense. I take no offense by anybody. The pleadings were what they were, and I had no issue reading them. Thank you all very much for your time.

MR. TALARICO: Thank you, Judge.

THE COURT: Thank you, sir.

(Which were all the proceedings had in the above-entitled cause this date.)



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STATE OF ILLINOIS )
) SS:
COUNTY OF McHENRY )

I, JUDY CARLSON, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Judy A. Carlson

Certified Shorthand Reporter
License No. 084-003347



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# Exhibit 25

#12

**CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT**

FILED
McHenry County, Illinois
FEB 1 - 2023
KATHERINE M. KEEFE
Clerk of the Circuit Court

**STATE OF ILLINOIS**
**COUNTY OF MCHENRY** } **SS**

**GEN. NO.** 17LA377

☑ Jury ☐ Non-Jury

Paul Dulberg

**vs.**

Popovich and Mast

**Date** 2-1-23 **Plaintiff's Attorney** Alphonse Talarico **Defendant's Attorney** George K. Flynn

**ORDER**

This matter coming to be heard on Popovich and Mast's Motion for Summary Judgment, it is hereby ordered:

1) Defendants' Motion for Summary Judgment is granted, for the reasons stated on the record. The 2 year statute of limitations lapsed before the filing of Plaintiff's complaint. Judgment for defendants entered and the case is dismissed with prejudice.

**Prepared by:** George K. Flynn

**Attorney for:** Defendants

**Attorney Registration No.:** 6239349

**Judge** _____

# Exhibit 26

** FILED ** Env: 21713475
McHenry County, Illinois
2017LA000377
Date: 3/3/2023 10:55 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

**Instructions**

Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child.

Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that will hear the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party is filing the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court case number, the trial judge's name, and the Supreme Court Rule that allows the appellate court to hear the appeal.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

## APPEAL TO THE APPELLATE COURT OF ILLINOIS

SECOND **District**

**from the Circuit Court of**

McHenry **County**

**In re**

Paul R. Dulberg

**Plaintiffs/Petitioners** *(First, middle, last names)*

☑ **Appellants** ☐ **Appellees**

v.

Hans Mast and The Law Offices of Thomas J. Popovich, P.C.

**Defendants/Respondents** *(First, middle, last names)*

☐ **Appellants** ☑ **Appellees**

**Trial Court Case No.:**

17LA000377

**Honorable**

Joel D. Berg for S.J. only

**Judge, Presiding**

**Supreme Court Rule:**

303

## NOTICE OF APPEAL (CIVIL)

In **1**, check the type of appeal.

For more information on choosing a type of appeal, see *How to File a Notice of Appeal.*

**1. Type of Appeal:**

☑ Appeal
☐ Interlocutory Appeal
☐ Joining Prior Appeal
☐ Separate Appeal
☐ Cross Appeal

In **2**, list the name of each person filing the appeal and check the proper box for each person.

**2. Name of Each Person Appealing:**

Name: Paul *First* R. *Middle* Dulberg *Last*

☑ Plaintiff-Appellant ☐ Petitioner-Appellant

☐ Defendant-Appellant ☐ Respondent-Appellant





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Name: _____
*First* *Middle* *Last*

☐ Plaintiff-Appellant ☐ Petitioner-Appellant

**OR**

☐ Defendant-Appellant ☐ Respondent-Appellant

In **3**, identify every order or judgment you want to appeal by listing the date the trial court entered it.

**3. List the date of every order or judgment you want to appeal:**

05/10/2018
*Date*

11/13/2018
*Date*

02/25/2019
*Date*

05/30/2019
*Date*

09/05/2019
*Date*

11/04/2019
*Date*

02/03/2020
*Date*

11/24/2020
*Date*

01/06/2021
*Date*

02/11//2021
*Date*

03/16/2021
*Date*

04/06/2021
*Date*

06/14/2021
*Date*

09/07/2021
*Date*

01/04/2022
*Date*

05/02/2022
*Date*

06/10/2022
*Date*

07/11/2022
*Date*

11/09/2022 (08:20 AM)
*Date*

11/09/2022 (08:27 AM)
*Date*

12/06/2022
*Date*

12/21/2022
*Date*

02/01/2023
*Date*


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4. State your relief:

In **4**, state what you want the appellate court to do. You may check as many boxes as apply.

☑ reverse the trial court's judgment *(change the judgment in favor of the other party into a judgment in your favor and* ☑ send the case back to the trial court for any hearings that are still required;

☐ vacate the trial court's judgment *(erase the judgment in favor of the other party)* and ☐ send the case back to the trial court for a new hearing and a new judgment;

☑ change the trial court's judgment to say: Defendants' Motion for Summary Judgment is Denied

☑ Order the trial court to: transfer this case to the first district (Cook County Law Division) for reassignment; order Defendants to answer the Discovery filed and served by Plaintiff's attorney Thomas W. Gooch;

☑ other: Judge Thomas Meyer should have self-recused because he knows the parties, was the Judge in the underlying matter 12 LA 178 and is friends with one of the Defendants. Therefore all orders should be reviewed; have Case Management Conferences and Case Management Orders; reopen F(1) discovery; Plaintiff's privileged discussions with his attorney Thomas W. Gooch after retention regarding when he knew that Defendants actions were malpractice should be removed from the record; find that Plaintiff's objections of "undue burden" to Defendants" Supplemental Requests should be ruled/treated the same as Defendants' discovery objections of undue burden; determine whether a hearing on Plaintiff's objections made at Plaintiff's deposition were valid; have all Court orders redesignated to match the enter date to the file date and to the hearing date; strike all motions instigated by the Court; all stipulations must be signed by the party making the stipulation; proposed order not agreed to by the Plaintiff should not have been sent to this Honorable Court and should not have been entered; Plaintiff, a Party with a Pro Se appearance previously filed, should have been allowed to hear and speak at the Zoom proceedings when his attorney was hospitalized; oral motions not filed or noticed should not be allowed; the Judge should not be allowed to make an oral motion and grant his own oral motion; depositions that violate (multiple) Supreme Court rules should be stricken; Zoom depositions with missing exhibits should be stricken, Zoom depositions where the officer authorized to administer oaths was never given all exhibits used should be stricken; Defendants' ex parte communication on November 9, 2022 between non-attorney Ms. Wang and Plaintiff's former attorney Julie C. Williams (formerly Julia C. Floyd) and any other ex parte communication between: this Honorable Court; Plaintiff's former attorneys and Defendants' former offices should be revealed; the Order entered on December 6, 2022 should be stricken and a corrected Order should replace it because: there was no order entered on November 11, 2022 (VETERANS DAY); allow the contemporaneous audio recording of Defendant Hans Mast deposition made by the officer authorized to administered oaths be entered in to the record as evidence for the purpose of proof that the Deposition Of Defendant Hans Mast contained numerous major violation of Supreme Court Rules ;strike the Zoom Deposition of Defendant Hans Mast completed in violation of numerous Supreme Court Rules without the waiver of said violation by the Parties; grant Plaintiff's motion to Depose Defendant Hans Mast; deny Defendants' Motion for Summary Judgment based upon the Zoom deposition of Defendant Hans Mast and disregarding the Law of the State of Illinois regarding the Statute of Limitation for Legal Malpractice and the requirement of pecuniary loss as determined by the Illinois Supreme Court in 2022 IL 126935 SUBURBAN REAL ESTATE SERVICES, INC., et al., Appellees, v. WILLIAM ROGER CARLSON JR. et al., Appellants; upon remand to consider Plaintiff's additional vicarious pecuniary losses stemming from Defendants erroneous settlement advice in the underlying case to release the homeowners for $5,000.00 (the McGuires in the underlying


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case

and grant any other relief that the court finds appropriate.

| | | | |
|---|---|---|---|
| If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name. Fill in your address, telephone number, and email address, if you have one. | /s/ Paul R Dulberg<br>*Your Signature* | 4606 Hayden Ct.<br>*Street Address* | |
| | Paul R Dulberg<br>*Your Name* | McHenry, Illinois, 60051<br>*City, State, ZIP* | |
| | pdulberg@icloud.com<br>*Email* | (847) 497-4250<br>*Telephone* | *Attorney # (if any)* |
| All appellants must sign this form. Have each additional appellant sign the form here and enter their complete name, address, telephone number, and email address, if they have one. | **Additional Appellant Signature**<br>/s/<br>*Signature* | *Street Address* | |
| | *Name* | *City, State, ZIP* | |
| | *Email* | *Telephone* | *Attorney # (if any)* |

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.


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**PROOF OF SERVICE** ***(You must serve the other party and complete this section)***

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

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1. I sent this document:
   a. To:
      Name: George (*First*) K. (*Middle*) Flynn (*Last*)
      Address: 200 S. Wacker Drive #2550 (*Street, Apt #*), Chicago (*City*), Illinois (*State*), 60606 (*ZIP*)
      Email address: gflynn@karballaw.com
   b. By:
      ☑ An approved electronic filing service provider (EFSP)
      ☐ Email *(not through an EFSP)*
      *Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*
      ☐ Personal hand delivery to:
         ☐ The party
         ☐ The party's family member who is 13 or older, at the party's residence
         ☐ The party's lawyer
         ☐ The party's lawyer's office
      ☐ Mail or third-party carrier

In **c**, fill in the date and time that you sent the document.

   c. On: March 3, 2023 (*Date*)
      At: _____ (*Time*) ☐ a.m. ☐ p.m.

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:
   a. To:
      Name: _____ (*First*) (*Middle*) (*Last*)
      Address: _____ (*Street, Apt #*) (*City*) (*State*) (*ZIP*)
      Email address: _____
   b. By:
      ☐ An approved electronic filing service provider (EFSP)
      ☐ Email *(not through an EFSP)*
      *Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*
      ☐ Personal hand delivery to:
         ☐ The party
         ☐ The party's family member who is 13 or older, at the party's residence
         ☐ The party's lawyer
         ☐ The party's lawyer's office
      ☐ Mail or third-party carrier
   c. On: _____ (*Date*)
      At: _____ (*Time*) ☐ a.m. ☐ p.m.


Received 03-03-2023 11:49 AM / Circuit Clerk Accepted on 03-03-2023 12:06 PM / Transaction #21713475 / Case #2017LA000377

In **3**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

3. I sent this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____
*Date*

At: _____ ☐ a.n ☐ p.m.
*Time*

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

**I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

6184530
*Attorney # (if any)*



**Print Form** **Save Form** **Reset Form**

Received 03-03-2023 11:49 AM / Circuit Clerk Accepted on 03-03-2023 12:06 PM / Transaction #21713475 / Case #2017LA000377

# Exhibit 27

# ILLINOIS APPELLATE COURT
## SECOND DISTRICT

**55 SYMPHONY WAY**
**ELGIN, IL 60120**
**(847) 695-3750**


FILED
McHenry County, Illinois
DEC – 4 2023
KATHERINE M. KEEFE
Clerk of the Circuit Court

December 4, 2023

Alphonse A. Talarico
Law office of Alphonse Talarico
707 Skokie Blvd., #600
Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.
Appeal No.: 2-23-0072
County: McHenry County
Trial Court No.: 17LA377

The court has this day, December 04, 2023, entered the following order in the above entitled case:

Appellant's motion for leave to file a reply is denied.

Appellant's motion to reconsider is denied. As appellant has failed to file an opening brief pursuant to this court's order of November 9, 2023, this appeal is dismissed.

**THIS ORDER IS FINAL AND SHALL STAND AS THE MANDATE OF THIS COURT.**
(McLaren, Hutchinson, Schostok, JJ.)

Jeffrey H. Kaplan
Clerk of the Court

cc: George Kenneth Flynn
McHenry County Circuit Court
Michelle Marie Blum

# Exhibit 28

Hearing Date: 12/12/2023 9:45 AM - 9:50 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, U

FILED
11/17/2023 3:45 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010905
Calendar, U
25265770

FILED DATE: 11/17/2023 3:45 PM 2022L010905

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

| | |
|---|---|
| PAUL DULBERG and THE PAUL DULBERG REVOCABLE TRUST,<br><br>Plaintiffs,<br><br>v.<br><br>KELLY N. BAUDIN a/k/a BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES; WILLIAM RANDAL BAUDIN II a/k/a BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES; KELRAN, INC a/k/a THE BAUDIN LAW GROUP, Ltd.; JOSEPH DAVID OLSEN a/k/a YALDEN, OLSEN & WILLETTE LAW OFFICES; CRAIG A WILLETTE a/k/a YALDEN, OLSEN & WILLETTE LAW OFFICES; RAPHAEL E YALDEN II a/k/a YALDEN, OLSEN & WILLETTE LAW OFFICES; ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES; and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,<br><br>Defendants. | Case No. 2022 L 010905<br><br>Honorable Michael F. Otto<br><br>Calendar U |

**ADR SYSTEMS OF AMERICA, LLC'S**
**PETITION FOR SANCTIONS UNDER RULE 137**

Defendant ADR Systems of America, LLC ("ADR"), for its Petition pursuant to Illinois Supreme Court 137 against Plaintiffs Paul Dulberg and the Paul Dulberg Revocable Trust (collectively, "Dulberg") and their attorney Alphonse A. Talarico ("Mr. Talarico"), states as follows:

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## INTRODUCTION

This Court dismissed *with prejudice* Dulberg's claim against ADR set forth in "Count 4" of his Complaint on **October 31, 2023**.

ADR appreciates the Court's reluctance to issue sanctions. Accusations of frivolous pleading are often levied simply because a defendant obtains the dismissal of a claim. There are, however, those occasions where a party so clearly pursues a claim that is objectively without basis, while ignoring a warning that the party should cease pursuing that frivolous claim, that the Court must take action under Rule 137 as a means to protect the party subjected to that claim and the judicial system whose resources are wasted by having to address that claim.

Here, Dulberg contended that ADR somehow wronged him by having one of its neutrals (the Hon. James Etchingham (ret.)) preside over a binding mediation in December 2016 that not only was approved by the United States Bankruptcy Court, but also resulted in a substantial gain to Dulberg. Dulberg then waited six years before filing this lawsuit against various defendants, including ADR. To this date, Dulberg's claim against ADR remains incomprehensible.

In response to the lawsuit and before filing a responsive pleading, counsel for ADR sent a letter to Dulberg's attorney, Mr. Talarico, setting forth in detail why Dulberg's claim against ADR was without a good faith basis as a matter of fact and as a matter of law. ADR warned Mr. Talarico that ADR would seek sanctions if Dulberg did not dismiss its claim against ADR. Dulberg and Mr. Talarico ignored this warning, forcing ADR to pursue its motion to dismiss to resolution. Recognizing the meritless nature of the claim against ADR, the Court dismissed it but allowed Dulberg an attempt to amend. Ultimately, because Dulberg and Mr. Talarico never sought to file an Amended Complaint, ADR had to incur additional fees to request the Court dismiss that claim with prejudice, which the Court did on October 31, 2023.

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Dulberg and Mr. Talarico had no factual or legal basis for seeking relief against ADR and knew the risk they were taking when they moved forward. The situation in which Dulberg and Mr. Talarico find themselves is one of their own making that could and should have been avoided.

The Court should enter an Order finding that Dulberg and Mr. Talarico violated Rule 137. Upon that finding, ADR will submit an appropriate declaration in support of its request for the reimbursement of fees and costs ADR incurred defending this action, including fees it has incurred in seeking sanctions by this motion.

## FACTS SUPPORTING THE ISSUANCE OF SANCTIONS

### A. ADR Presides Over a Binding Mediation Approved by the United States Bankruptcy Court and Dulberg Accepts the Benefits of that Mediation

1. ADR, based in Chicago, provides alternative dispute resolution services, which include arbitrations and mediations.

2. The gist of Dulberg's Complaint arose from his personal bankruptcy filed in the United States Bankruptcy Court for the Northern District of Illinois (Case No. 14-83578). It appears that Dulberg is unhappy that Defendant Joseph Olsen (the "Trustee"), who served as the bankruptcy trustee overseeing Dulberg's personal bankruptcy, agreed to the recommendation of the Bankruptcy Court-approved special counsel, the Baudin Law Group, to participate in a binding mediation held at ADR in December 2016 with Allstate Insurance concerning a personal injury claim the trustee controlled (*Dulberg v. Gagnon*) ("Dulberg's Injury Claim"). (*See* Dulberg Comp., **Exhibit A** hereto, at Exhibit 7.)

3. In an October 31, 2016 hearing, the Bankruptcy Court approved (i) the proposal to hold a binding mediation of Dulberg's Injury Claim, (ii) that this mediation would be subject to a $50,000-$300,000 (reflecting the applicable insurance policy limit) high/low agreement, and (iii) that the mediator who would preside over the binding mediation would *not* be made aware of

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that high/low agreement. (Dulberg Compl. at Exhibit 6A (October 31, 2016 Transcript of Proceedings), pp. 2-5.)

4. The Bankruptcy Court approved the submission of the claim to binding mediation before ADR. ADR played no role in the bankruptcy proceedings. (*Id.* at Exhibit 8 ("Joseph D. Olsen, Trustee herein, is authorized to enter into a 'Binding Mediation Agreement' as described in the Trustee's Motion, and the Trustee may execute such documents as are necessary to accomplish the matters set forth herein.").)

5. On December 8, 2016, the parties, *including Dulberg*, participated in the binding mediation at ADR before the Honorable James Etchingham (ret.). (*Id.* ¶ 57.)

6. Prior to that binding mediation, the attorneys for the parties and Dulberg executed a Binding Mediation Agreement. (*Id.* at Exhibit 11.) That agreement reflects the "high/low" agreement that the Bankruptcy Court approved.

7. On December 12, 2016, Judge Etchingham rendered an award in Dulberg's favor of $561,000. The issuance of the award terminated ADR's involvement in the proceeding. (*Id.* ¶ 64 and Exhibit 10.)

8. In or about April 2017, the Trustee sought approval for the distribution to various attorneys and creditors from the proceeds received as a result of the binding mediation. The Trustee's request also included a distribution to Dulberg of more than $117,000. The Bankruptcy Court approved the distribution, and it appears Dulberg accepted his $117,000 without objection to the Bankruptcy Court. (*See* ADR Motion to Dismiss, **Exhibit B** hereto, p. 4.)

9. Six years later, Dulberg instituted this lawsuit, complaining that his lawyers forced him into binding mediation against his will.

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10. Without commenting on the validity of the claims against the other parties, which the Court dismissed with prejudice, Dulberg's claim against ADR set forth in "Count 4" is (and has always been) unfounded in fact or law.

11. Dulberg admitted in his Complaint that "there was a valid and enforceable contract" between Dulberg, Allstate, and ADR. (Dulberg Compl. ¶ 94.)

12. Apparently, there was an unsigned and undated draft of a Binding Mediation Agreement that the Trustee submitted to the Bankruptcy Court as part of his motion seeking approval to submit the matter to binding mediation. (*Id.* ¶ 95.) Dulberg did not allege that this draft constituted a "valid and enforceable contract."

13. According to Dulberg, "Major terms within the two agreements were changed." (*Id.* ¶ 96.) Dulberg never offered an explanation as to the alleged relevance of the cited terms. (*See, e.g.*, notifications, "Language under Parties B; "who is liable to plaintiff"; ADR's fee schedule, ADR's "Fee Schedule boxed information"; "page 6 section v number 5".)

14. Dulberg then alleged that ADR breached the Binding Mediation Agreement by not following the terms regarding amending the contract. However, Dulberg, by his own allegations, admitted that the only enforceable contract to which ADR was a party is the one the parties signed. (Dulberg Compl. at Exhibit 11.)

15. Dulberg then asserted in perplexing fashion that "Plaintiff suffered pecuniary injury in an amount in excess of $261,000 because the contract under the changed terms should not be allowed to regulate the procedure." (*Id.* ¶ 100.)

16. Dulberg's Complaint admitted (i) the enforceable contract to which ADR is a party is the Binding Mediation Agreement embodied in Exhibit 11 to the Complaint; (ii) a binding mediation dispute was presented to ADR for resolution; (iii) Dulberg attended the binding

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mediation; and (iv) Judge Etchingham rendered an award consistent with the terms of the Binding Mediation Agreement, which the parties accepted.

17. ADR was not a party to the draft agreement that the Trustee attached to his motion, and the Complaint lacked any allegation that ADR engaged in any material breach of the executed Binding Mediation Agreement.

**B. ADR Notifies Dulberg and its Counsel, Mr. Talarico, that Count 4 Violates Rule 137 because it Has No Basis in Fact or Law**

19. On January 31, 2023, ADR, through its counsel, sent a two-page letter to Mr. Talarico stating the many reasons why Count 4 was neither well-grounded in fact nor warranted by existing law and, as such, why it served no legitimate purpose. (*See* **Exhibit C**.)

20. ADR demanded that Dulberg immediately withdraw the Complaint against ADR. ADR further warned Dulberg and its counsel that if they did not do so, ADR would seek Rule 137 sanctions.

**C. The Court Dismisses Count 4 *without Prejudice*, and Dulberg Does Not Attempt to File an Amended Complaint**

21. Dulberg and its counsel ignored this warning and their obligations under Rule 137.

22. As such, on February 24, 2023, ADR was forced to file a Section 2-615 Motion to Dismiss. (*See* **Exhibit B** (without exhibits).)

23. Beyond the fact that Count 4 made no sense, Count 4 failed as to ADR because a valid breach of contract claim must identify the specific contractual provision at issue and the conduct constituting a breach thereof. *See Babbitt Muns., Inc. v. Health Care Serv. Corp.*, 2016 IL App (1st) 152662, ¶ 15 (affirming dismissal of breach of contract claim).

24. On April 25, 2023, on Dulberg's behalf, Mr. Talarico filed a four-page Response, which made no serious attempt to address the gross factual and legal deficiencies in Count 4. (*See* **Exhibit D**.)

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25. On May 9, 2023, ADR filed its Reply in support of its Motion to Dismiss, which reviewed why Dulberg's Response was inadequate or simply made no sense. (**Exhibit E**.)

26. The Court held a hearing on ADR's Motion to Dismiss on May 25, 2023, and dismissed Count 4 without prejudice. (*See* **Exhibit F**.)

27. Thereafter, Dulberg did not seek to file an Amended Complaint.

28. On October 11, 2023, in light of Dulberg's failure to file an Amended Complaint, ADR filed a Motion for Status Conference, which was heard on October 31, 2023. Mr. Talarico did not attend that hearing. The Court entered an Order dismissing Dulberg's claims against ADR with prejudice. (*See* **Exhibit G**.)

## ARGUMENT

### I. Rule 137 Sanctions Are Appropriate because Dulberg Did Not Have any Legitimate Basis for Filing Count 4

Illinois Supreme Court Rule 137 requires the signature of an attorney on "[e]very pleading." Ill. S. Ct. R. 137(a). The signature constitutes a certificate that, to the best of the signer's "knowledge, information, and belief formed after reasonable inquiry," the pleading is "well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." *Id.* Where that good faith and reasonable basis to support the pleading is lacking, Rule 137 allows a court to impose sanctions on both the attorney and the represented party. *Id.* "The purpose of the rule is to prevent a litigant from abusing the judicial process by penalizing the party who brings a vexatious or harassing action without a sufficient legal or factual foundation." *Marvel of Ill., Inc. v. Marvel Contaminant Control Indus., Inc.*, 318 Ill. App. 3d 856, 867 (2d Dist. 2001) (internal quotation and citation omitted).

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Further, "[a]n attorney has an obligation to promptly dismiss a lawsuit once it becomes evident that it is baseless." *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 964 (1st Dist. 2001) (internal quotation and citation omitted). Sanctions are warranted under Rule 137 when counsel fails to do so. *See id.* at 962 (holding trial court abused its discretion when it failed to sanction counsel that filed and then failed to dismiss frivolous declaratory judgment complaint).

While one could fairly assert that Dulberg's entire Complaint violated Rule 137, there can be *no* doubt that Count 4 against ADR is precisely the type of claim Rule 137 is aimed to prevent. Here, Dulberg and its counsel, Mr. Talarico, had no reasonable (or legitimate) basis in law or fact for pursuing Count4 against ADR. At no time could they come close to satisfying the most basic elements of a contract claim – namely, what provision of the Mediation Agreement ADR breached and why that breach was responsible for any damages to Dulberg.

Sanctions are warranted here, especially in light of the warning that was provided to Dulberg and Mr. Talarico that it should not proceed against ADR and Dulberg and Mr. Talarico's inability, both in Dulberg's Response and during the hearing on the Motion to Dismiss, to articulate any logical basis under Illinois law for bringing a claim against ADR.

## II. As an Appropriate Sanction, the Court Should Order Dulberg and Mr. Talarico to Pay ADR the Attorneys' Fees and Costs it Incurred in Moving to Dismiss Count 4 and in Seeking Rule 137 Sanctions

Rule 137 allows a party to recover the attorneys' fees and costs it incurred because of the sanctionable pleading. *Robertson v. Calcagno*, 333 Ill. App. 3d 1022, 1028 (1st Dist. 2002); *see also* Ill. S. Ct. R. 137(a). A party may also recover the attorneys' fees it incurs in prosecuting a motion for sanctions. *Id.* As an appropriate sanction under Rule 137, the Court should award ADR not only the attorneys' fees and costs it incurred in obtaining the dismissal of Count 4, but also the additional attorneys' fees ADR incurs in seeking relief under Rule 137.

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**WHEREFORE**, ADR Systems respectfully requests that the Court grant this Petition, find that Plaintiffs and their counsel, Mr. Talarico, violated Illinois Supreme Court Rule 137, and find that ADR is entitled to an award of the attorneys' fees and costs it incurred in dismissing Count 4 of the Complaint and in seeking sanctions under Rule 137 and grant such other and further relief as the Court deems appropriate. Upon the entry of such an Order, ADR will submit an appropriate declaration setting forth its fees and costs.

Dated: November 17, 2023

Respectfully submitted,

**ADR SYSTEMS OF AMERICA, LLC**

By: /s/ Robert A. Chapman
One of its Attorneys

Robert A. Chapman
Shannon T. Knight
**CHAPMAN SPINGOLA, LLP**
190 South LaSalle Street, Suite 3850
Chicago, Illinois 60603
(312) 630-9202 (Telephone)
(312) 630-9233 (Facsimile)
rchapman@chapmanspingola.com
sknight@chapmanspingola.com
Firm ID No. 29411

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**VERIFICATION**

I, Robert A. Chapman, an attorney for Defendant ADR Systems of America, LLC, depose and aver, pursuant to 735 ILCS 5/1-109, that I have read ADR's Petition for Sanctions under Rule 137 and that the statements contained therein are true and correct to the best of my knowledge.

/s/ Robert A. Chapman

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# EXHIBIT A

All Law Division initial Case Management Dates will be heard via ZOOM.
For more information and Zoom Meeting IDs go to https://www.cookcountycourt.org/HOME/Zoom-Links/Agg4906_SelectTab/12
Remote Court date: 2/8/2023 9:30 AM

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12/8/2022 3:50 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010905
Calendar, R
20609010

FILED DATE: 12/8/2022 3:50 PM 2022L010905

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

**COUNTY DEPARTMENT, LAW DIVISION**

| | | |
|---|---|---|
| PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST | ) | |
| Plaintiffs, | ) | CASE NO. 2022L010905 |
| vs. | ) | |
| KELLY N. BAUDIN A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, WILLIAM RANDAL BAUDIN II A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES, ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY | ) | |
| Defendants. | | |

**PLAINTIFFS' COMPLAINT AT LAW**

FILED DATE: 11/7/2023 3:46 PM 2022L010905

Plaintiffs, PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST, by and through their attorney, Alphonse A. Talarico, for their Complaint against Defendants, KELLY N. BAUDIN A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, WILLIAM RANDAL BAUDIN II A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, ADR SYSTEMS OF AMERICA, LLC., ADR COMMERCIAL SERVICES, ALLSTATE INSURANCE COMPANY, states as follows:

## NATURE OF THE CASE

1. This is an action against Defendants KELLY N. BAUDIN A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, WILLIAM RANDAL BAUDIN II A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., for **LEGAL MALPRACTICE PREDICATED ON THE ATTORNEYS' BREACH OF THEIR FIDUCIARY DUTY (FRAUDULENT MISREPRESENTATION).**

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2. This is an action against Defendants JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, for **LEGAL MALPRACTICE PREDICATED ON THE ATTORNEYS' BREACH OF THEIR FIDUCIARY DUTY (FRAUDULENT MISREPRESENTATION).**

3. This is an action against Defendant ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES for **BREACH OF A WRITTEN CONTRACT.**

4. This is an action against Defendant ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY for **BREACH OF A WRITTEN CONTRACT.**

## PARTIES

5. Plaintiffs are PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST. Paul R. Dulberg is an Illinois resident whose address is 4606 Hayden Court, McHenry Illinois 60051. The Paul R. Revocable Trust of which Paul R. Dulberg and Thomas W. Kost are Co-Trustees is an Illinois Revocable Thrust whose address is 4606 Hayden Court, McHenry Illinois 60051.

6. Defendants are:

A) KELLY N. BAUDIN is an Illinois resident and Attorney with a registered address of 304 S. McHenry Avenue, Crystal Lake, Illinois 60014. She is also the President and Agent for Co-Defendant KELRAN, INC. an Illinois Domestic Corporation whose address is 304 S. McHenry

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Avenue, Crystal lake, Illinois 60014 and does business under the Assumed Name of THE BAUDIN LAW GROUP, LTD.

B) WILLIAM RANDAL BAUDIN II is an Illinois resident and Attorney with a registered address of 304 S. McHenry Avenue, Crystal Lake, Illinois 60014. He is also the Secretary for Co-Defendant KELRAN, INC. an Illinois Domestic Corporation whose address is 304 S. McHenry Avenue, Crystal lake, Illinois 60014 and does business under the Assumed Name of THE BAUDIN LAW GROUP, LTD.

C) KELRAN INC. A/K/A THE BAUDIN LAW GROUP, LTD., is an Illinois Domestic Company with an assumed name of THE BAUDIN LAW GROUP, LTD. With an address of 304 South McHenry Avenue, Crystal Lake, Illinois 60014, and Registered Agent Kelly N. Baudin 304 South McHenry Avenue, Crystal Lake, Illinois 60014.

D) JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, is an Illinois resident and Attorney with a registered address of 5702 Elaine Drive Suite 104, Rockford, Illinois 61108.

E) CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, is an Illinois resident who is no longer authorized to practice law in the State of Illinois as of 2021 with a registered address of 1837 National Avenue, Rockford, Illinois 61103.

F) RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, is an Illinois resident who is no longer authorized to practice law in the State of Illinois as of 2013 with a registered address of 1505 National Avenue, Rockford, Illinois 61103.

G) ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES, is an Illinois Domestic LLC with a principal office addres  s of 20 North Clark

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Street 29th Floor, Chicago, Illinois 60602. The registered agent is Marc J. Becker 20 North Clark Street, Suite 2900, Chicago, Illinois 60602.

H) ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY is an Illinois Domestic Dividing Stock Insurance Company pursuant to the Illinois Insurance Code 215 ILCS 5/35B-20 Type P&C Domestic Stock. Its address is 3100 Sanders Road, Suite 2100, Northbrook, Illinois 60062. Its Parent Company is THE ALLSTATE CORPORATION. Its registered agent is CT CORPORATION SYSTEM, 208 SOUTH LASALLE STREET SUITE 814, CHICAGO, ILLINOIS 60604.

## JURISDICTION AND VENUE

7. This Court has personal jurisdiction for each Defendant as follows:

7a. KELLY N. BAUDIN pursuant to 735 ILCS 5/2-209(a)(2), 735 ILCS 5/2 209(a)(7), 735 ILCS 5/2-209(a)(11), 735 ILCS 5/2-209(a)(12), 735 ILCS 5/2-209(a)(14), 735 ILCS 5/2-209(b)(2);

7b. WILLIAM RANDAL BAUDIN II pursuant to735 ILCS 5/2-209(a)(2), 735 ILCS 5/2 209(a)(7), 735 ILCS 5/2-209(a)(11), 735 ILCS 5/2-209(a)(12), 735 ILCS 5/2-209(a)(14), 735 ILCS 5/2-209(b)(2);

7c. KELRAN INC. A/K/A THE BAUDIN LAW GROUP, LTD., pursuant to 735 ILCS 5/2 209(a)(7), 735 ILCS 5/2-209(b)(3);

7d. JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES pursuant to 735 ILCS 5/2-209(a)(2), 735 ILCS 5/2-209(a)(11), 735 ILCS 5/2-209(a)(14), 735 ILCS 5/2-209(b)(2);

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7e. CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES pursuant to 735 ILCS 5/2-209(a)(2), 735 ILCS 5/2-209(a)(11), 735 ILCS 5/2-209(a)(14), 735 ILCS 5/2-209(b)(2);

7f. RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES pursuant to 735 ILCS 5/2-209(a)(2), 735 ILCS 5/2-209(a)(11), 735 ILCS 5/2-209(a)(14), 735 ILCS 5/2-209(b)(2);

7g. ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES pursuant to 735 ILCS 5/2-209(a)(1), 735 ILCS 5/2 209(a)(7), 735 ILCS 5/2-209(b)(3);

7h. ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY pursuant to 735 ILCS 5/2-209(a)(1), 735 ILCS 5/2-209(b)(4).

8. This Court has subject matter jurisdiction pursuant to The Constitution of the State of Illinois, Article VI The Judiciary, Section 9. Circuit Courts-Jurisdiction because legal malpractice, fraud and breach of contract matters committed within the State of Illinois.

9. Venue is proper pursuant to 735 ILCS 5/2-101(1) because Defendant ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES is a "resident " of Cook County, Illinois and 735 ILCS 5/2-101(2) because the fraudulent Binding Mediation Agreement was created and the Binding Mediation Hearing was conducted in Cook County, Illinois.

## STATEMENT OF FACTS

10. On or about October 2, 2014 PLAINTIFF Paul R Dulberg began calling the office of

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Randy Baudin Sr. multiple times, but nobody called back until December of 2014.

11. On or about September 22, 2015 Plaintiff Paul R Dulberg along with his mother Barbara Dulberg and brother Tom Kost went to meet with Randy Baudin Sr., and Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin at the office of Randal Baundin Sr. to discuss possible representation.

12. Upon entering the office of Randy Baudin Sr. Dulberg on September 22, 2015 Plaintiff met with a receptionist who called herself Myrna and she introduced Dulberg to Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin, attorneys of the firm.

13. When Barbara Dulberg inquired about Randy Baudin Sr, she was told that he was not available, not real active these days but doing okay.

14. A meeting took place on September 22, 2015 between Plaintiff Dulberg, Barbara Dulberg, Tom Kost and Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin.

15. On September 22, 2015 Plaintiff Dulberg entered into a fee agreement with Baudin & Baudin, an association of attorneys which at the time was located at 2100 Huntington Dr., Suite C Algonquin IL. 60102 (Please see Plaintiffs' exhibit 1 attached).

16. At the time Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin

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belonged to Defendant KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., located at 304 McHenry Ave., Crystal Lake, Illinois 60014.

17. Plaintiff Dulberg informed Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin at their opening meeting that he intended/required that they were willing to take the case to trial.

18. Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin agreed to take the case to trial if necessary.

19. Plaintiff Dulberg hired Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin to represent him in prosecuting his claims in the pending case designated as 12 LA 178 and that the case was an asset of the Bankruptcy Estate Bk No.:14-83578.

20. Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin did not review or did not use the relevant fact that within 12 LA 178 there was an unanswered (and never answered) cross-claim that would have determined liability for the remaining defendant.

21. Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin did not review or did not use the relevant fact that within 12 LA 178 there was an unanswered (and never

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answered) Interrogatories that may have determined liability for the remaining defendant.

22. Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin did not inform Circuit Court Judge handling 12 LA 178 that Plaintiff Paul Dulberg had filed for bankruptcy protection in Bk No.:14-83578.

23. On July 15, 2016 Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin invited Dulberg and his mother, Barbara Dulberg, to meet at Jamison Charhouse.

24. On July 15, 2016 at 2:22 PM from (815) 814-2193 Defendant WILLIAM RANDAL BAUDIN II sent a text message to Plaintiff Dulberg stating "Kelly and I would like speak with you and your mom Monday night at 630"

25. On July 15, 2016 at 2:27 PM Plaintiff Dulberg sent a text message to Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin stating "Okay, Monday the 18th at 6:30 pm. Do we need to bring anything?"

26. On July 15, 2016 at 2:29 PM Defendant WILLIAM RANDAL BAUDIN II sent a text message to Plaintiff Dulberg stating "Maybe the social security report if you have it? We will Jameson's Charhouse crystal lake at 630 in meeting room there."

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27. On July 18, 2016 at 4:26 PM Plaintiff Dulberg sent a text message to Defendant WILLIAM RANDAL BAUDIN II stating "Still on for tonight?"

28. On July 18, 2016 at 4:26 PM Defendants WILLIAM RANDAL BAUDIN II sent a text message to Plaintiff Dulberg stating "Yes sir."

29.On July 18, 2016 Defendants WILLIAM RANDAL BAUDIN II and Kelly N. Baudin met with Dulberg and his mother, Barbara Dulberg, at the Jamison Charhouse. During this meeting, Randal and Kelly Baudin informed Dulberg about ADR and tried to convince Dulberg to say Yes to the ADR. Dulberg did not agree with the ADR. Randy asked Dulberg to think it over and Dulberg agreed to think it over and get back to him.

30. On July 18, 2016 at 8:54 PM Plaintiff Dulberg sent a text message to Defendant WILLIAM RANDAL BAUDIN II stating "Would we be in a better position if the SSDI decision was already in and would that make a difference in the amount the arbitration judge would award?"

31. On July 18, 2016 at 10:12 PM Defendants WILLIAM RANDAL BAUDIN II and sent a text message to Plaintiff Dulberg stating "So sorry came in garbled. Are you taking our recommendation as to the binding mediation?"

32. On July 18, 2016 10:13 PM Plaintiff Dulberg sent a text message to Defendant

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WILLIAM RANDAL BAUDIN II "You will have an answer tomorrow"

33. On July 19, 2016 at 12:23 AM Plaintiff Dulberg sent a text message to Defendant WILLIAM RANDAL BAUDIN III stating "Sorry but I want to get this to you while its fresh Please answer this in the morning How are costs and attorney fees handled in binding arbitration? Do they come out of the award or are they in addition to the award like a trial?"

34. On July 19, 2016 at 3:57 AM Defendants WILLIAM RANDAL BAUDIN II sent a text message to Plaintiff Dulberg stating "Both Handled the same as trail."

35. On July 19, 2016 at 7:02 AM Plaintiff Dulberg sent a text message to Defendant WILLIAM RANDAL BAUDIN II stating "Does that mean your fees and costs are awarded separate from the award or do they still come out of the 300k cap?"

36. On July 19, 2016 at 7:06 AM Defendant WILLIAM RANDAL BAUDIN II sent a text message to Plaintiff Dulberg stating If at trial and win 300 max Costs not above that. Same as mediation. We can ask for judge to award costs in both. Up to judge to award. Also costs mean filing fee service fee. Not the costs like experts bills.

37. On July 19, 2016 at 7:54 AM Plaintiff Dulberg sent a text message to Defendant W.

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Randall Baudin II stating "We are thinking that if we can get Allstate to agree in advance and in writing to cover your % (fee) and all the costs including deposition fees, expert witness fees and medical above and beyond any award the arbiter sees fit then we would be willing to go forward. Let's just see if they are open to it"

38. On July 19, 2016 at 7:56 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating "They won't. The judge will decide what the award is and that is the award. We again urge you to do the binding mediation."

39. On July 19, 2016 at 8:40 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating "They are the ones pushing for arbitration correct? Why?"

40. On July 19, 2016 at 8:47 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating "I have to run to the dr's appointment. I'd tell Kelly to ask that Allstate wait till possibly Thursday for their answer. It's not like it cost them anything"

41. On July 19, 2016 at 10:07 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating "I told you they don't care if we arbitrate. We as your lawyers say that it is the best that you do the binding mediation. We are deciding this based on facts and odds as to give you the best outcome. It appears to me that you are still looking for some justification or rationalization to carry on as if it will make it better. It

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won't. This will give you the best possible outcome."

42. On July 19, 2016 at 1:46 PM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating "Randy, Yes arbitration is appealing because it saves a few thousand dollars and maybe a few years but I don't like the idea of being blindly boxed in on their terms alone without any assurances as to your fees, medical expenses or even what we spent out of pocket in costs to get here. I want some assurances/concessions on their part prior to walking in or it's no deal. Going in blind with no assurances, I can't help but to feel like a cow being herded thinking its dinner time but it's really slaughter time. They need to give somewhere prior to arbitration or it's a good indication as to how they will negotiate once we start. In other wards, if they won't concede anything prior to arbitration then they won't negotiate or concede anything once the arbitration starts and if that's the case, what's the point. We need something to show they are sincere in trying to resolve this. Up the lower limits from 50k to 150k, concede on the medical portion, out of pocket expenses, attorneys fees or how about just resolving their portion and leave their chainsaw wielding idiot open to defend himself in this lawsuit. Perhaps they can give on something I haven't thought of

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yet, Anything will do but giving on nothing prior to walking in there spells out what I'm going to get and if that's the case then I'll spend money and roll the dice. Convince me I'm not going being lead to slaughter and I'll agree To do it"

43. On July 19, 2016 at 4:28 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating "So sorry your texts come in out of order. Binding mediation or no."

44. On July 20, 2016 at 11:44 AM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating "All right, Kelly called and we have Cole show Sean in the next hour or so. Kelly had promised her we were calling yesterday, they have to know what's going on and make arrangements regarding additional counsel. Again, as your attorneys we are strongly urging you to participate in the binding mediation. It is your best opportunity for the greatest possible recovery and the guarantee that you would at least walk away with something if you got 0. Again, this gives us the most control of the situation."

45. On July 20, 2016 at 1:04 PM Defendant W. Randall Baudin II sent a text message to Plaintiff Dulberg stating "Yes binding mediation?"

46.On July 20, 2016 at 1:24 PM Plaintiff Dulberg sent a text message to Defendant W.

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Randall Baudin II stating "Randy, I truly appreciate yours and Kelly's honest advice and I hope I continue to receive it in the future. Please don't take this personal because it's not. I value everything you have to offer more than you know. I will be moving forward with litigation at this time. However, should Allstate consider a full settlement with no strings attached in the future so they can save the cost of litigation or a humiliating defeat I'm not opposed to entertaining it and most likely will accept it. This is too important to me and my family. I just cannot give up the protections of a public trial with the possibility of review should something be handled wrongly in the hopes of saving a few thousand dollars and time. Thank you both for your honest advice now let's move forward together and enjoy winning this case together."

47. On August 16, 2016 at 7:42 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating "Randy, I have to ask again, why is it wise to agree to mediate before permanent disability is determined by social security since the permanent disability rating would be a large factor in determining what the insurance adjuster is willing to give? Both mom and myself need a real answer to this question"

48. On September 27, 2016, W. Randall Baudin II signed an affidavit "AFFIDAVIT OF

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W.RANDALL BAUDIN, II PURSUANT TO RULES 2014(a), 2016(b) and 5002 TO

EMPLOYEE BAUDIN LAW GROUP, LTD. AS SPECIAL COUNSEL FOR THE

TRUSTEE".

Section 1 states:

"I am a member of the law firm of Boudin Law Group, Ltd. located at 304 South McHenry Avenue, Crystal Lake, IL 60014 and in that capacity I have personal knowledge of, and authority to speak on behalf of the firm of Baudin Law Group, Ltd. with respect to the matters set forth herein. This Affidavit is offered in support of the Application of the Trustee for Authorization to Employ Baudin Law Group, Ltd. as special counsel for the Trustee. The matters set forth herein are true and correct to the best of my knowledge, information and belief.

Section 5 of the affidavit states:

"To the best of my knowledge, information and belief, Baudin Law Group, Ltd. does not hold or represent a party that holds an interest adverse to the Trustee nor does it have any connection with the Debtor's creditors, or any party in interest or their respective attorneys and accountants with respect to the matters for which Baudin Law Group, Ltd. is to be employed, is disinterested as that term is used in 11 U.S.C. § 101(14) and has no connections with the United States Trustee or any person employed in the Trustee's office, except that said firm has represented the Debtor's pre-petition with respect to the subject personal injury claim."

Section 6, part A states:

"My firm and I are obligated to keep the Trustee fully informed as to all aspects of this matter, as the Bankruptcy estate is my client until such time as the claim in question is abandoned by the Trustee, as shown by a written notice of such abandonment."

Section 6, part D states:

"No settlements may be entered into or become binding without the approval of the Bankruptcy Court and the Trustee, after notice to the Trustee, creditors and parties of interest."

Section 6, part E states:

"All issues as to attorneys fees, Debtor's exemptions, the distribution of any recovery between the Debtor and the Trustee or creditors, or any other issue which may come to

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be in dispute between the Debtor and the Trustee or creditors are subject to the jurisdiction of the Bankruptcy Court. Neither I nor any other attorney or associate of the Firm will undertake to advise or represent the Debtor as to any such matters or issues. Instead, the Firm will undertake to obtain the best possible result on the claim and will leave to others any advice or representation as to such issues."

Section 6, part F states:

"The Firm is not authorized to grant any "physician's lien" upon, offer to protect payment of any claim for medical or other services out of, or otherwise pledge or encumber in any way any part of any recovery without separate Order of this Court, which may or may not be granted."

(Please see Exhibit 2 and exhibit 3 attached).

49. On October 4, 2016 bankruptcy trustee Olsen filed 2 motions with the bankruptcy court.

(Please see Exhibit 4 and 5 attached)

50. On or about October 9, 2016 Plaintiff Paul R. Dulberg received a phone call from W. Randal Baudin II informing Dulberg that the binding mediation process will take place even though Dulberg does not approve of the process and refused to sign the arbitration agreement. W. Randal Baudin II informed Dulberg that the bankruptcy trustee and judge had the authority to order the process into a binding mediation agreement without Dulberg's consent.

51. On October 18, 2016 at 10:50 AM Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating "Hi Randy, since we haven't received the IME report in 10 days as the Dr stated we would, I'd like to move back the date of the

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mediation thingy I'm being forced into so we have more than only a few weeks to deal with whatever the report may show. At least 2-3 months should do it considering the defense has already had the treating Dr's reports and depositions for months and years already. Let me know"

52. On October 31, 2016 Trustee Olsen appeared before the Honorable Thomas M. Lynch in the Northern District of Illinois, Western Division, US Bankruptcy Court and the following occurred:

MR. OLSEN: Good morning, Your Honor. Joseph Olsen, trustee. This comes before the Court on two motions. One is to authorize the engagement of special counsel to pursue a personal injury litigation, I think it's in Lake County, involving a chainsaw accident of some sort. And then, presumably, if the Court grants that, the second one is to authorize the estate to enter into -- I'm not sure what you call it, but binding mediation. But there's a floor of $50,000, and there's a ceiling of $300,000

And I guess I've talked with his attorney. He seems very enthusiastic about it. There may be some issues about the debtor being a good witness or not, I guess. It had to do with a neighbor who asked him to help him out with a chainsaw, and then I guess the neighbor kind of cut off his arm, or almost cut off his arm right after that. There's some

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bitterness involved, understandably, I guess.

But I don't do personal injury work at all, so I'm not sure how that all flows through to a jury, but he didn't seem to want to go through a jury process. He liked this process, so...

THE COURT: Very well. Mr. Olsen, first of all, with regard to the application to employ the Baudin law firm, it certainly appears to be in order and supported by affidavit. Their proposed fees are more consistent with at least what generally is the market than some of the fees you and I have seen in some other matters. One question for you: Have you seen the actual engagement agreement?

MR. OLSEN: I thought it was attached to my motion.

THE COURT: Okay.

MR. OLSEN: If it's not, it should have been. It's kind of an interesting -- actually, this is kind of a unique one. The debtor actually paid them money in advance, and then he's going to get a credit if they actually win, which I guess enures, now, to my benefit, but t that's okay. And there's a proviso for one-third, except if we go to trial, then it's 40 percent. So these are getting more creative by the PI bar as we plod along here, I guess, but...

THE COURT: It's a bar that's generally pretty creative. And my apologies. I saw the

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affidavit, but you did have the agreement attached, and one was in front of the other. And the agreement is just as you describe it. It appears to be reasonable, and so I'll approve the application. Tell me about this binding mediation. It's almost an oxymoron, isn't it?

MR. OLSEN: Well, I guess the mediators don't know there's a floor and a ceiling. I'm not sure where that comes from, but that's -- yeah. And whatever number they come back at is the number we're able to settle at, except if it's a not guilty or a zero recovery, we get 50,000, but to come back at 3 million, we're capped at 300,000.

THE COURT: Interesting.

MR. OLSEN: A copy of the mediation agreement should also be attached to that motion.

THE COURT: And I do see that. That appears to be in order. It's one of those you wish them luck

MR. OLSEN: I don't want to micromanage his case.

THE COURT: But that, too, sounds reasonable. There's been no objection?

MR. OLSEN: Correct.

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THE COURT: Very well. I will approve -- authorize, if you will, for you to enter into the binding mediation agreement, see where it takes you.

MR. OLSEN: Thanks, Your Honor."
(Please see Group Exhibit 6A and B attached)

53. On October 31, 2016 both orders were issued by bankruptcy judge.
(Please see Exhibit 7 and Exhibit 8 attached)

54. On October 31, 2016 at 10:41AM trustee Olsen sent an email to Randall Baudin II stating: "Randy- The Court authorized your appointment this morning, as well as entry into that "Binding Mediation Agreement"; Do you want the debtor to /s/ the form, or me as trustee? Let me know, thanks."
(Please see Exhibit 9 p2 attached)

55. On October 31, 2016 at 10:50AM Randall Baudin II sent an email to Trustee Olsen stating: "You can good ahead sign it."
(Please see Exhibit 9 P3 attached)

56. On or about November15, 2016 W. Randal Baudin II told Dulberg that even though he does not want the binding mediation to take place, he should attend the hearing anyway because the judge will look down on a person that doesn't attend as if they are uninterested in their own case.

57. On December 8, 2016, Dulberg attended the binding mediation with his mother,

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Barbara Dulberg, even though he did not agree to the process, did not want it to happen, and refused to sign any agreement or consent to the process.

58. Dulberg believed at the time that the bankruptcy judge was the person who ordered the case into binding mediation at the request of the Trustee and Dulberg believed the bankruptcy judge had the legal authority to make that decision without anyone else's consent. Dulberg believed this because W. Randall Baudin II told him it was true.

59. Towards the end of the Binding Mediation, the Mediator was informing Dulberg that he was finding in Dulberg's favor but wasn't going to make the award so high that a neighborhood war would break out and Dulberg would have to wait to find out the award amount.

60. At that point some yelling started outside the room, to Dulberg and Barbara Dulberg it sounded like Kelly Baudin and Shoshan Reddington, Esq. (Allstate Defense Attorney).

61. Dulberg continued to talk with the Mediator and W. Randall Baudin II quickly excused himself to deal with the yelling.

62. Upon return, W. Randall Baudin II told Barbara Dulberg that Shoshan was angry

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because she was informed they had a deal with prior counsel and the case would be settled for $50,000.

63. When W. Randall Baudin II sat down, Dulberg moved Dr. Bobby L. Lanford's report in front of W. Randall Baudin II and pointed to the statement "... the McGuires – were also somewhat responsible ...".

Dulberg asked, Is that true?

W. Randall Baudin II looked and replied, That's what it says
.
Dulberg replied, Mast ******** lied.

64. On December 12, 2016 The ADR Mediator The Honorable James P. Etchingham, (Ret) issued a Binding Mediation Gross Award of $660,000.00. (Please see Exhibit 10 attached)

65. On December 12, 2016 W. Randall Baudin II called Dulberg to inform Dulberg of the award.

66. W. Randall Baudin II spoke of the $561,000 net award informing Dulberg that both he and Kelly thought they did good and unfortunately the cap of $300,000 was in place but we think we did good.

67. Dulberg replied, Yeah you two did good, real good and I thank both of you

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sincerely. I just can't help it, what I see here is a gift of $261,000 given to those responsible for my injuries.

68. Dulberg was informed that the trustee would receive the $300,000 award, but the money would not be issued unless Dulberg signed a document, which Dulberg signed in order to have the money issued to the bankruptcy trustee to pay his creditors

**COUNT 1**

**LEGAL MALPRACTICE-BREACH OF FIDUCIARY DUTY AGAINST DEFENDANTS KELLY N. BAUDIN, WILLIAM RANDAL BAUDIN II AND KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd.,**

69. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 65, inclusive, of this Complaint, as if fully restated herein.

70. Plaintiff entered into an Attorney- Client agreement with Defendants Kelly N. Baudin, William Randal Baudin II and KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., on September 22, 2015. (Please see Exhibit 1 attached)

71. Pursuant to that agreement a relationship was created wherein the Defendants owed a fiduciary duty to act in the best interest of their client Plaintiff Paul R. Dulberg.

72. Defendants breached their fiduciary duty to plaintiff Paul R. Dulberg as follows:

a) These Defendants knew or should have known that the counterclaim filed by the McGuires against Gagnon on February 1, 2013 was not answered by Gagnon.

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b) These Defendants knew or should have known that because Gagnon did not answer the counterclaim filed on February 1, 2013, Gagnon was effectively admitting that the facts stated in the counterclaim were true.

c) These Defendants knew or should have known that by not answering the counterclaim filed by the McGuires on or about February 1, 2013, Gagnon was contradicting the statements in what was Gagnon's deposition.

d) These Defendants knew or should have known that documents such as "Gagnon deposition exhibit 1" were highly questionable and showed evidence of being manipulated.

e) These Defendants knew or should have known that Gagnon never filed answers to the interrogatories sent by Popovich and Mast.

f) These Defendants never asked Gagnon's counsel for the answers to interrogatories.

g) These Defendants never informed the judge that they never received Gagnons answers to interrogatories.

h) These Defendants knew or should have known that an audio recording of a telephone conversation that Mast claimed to have with Gagnon on April 11, 2012 was missing from the case file.

i) These Defendants never informed the judge that Dulberg had filed for bankruptcy.

j) These Defendants and Trustee Olsen, together, coerced Dulberg against his will into a binding mediation agreement.

k) Trustee Olsen told the bankruptcy judge that the parties agreed and Dulberg did not want a jury trial because he wouldn't be a good witness.

l) These Defendants informed Dulberg that the bankruptcy judge has the authority and did force the binding mediation agreement upon the parties.

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m) These Defendants and Trustee Olsen, together, decided that any arbitration award was to be capped at $300,000 and forced the upper cap on Dulberg without his consent and while ignoring his strong objection.

n) These Defendants and Trustee Olsen, together, intentionally gave Dulberg deceptive and misleading legal opinions with respect to who has legal authority to decide for Plaintiff Paul R. Dulberg all major issues regarding the direction of Dulberg's case against Gagnon.

o) Trustee Olsen and these Defendants intentionally misrepresented Dulberg's wishes to the bankruptcy judge.

p) These Defendants may have forged Dulberg's signature on the Binding Mediation Agreement. (Please see Plaintiff's Exhibit 11 attached)

73. Defendants Kelly N. Baudin, William Randal Baudin II and KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., actions in forcing Plaintiff Paul R. Dulberg into Binding Mediation with a $300,000.00 cap against his stated desire and instructions for an uncapped jury trial was the proximate cause of Plaintiff's pecuniary injuries,

74. Plaintiff Paul R. Dulberg's actual damages in an amount in excess of $261,00.00

WHEREFORE, Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST pray that this Court enter judgment on Count 1 of the Complaint in their favor and against Defendants Kelly N. Baudin, William Randal Baudin II and KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., and each of them, in the amount in excess of $261,000.00, plus interest, award Plaintiffs' their costs and reasonable attorneys' fees, and grant such other relief as this Court deems just and proper.

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## COUNT 2

## LEGAL MALPRACTICE-FRAUDULENT MISREPRESENTATION AGAINST DEFENDANTS KELLY N. BAUDIN, WILLIAM RANDAL BAUDIN II AND KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd.,

75. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 71, inclusive, of this Complaint, as if fully restated herein.

76. These Defendants represented to Plaintiff that the bankruptcy judge had the authority and did order that Plaintiff pursue his ongoing litigation in Civil Court through Binding Mediation.

77. These Defendants' representation was false as these Defendant with the cooperation of the Bankruptcy Trustee told the Bankruptcy Court that Plaintiff desired to enter into binding mediation.

78. These Defendants knew that the representation was false.

79. The Bankruptcy Judge reasonably relied on the truth of the misrepresentation.

80. The misrepresentation was made to coerce Plaintiff to do what he has refused to do that being to accept Binding Mediation of his cause of action currently pending in Circuit Court.

81. Plaintiff Paul R. Dulberg reliance on the misrepresentation led to his pecuniary injury as the Binding Mediation had a cap of $300,000.00 against a gross award by the Mediator of $660,000.00.

WHEREFORE, Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST pray that this Court enter judgment on Count 2 of the Complaint in their favor and against Defendants Kelly N. Baudin, William Randal Baudin II and KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., and each of them, in the

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amount in excess of $261,000.00, plus interest, award Plaintiffs' their costs and reasonable attorneys' fees, and grant such other relief as this Court deems just and proper.

**COUNT 3**

**LEGAL MALPRACTICE-AIDING AND ABETTING A FRAUD AGAINST DEFENDANTS JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES**

82. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 78, inclusive, of this Complaint, as if fully restated herein.

83. Defendant Joseph David Olsen was the second Trustee appointed to Plaintiff Paul R. Dulberg's bankruptcy action.

84. Defendant Joseph David Olsen had his a/k/a Law Firm YALDEN, OLSEN & WILLETTE LAW OFFICES appointed as his counsel in Plaintiff Paul R. bankruptcy matter.

85. Defendant Joseph David Olsen had Plaintiff Counsel in the Circuit Court matter DEFENDANTS KELLY N. BAUDIN, WILLIAM RANDAL BAUDIN II and KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., appointed as his special counsel in Plaintiff's bankruptcy case.

86. Defendant Joseph David Olsen aided Defendant William Randal Baudin II to promote the misrepresentation that Plaintiff desired to enter into a binding

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mediation agreement because plaintiff was not a good witness.

87. Coercing Plaintiff into a binding mediation agreement was a wrongful act causing Plaintiff pecuniary injury in an amount in excess of $261,000.00.

88. Defendant Joseph David Olsen was aware of his role when he presented his motions to hire Defendant William Randal Baudin II as Special Counsel and to enter into a binding mediation agreement for Plaintiff and also when he told the bankruptcy judge that Plaintiff desire to avoid a jury trial because he was not a good witness.

89. Defendant Joseph David Olsen knowingly and substantially assisted Defendant William Randal Baudin II in his misrepresentations.

90. The Baudins and Trustee Olsen, together, coerced Dulberg against his will into a binding mediation agreement.

91. Trustee Olsen told the bankruptcy judge that the parties agreed and Dulberg did not want a jury trial because he wouldn't be a good witness.

92. The Baudins and Trustee Olsen, together, decided that any arbitration award was to be capped at $300,000 and forced the upper cap on Dulberg without his consent and while ignoring his strong objection

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WHEREFORE, Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST pray that this Court enter judgment on Count 3 of the Complaint in their favor and against DEFENDANTS JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW and each of them, in the amount in excess of $261,000.00, plus interest, award Plaintiffs' their costs and reasonable attorneys' fees, and grant such other relief as this Court deems just and proper.

## COUNT 4

## BREACH OF CONTRACT AGAINST DEFENDANT ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES

93. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 89, inclusive, of this Complaint, as if fully restated herein.

94. There was a valid and enforceable contract between Plaintiff Paul R. Dulberg and Defendants ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES and ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY dated December 8, 2016. (Please see Exhibit 11 attached)

95. There existed an unsigned/undated draft of this agreement presented to Plaintiff's Bankruptcy Judge on October 31, 2016 by Defendant Joseph David Olsen. (Please see Group Exhibit 6B attached)

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96. Major terms within the two agreements were changed including but not limited to:

a. Notifications under the title on page one;

b. Language under Parties B;

c. page 4 F1.b. regarding who is liable to Plaintiff;

d. page 5 V.A.1. ADR Systems Fee Schedule;

e. page 5 V ADR Systems Fee Schedule boxed information;

f. page 6 section v number 5.

97. The specified language of Paragraph III. B. Amendments to the Agreement were not followed.

98. Plaintiff did all that was required of him under the terms of the contract.

99. Defendant breached the contract by not following the terms regarding amending the contract.

100. Plaintiff suffered pecuniary injury in an amount in excess of $261,000.00 because the contract under the changed terms should not be allowed to regulate the procedure.

WHEREFORE, Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST pray that this Court enter judgment on Count 4 of the

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Complaint in their favor and against DEFENDANT ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES in the amount in excess of $261,000.00, plus interest, award Plaintiffs' their costs and reasonable attorneys' fees, and grant such other relief as this Court deems just and proper.

**COUNT 5**

**BREACH OF CONTRACT AGAINST DEFENDANT ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY**

101. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 97, inclusive, of this Complaint, as if fully restated herein.

102. There was a valid and enforceable contract between Plaintiff Paul R. Dulberg and DEFENDANT ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY dated December 8, 2016. (Please see Exhibit 11 attached)

103. There existed an unsigned/undated draft of this agreement presented to Plaintiff's Bankruptcy Judge on October 31, 2016 by Defendant Joseph David Olsen. (Please see Group Exhibit 6B attached)

104. Major terms within the two agreements were changed including but not limited to:

a. Notifications under the title on page one;

b. Language under Parties B;

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c. page 4 F1.b. regarding who is liable to Plaintiff;

d. page 5 V.A.1. ADR Systems Fee Schedule;

e. page 5 V ADR Systems Fee Schedule boxed information;

f. page 6 section v number 5.

94. The specified language of Paragraph III. B. Amendments to the Agreement were not followed.

105. Plaintiff did all that was required of him under the terms of the contract.

106. Defendant breached the contract by not following the terms regarding amending the contract.

107. Plaintiff suffered pecuniary injury in an amount in excess of $261,000.00 because the contract under the changed terms should not be allowed to regulate the procedure.

WHEREFORE, Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST pray that this Court enter judgment on Count 5 of the Complaint in their favor and against DEFENDANT ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY in the amount in excess of $261,000.00, plus interest, award Plaintiffs' their costs and reasonable attorneys' fees, and grant such other relief as this Court deems just and proper.

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**JURY DEMAND-12 PERSONS**

Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST demand a trial by jury on all issues triable by a jury.

Dated: December 8, 2022

Respectfully submitted,

By: /s/ Alphonse A. Talarico
ARDC 6184530
CC 53293
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

Attorney for Plaintiffs: Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST

**VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and

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correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul R. Dulberg

**AFFIDAVIT PURSUANT TO SUPREME COURT RULE 222(b)**

I, Paul R. Dulberg, after being duly sworn on oath depose and state as follows:

1. I have brought suit against Defendants KELLY N. BAUDIN A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, WILLIAM RANDAL BAUDIN II A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES, ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY

2. The total of money damages I seeks does exceed $50,000;

3. I am filing this Affidavit pursuant to the provisions of Illinois Supreme Court Rule 222.

Dated: December 8, 2022

Paul R. Dulberg

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# FEE AGREEMENT

I, Paul Dulberg, hereby agree to retain and employ BAUDIN & BAUDIN, an association of attorneys, to prosecute and/or settle all suits and claims for damages, which may include personal injuries and property damage, against responsible parties, including their insurance companies and my insurance companies, or any other responsible insurance companies, arising out of events which occurred on or about the 28th day of June, 2011, at or near 1016 W. Elder Avenue, McHenry, Illinois.

I agree to pay BAUDIN & BAUDIN as compensation for services (1) a non-refundable retainer fee of $3,333.33; AND (2) a sum of money equal to one-third (1/3) of the gross amount realized from this claim by settlement prior to trial of this matter, OR, if this matter proceeds to trial, which is defined as any time after the final pre-trial conference with the Court has concluded, I agree to pay BAUDIN & BAUDIN as compensation for its services a sum of money equal to forty percent (40%) of the gross amount realized from such action. Should this matter conclude by way of settlement, negotiations, trial, arbitration or judgment in my favor, BAUDIN & BAUDIN agrees to reduce its percentage fee by an amount of $3,333.33 as an offset for the non-refundable retainer fee; however, in no event will the $3,333.33 be refunded to me once this agreement has been executed.

I realize, understand and agree that all expenses and costs related to my claim, such as medical expenses for my/our care and treatment and related costs such as costs for obtaining medical records and bills, as well as court costs, including filing fees, costs of depositions, costs of experts, etc. are my obligation and responsibility and shall be paid as those bills become due from time to time.

It is further agreed and understood that there will be no further charges for legal services over and above the $3,333.33 non-refundable retainer fee by BAUDIN & BAUDIN (with the exception of the aforesaid expenses and costs referred to in paragraph 3) unless recovery is made in this claim, and that no settlement will be made without the consent of the claimant(s).

I hereby authorize and direct that BAUDIN & BAUDIN is authorized to endorse and deposit any proceeds received in regard to the aforesaid claim herein, and to disburse those funds for purposes of client payments, resolution of liens, reimbursement of costs advanced, and attorney's fees.

This cause was not solicited either directly or indirectly from me/us by anyone. This agreement is being executed with duplicate originals.

Signed this 22nd day of September, 2015, and copy received by claimant(s) or claimant(s)'s representative.

Claimant

Claimant

BAUDIN & BAUDIN
2100 N. Huntington Drive, Suite C
Algonquin, IL 60102
847.658.5295 FAX: 847.658.5015

Revised 9/2015

EXHIBIT
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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 7 |
| | ) | |
| DULBERG, PAUL | ) | CASE NO. 14-83578 |
| | ) | |
| Debtors. | ) | JUDGE: THOMAS M. LYNCH |

**AFFIDAVIT OF W. RANDAL BAUDIN, II PURSUANT TO RULES 2014(a), 2016(b) AND 5002 TO EMPLOY BAUDIN LAW GROUP, LTD. AS SPECIAL COUNSEL FOR THE TRUSTEE**

STATE OF ILLINOIS )
) ss
COUNTY OF McHENRY )

Personally appeared before the undersigned officer, duly authorized to administer oaths, W. Randal Baudin, II, and after being duly sworn, states as follows:

1. I am a member of the law firm of Baudin Law Group, Ltd. located at 304 South McHenry Avenue, Crystal Lake, IL 60014 and in that capacity I have personal knowledge of, and authority to speak on behalf of the firm of Baudin Law Group, Ltd., with respect to the matters set forth herein. This Affidavit is offered in support of the Application of the Trustee for Authorization to Employ Baudin Law Group, Ltd. as special counsel for the Trustee. The matters set forth herein are true and correct to the best of my knowledge, information and belief.

2. Baudin Law Group, Ltd. has no partners, associates or other professional employees who are related to any judge of the United States Bankruptcy Court for the Northern District of Illinois.

3. Neither the firm of Baudin Law Group, Ltd. nor I have agreed to share any compensation or reimbursement awarded in this case with any persons other than partners and associates of the firm of Baudin Law Group, Ltd..

4. Baudin Law Group, Ltd. shall be compensated for their services on a contingent fee basis pursuant to terms of the attached agreement.

5. To the best of my knowledge, information and belief, Baudin Law Group, Ltd. does not hold or represent a party that holds an interest adverse to the Trustee nor does it have any connection with the Debtor's creditors, or any party in interest or their respective attorneys and accountants with respect to the matters for which Baudin Law Group, Ltd. is to be employed, is disinterested as that term is used in 11 U.S.C. § 101(14), and has no connections with the United States Trustee or any person employed in the Trustee's office, except that said firm has represented the Debtors pre-petition with respect to the subject personal injury claim.

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6. I understand and agree that:

A. My Firm and I are obligated to keep the Trustee fully informed as to all aspects of this matter, as the Bankruptcy Estate is my client until such time as the claim in question is abandoned by the Trustee, as shown by a written notice of such abandonment.

B. All proceeds of any settlement or recovery must be paid to the Trustee in the first instance, and none may be disbursed without approval in writing of the Trustee or an Order of the Bankruptcy Court.

C. If this application for appointment is approved, any fees or reimbursement of costs from the proceeds of any recoveries will be paid by the Trustee only after approval of the Bankruptcy Court.

D. No settlements may be entered into or become binding without the approval of the Bankruptcy Court and the Trustee, after notice to the Trustee, creditors and parties in interest.

E. All issues as to attorneys fees, Debtor's exemptions, the distribution of any recovery between the Debtor and the Trustee or creditors, or any other issue which may come to be in dispute between the Debtor and the Trustee or creditors are subject to the jurisdiction of the Bankruptcy Court. Neither I nor any other attorney or associate of the Firm will undertake to advise or represent the Debtor as to any such matters or issues. Instead, the Firm will undertake to obtain the best possible result on the claim, and will leave to others any advice or representation as to such issues.

F. The Firm is not authorized to grant any "physician's lien" upon, offer to protect payment of any claim for medical or other services out of, or otherwise pledge or encumber in any way any part of any recovery without separate Order of this Court, which may or may not be granted.

G. Authorization to hire experts. As part of this representation, I will need to hire experts to advise and assist in the conduct of this litigation, specifically medical experts, liability or forensic experts, vocational or economic experts, or other experts on issues of liability or damages. In this regard, I agree that:

i. My Firm or I will pay or advance any fees or cost retainers required by such experts with the understanding that such payment or advance will be included as a cost in any subsequent fee application my Firm or I make to this Court; and

ii. Before entering into any such retention or paying any initial fees or costs, I will consult with the Trustee, provide the Trustee any

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information requested including estimates of total costs and fees, provide a copy of any fee agreements, and obtain the Trustee's advance written approval to the proposed terms of retention.

iii. I will see that copies of any bills submitted by such experts are submitted to the Trustee when I receive them and a reasonable time before I or my Firm pays them, and are approved in advance, by the Trustee, in writing.

iv. Such fees or expenses of such experts are subject to reimbursement only by the Bankruptcy Estate, upon approval of this Court, to be paid as an administrative expense in this Bankruptcy case pursuant to 11 U.S.C. § 726, out of proceeds of any settlement or recovery in the litigation my Firm and I will be handling.

W. Randal Baudin, II, Affiant

Subscribed and sworn to before
me this 27 day of September, 2016

Notary Public

OFFICIAL SEAL
MYRNA E BOYCE
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/17/19

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 7 |
| | ) | |
| DULBERG, PAUL | ) | CASE NO. 14-83578 |
| | ) | |
| Debtors. | ) | JUDGE: THOMAS M. LYNCH |

**AFFIDAVIT OF W. RANDAL BAUDIN, II PURSUANT TO RULES 2014(a), 2016(b) AND 5002 TO EMPLOY BAUDIN LAW GROUP, LTD. AS SPECIAL COUNSEL FOR THE TRUSTEE**

STATE OF ILLINOIS )
) ss
COUNTY OF McHENRY )

Personally appeared before the undersigned officer, duly authorized to administer oaths, W. Randal Baudin, II, and after being duly sworn, states as follows:

1. I am a member of the law firm of Baudin Law Group, Ltd. located at 304 South McHenry Avenue, Crystal Lake, IL 60014 and in that capacity I have personal knowledge of, and authority to speak on behalf of the firm of Baudin Law Group, Ltd., with respect to the matters set forth herein. This Affidavit is offered in support of the Application of the Trustee for Authorization to Employ Baudin Law Group, Ltd. as special counsel for the Trustee. The matters set forth herein are true and correct to the best of my knowledge, information and belief.

2. Baudin Law Group, Ltd. has no partners, associates or other professional employees who are related to any judge of the United States Bankruptcy Court for the Northern District of Illinois.

3. Neither the firm of Baudin Law Group, Ltd. nor I have agreed to share any compensation or reimbursement awarded in this case with any persons other than partners and associates of the firm of Baudin Law Group, Ltd..

4. Baudin Law Group, Ltd. shall be compensated for their services on a contingent fee basis pursuant to terms of the attached agreement.

5. To the best of my knowledge, information and belief, Baudin Law Group, Ltd. does not hold or represent a party that holds an interest adverse to the Trustee nor does it have any connection with the Debtor's creditors, or any party in interest or their respective attorneys and accountants with respect to the matters for which Baudin Law Group, Ltd. is to be employed, is disinterested as that term is used in 11 U.S.C. § 101(14), and has no connections with the United States Trustee or any person employed in the Trustee's office, except that said firm has represented the Debtors pre-petition with respect to the subject personal injury claim.

EXHIBIT
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6. I understand and agree that:

A. My Firm and I are obligated to keep the Trustee fully informed as to all aspects of this matter, as the Bankruptcy Estate is my client until such time as the claim in question is abandoned by the Trustee, as shown by a written notice of such abandonment.

B. All proceeds of any settlement or recovery must be paid to the Trustee in the first instance, and none may be disbursed without approval in writing of the Trustee or an Order of the Bankruptcy Court.

C. If this application for appointment is approved, any fees or reimbursement of costs from the proceeds of any recoveries will be paid by the Trustee only after approval of the Bankruptcy Court.

D. No settlements may be entered into or become binding without the approval of the Bankruptcy Court and the Trustee, after notice to the Trustee, creditors and parties in interest.

E. All issues as to attorneys fees, Debtor's exemptions, the distribution of any recovery between the Debtor and the Trustee or creditors, or any other issue which may come to be in dispute between the Debtor and the Trustee or creditors are subject to the jurisdiction of the Bankruptcy Court. Neither I nor any other attorney or associate of the Firm will undertake to advise or represent the Debtor as to any such matters or issues. Instead, the Firm will undertake to obtain the best possible result on the claim, and will leave to others any advice or representation as to such issues.

F. The Firm is not authorized to grant any "physician's lien" upon, offer to protect payment of any claim for medical or other services out of, or otherwise pledge or encumber in any way any part of any recovery without separate Order of this Court, which may or may not be granted.

G. Authorization to hire experts. As part of this representation, I will need to hire experts to advise and assist in the conduct of this litigation, specifically medical experts, liability or forensic experts, vocational or economic experts, or other experts on issues of liability or damages. In this regard, I agree that:

i. My Firm or I will pay or advance any fees or cost retainers required by such experts with the understanding that such payment or advance will be included as a cost in any subsequent fee application my Firm or I make to this Court; and

ii. Before entering into any such retention or paying any initial fees or costs, I will consult with the Trustee, provide the Trustee any

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information requested including estimates of total costs and fees, provide a copy of any fee agreements, and obtain the Trustee's advance written approval to the proposed terms of retention.

iii. I will see that copies of any bills submitted by such experts are submitted to the Trustee when I receive them and a reasonable time before I or my Firm pays them, and are approved in advance, by the Trustee, in writing.

iv. Such fees or expenses of such experts are subject to reimbursement only by the Bankruptcy Estate, upon approval of this Court, to be paid as an administrative expense in this Bankruptcy case pursuant to 11 U.S.C. § 726, out of proceeds of any settlement or recovery in the litigation my Firm and I will be handling.

W. Randal Baudin, II, Affiant

Subscribed and sworn to before me this 27 day of September, 20 16

Notary Public

OFFICIAL SEAL
MYRNA E BOYCE
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:08/17/19

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 7 |
| PAUL DULBERG | ) | Case Number: 14-83578 |
| | ) | |
| Debtor. | ) | JUDGE THOMAS M. LYNCH |

**NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST**

Notified via Electronic filing: Attorney David Stretch and U.S. Trustee's Office,

Notified via U.S. Postal Service: See attached service list.

Joseph D. Olsen, Trustee has filed papers with the Court regarding his **Motion for Authority to Enter into a "Binding Mediation Agreement" in accordance with the "Binding Mediation Agreement" which is attached hereto and made a part hereof as Exhibit A.**

A copy of said Motion referred to herein is available for inspection at the offices of the Clerk of the U.S. Bankruptcy Court or at the offices of Yalden, Olsen & Willette, during usual business hours.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you want the Court to consider your views on the Motion, then you or your attorney must:

**Attend the hearing on scheduled to be held on the 31st day of October, 2016 at 9:30 am in courtroom 3100, United States Bankruptcy Court, 327 South Church St., Rockford, IL 61101.**

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Joseph D. Olsen, Trustee

By: YALDEN, OLSEN & WILLETTE, his attorneys

By: s/s Joseph D. Olsen

Joseph D. Olsen
Yalden, Olsen & Willette
1318 East State Street
Rockford, IL 61104

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on October 4, 2016 I caused the aforesaid to be served upon all persons to whom it is directed (see attached Service List) by United States Mail by depositing the same in the United States Mail at Rockford, Illinois, at or about the hour of 5:00 p.m.

s/s Marti Maravich

EXHIBIT
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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 7 |
| | ) | Case Number: 14-83578 |
| PAUL DULBERG | ) | |
| Debtor. | ) | JUDGE: THOMAS M. LYNCH |

**MOTION FOR AUTHORITY TO ENTER INTO A "BINDING MEDIATION AGREEMENT".**

NOW COMES the Trustee, Joseph D. Olsen, by his attorneys, Yalden, Olsen & Willette, pursuant to Bankruptcy Rule 9019, and for his Motion for Authority to Enter into a "Binding Mediation Agreement", states as follows:

1. That the Debtor, Paul Dulberg, filed his Voluntary Petition for Relief pursuant to Chapter 7 of Title 11 on November 26, 2014;

2. That Joseph D. Olsen is the duly appointed and qualified acting case Trustee of the above captioned Estate;

3. That on the date of the petition the Debtor, Paul Dulberg, had a certain claim against David Gagnon, et al for certain personal injuries suffered in a chainsaw injury. This certain personal injury case is pending in the circuit court of the 22nd Judicial Circuit, McHenry County, Illinois in cause number 12LA178.

4. Heretofore the Trustee has hired as his Special Counsel, the Baudin Law Group, Ltd. to prosecute the Bankruptcy Estate's claim in this matter. After discussions with Randy Baudin, the lead attorney on the file, Mr. Baudin has recommended participation in the "Binding Mediation Agreement", a copy of which agreement is attached hereto and made a part hereof as Exhibit A. There can be no guarantee of the amount of the award that is eventually provided under the "Binding Mediation Agreement" but it has a floor of no less than $50,000.00 and a ceiling of no greater than $300,000.00.

The Trustee, in consultation with his special counsel, believes the "Binding Mediation Agreement" would be in the best interest of the Estate.

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WHEREFORE, the Trustee requests authority to enter into the afore-described "Binding Mediation Agreement" and to execute any document necessary or appropriate to process the Debtor's claims through that binding mediation process.

JOSEPH D. OLSEN, Trustee

By: YALDEN, OLSEN & WILLETTE, his attorneys

By: s/s Joseph D. Olsen

Prepared by:
Joseph D. Olsen
Yalden, Olsen & Willette
1318 East State Street
Rockford, IL 61104
(815) 965-8635

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Alexian Brothers Medical Group
PO Box 5500
Belfast, ME 04915-5500

Associated Neurology SC
1900 Hollister Drive
Suite 250
Libertyville, IL 60048-5249

Bank of America
PO Box 851001
Dallas, TX 75285-1001

BANK OF AMERICA
PO BOX 982238
EL PASO TX 79998-2238

Cabelas Visa Center
World's Foremost Bank
PO Box 82609
Lincoln, NE 68501-2609

Capital One Bank
Attn: General Correspondence
PO Box 30285
Salt Lake City, UT 84130-0285

Capital One Bank (USA), N.A.
PO Box 6492
Carol Stream, IL 60197-6492

Capital One Bank (USA), N.A.
PO Box 71083
Charlotte, NC 28272-1083

Dr. Frank W. Sek
4606 W. Elm Street
McHenry, IL 60050-4015

Dynamic Hand Therapy & Rehab
498 S. US Highway 12
Suite C
Fox Lake, IL 60020-1908

Hand Surgery Associates, SC
Dr. Sagerman / Dr. Biafora
515 W. Algonquin Road
Arlington Heights, IL 60005-4405

McHenry Radiologists & Imaging
PO Box 220
McHenry, IL 60051-0220

MidAmerica Hand to Shoulder Clinic
Dr. Talerico
75 Remittance Drive, Suite 6035
Chicago, IL 60675-6035

Moraine Emergency Physicians
PO Box 8759
Philadelphia, PA 19101-8759

Northern Illinois Medical Center
4201 Medical Center Drive
McHenry, IL 60050-8499

Northwest Community Hospital
25709 Network Place
Chicago, IL 60673-1257

Northwest Surburban Anesthesiologis
8163 Solutions Center
Chicago, IL 60677-8001

Oak Trust Credit Union
1 South 450 Summit Avenue
Oakbrook Terrace, IL 60181

(p)OAK TRUST CREDIT UNION
12251 S ROUTE 59
PLAINFIELD IL 60585-9189

Oak Trust Credit Union
444 N Eola Rd, Suite 101
Aurora, IL 60502-9620

Open Advanced MRI of Round Lake
Medchex
PO Box 502
Katonah, NY 10536-0502

WORLD'S FOREMOST BANK
CABELA'S CLUB VISA
PO BOX 82609
LINCOLN, NE 68501-2609

Walgreens
3925 W. Elm Street
McHenry, IL 60050-4361

Walmart Pharmacy
3801 Running Brook Farms Boulevard
Johnsburg, IL 60051-5425

Worlds Foremost Bank NA
4800 NW 1st Street
Suite 300
Lincoln, NE 68521-4463

David L. Stretch
Law Office of David L. Stretch
5447 West Bull Valley Road
McHenry, IL 60050-7410

Paul R. Dulberg
4606 Hayden Court
McHenry, IL 60051-7918

Attorney W. Randal Baudin, II
Baudin Law Group, Ltd.
2100 N. Huntington Dr Suite C
Algonquin, IL 60102

FILED DATE: 11/17/2023 3:45 PM 2022L010905
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**Binding Mediation Agreement**
**ADR Systems File # 33391BMAG**

**Revised for Special Billing**

I. **Parties**

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

**SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

II. **Date, Time and Location of the Binding Mediation**

Date: Thursday, December 8, 2016
Time: 1:30 P.M.
Location: ADR Systems of America, LLC
20 North Clark Street
Floor 29
Chicago, IL 60602
Contact: Alex Goodrich
312-960-2267

III. **Rules Governing the Mediation**

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

A. **Powers of the Mediator**

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.



EXHIBIT "A"

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B. **Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.

2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

C. **Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

D. **Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:

   a. Medical records and medical bills for medical services;

   b. Bills for drugs and medical appliances (for example, prostheses);

   c. Property repair bills or estimates;

   d. Reports of lost time from employment, and / or lost compensation or wages;

   e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;

   f. Photographs;

   g. Police reports;

   h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and

   i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.

2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.

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a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and

b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.

3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**

4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016.**

5. The items are considered delivered as of the date that one of the following events occur:

   a. If mailed, by the date of the postmark;

   b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and

   c. The date transmitted by facsimile or email.

6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

   If emailing Submissions, please send to submissions@adrsystems.com, however, please do not send anything over 50 pages, including exhibits.

   The Honorable James P. Etchingham, (Ret.) (Mediator)
   C/O ADR SYSTEMS
   20 North Clark Street
   Floor 29
   Chicago, IL 60602

   Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)
   BAUDIN LAW GROUP
   304 McHenry Avenue
   Crystal Lake, IL 60039

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Shoshan Reddington, Esq. (Defense Attorney)
LAW OFFICES OF STEVEN LIHOSIT
200 N. La Salle Street
Suite 2550
Chicago, IL 60601

E. **Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

F. **Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").

   a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.

   b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

      The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **$50,000.00**. Also, the maximum award to Paul Dulberg will be **$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

**IV. Effect of this Agreement**

A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

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B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

## V. Mediation Costs

### A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is $2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

| | |
|---|---|
| Administrative Fee | $390.00 (Non-refundable) |
| Mediator's Review Time | $450.00 per hour |
| Session Time | $450.00 per hour |
| Mediator's Decision Writing Time | $450.00 per hour |
| Mediator's Travel Time (if any) | $75.00 per hour |

### B. Responsibility for Payment **Special Billing

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.

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3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.
5. ****Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

**VI. Acknowledgment of Agreement**

A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Paul Dulberg / Plaintiff Date

By: _____
Kelly N. Baudin / Attorney for the Plaintiff Date

By: _____
Randall Baudin, II / Attorney for the Plaintiff Date

By: _____
Shoshan Reddington / Attorney for the Defendant Date

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 7 |
| | ) | |
| DULBERG, PAUL | ) | CASE NO. 14-83578 |
| | ) | |
| Debtor. | ) | JUDGE THOMAS M. LYNCH |

**NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST**

Notified via Electronic filing: Attorney David Stretch and U.S. Trustee's Office,

Notified via U.S. Postal Service: See attached service list.

Joseph D. Olsen, Trustee has filed papers with the Court regarding his **Motion to Employ Special Counsel, Baudin Law Group, Ltd, as attorneys for the Trustee to pursue a personal injury cause of action.** A copy of said Motion referred to herein is available for inspection at the offices of the Clerk of the U.S. Bankruptcy Court or at the offices of Yalden, Olsen & Willette, during usual business hours.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you want the Court to consider your views on the Motion, then you or your attorney must:

**Attend the hearing on scheduled to be held on the 31st day of October , 2016 at 9:30 am in courtroom 3100, United States Bankruptcy Court, 327 South Church Street, Rockford, IL 61101.**

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Joseph D. Olsen, Trustee

By: YALDEN, OLSEN & WILLETTE, his attorneys

By: s/s Joseph D. Olsen

Joseph D. Olsen
Yalden, Olsen & Willette
1318 East State Street
Rockford, IL 61104

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on October 4, 2016 I caused the aforesaid to be served upon all persons to whom it is directed (see attached Service List) by United States Mail by depositing the same in the United States Mail at Rockford, Illinois, at or about the hour of 5:00 p.m.

s/s Marti Maravich

EXHIBIT
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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 7 |
| | ) | |
| PAUL DULBERG, | ) | CASE NO. 14-83578 |
| | ) | |
| | ) | |
| Debtors. | ) | JUDGE: THOMAS M. LYNCH |

## MOTION TO EMPLOY SPECIAL COUNSEL

NOW COMES Joseph D. Olsen, Trustee, by his attorneys, Yalden, Olsen & Willette, and for his Motion to Employ Special Counsel, hereby states as follows:

1. JOSEPH D. OLSEN is the duly qualified, appointed, and acting Trustee in the above-captioned case.

2. To perform his duties as Trustee, your movant requires the services of an attorney for the following purposes:

A. To appear for and prosecute the Estate's interest regarding a personal injury cause of action;

B. To assist in the preparation of such pleadings, motions, notices, and orders which are required;

3. For the foregoing and all other necessary and proper purposes, movant desires to retain the law office of Baudin Law Group, Ltd., as counsel for the Trustee.

4. Movant feels that the law office is well qualified to render the foregoing services.

5. The law office of Baudin Law Group, Ltd. has no connections with the Debtor(s), creditors, or any party in interest, their respective attorneys and accountants, the U.S. Trustee, or any person employed in the office of the U.S. Trustee as defined in 11 U.S.C. Section 101(14), except as follows:

Post petition the Debtor entered into a contingent fee agreement with Baudin & Baudin (the predecessor law group to the Baudin Law Group, Ltd.) whereby the Debtor paid $3,333.33 as a nonrefundable retainer (to the offset against any future recovery) and agreed to pay Baudin & Baudin 331/3% as a contingency fee if the matter settled prior to trial and 40% if the matter proceeds to trial.

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6. The attorneys requests that they be compensated in accordance with Baudin Law Group, Ltd. fee agreement which is attached hereto and made a part hereof as "Exhibit A."

WHEREFORE, JOSEPH D. OLSEN, Trustee, prays that he be authorized to employ the law office of Baudin Law Group, Ltd., as his attorneys to render services in the areas described above and compensation be paid as an administrative expense and in such amounts as this Court may hereinafter determine and allow.

JOSEPH D. OLSEN, Trustee

By: YALDEN, OLSEN & WILLETTE, his Attorneys

By: s/s Joseph D. Olsen

Joseph D. Olsen
YALDEN, OLSEN & WILLETTE
1318 East State Street
Rockford, IL 61104
(815) 965-8635
Fax (815) 965-4573

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Alexian Brothers Medical Group
PO Box 5500
Belfast, ME 04915-5500

Associated Neurology SC
1900 Hollister Drive
Suite 250
Libertyville, IL 60048-5249

Bank of America
PO Box 851001
Dallas, TX 75285-1001

BANK OF AMERICA
PO BOX 982238
EL PASO TX 79998-2238

Cabelas Visa Center
World's Foremost Bank
PO Box 82609
Lincoln, NE 68501-2609

Capital One Bank
Attn: General Correspondence
PO Box 30285
Salt Lake City, UT 84130-0285

Capital One Bank (USA), N.A.
PO Box 6492
Carol Stream, IL 60197-6492

Capital One Bank (USA), N.A.
PO Box 71083
Charlotte, NC 28272-1083

Dr. Frank W. Sek
4606 W. Elm Street
McHenry, IL 60050-4015

Dynamic Hand Therapy & Rehab
498 S. US Highway 12
Suite C
Fox Lake, IL 60020-1908

Hand Surgery Associates, SC
Dr. Sagerman / Dr. Biafora
515 W. Algonquin Road
Arlington Heights, IL 60005-4405

McHenry Radiologists & Imaging
PO Box 220
McHenry, IL 60051-0220

MidAmerica Hand to Shoulder Clinic
Dr. Talerico
75 Remittance Drive, Suite 6035
Chicago, IL 60675-6035

Moraine Emergency Physicians
PO Box 8759
Philadelphia, PA 19101-8759

Northern Illinois Medical Center
4201 Medical Center Drive
McHenry, IL 60050-8499

Northwest Community Hospital
25709 Network Place
Chicago, IL 60673-1257

Northwest Surburban Anesthesiologis
8163 Solutions Center
Chicago, IL 60677-8001

Oak Trust Credit Union
1 South 450 Summit Avenue
Oakbrook Terrace, IL 60181

(p)OAK TRUST CREDIT UNION
12251 S ROUTE 59
PLAINFIELD IL 60585-9189

Oak Trust Credit Union
444 N Kola Rd, Suite 101
Aurora, IL 60502-9620

Open Advanced MRI of Round Lake
Medchex
PO Box 502
Katonah, NY 10536-0502

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CABELA'S CLUB VISA
PO BOX 82609
LINCOLN, NE 68501-2609

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4800 NW 1st Street
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Lincoln, NE 68521-4463

David L. Stretch
Law Office of David L. Stretch
5447 West Bull Valley Road
McHenry, IL 60050-7410

Paul R. Dulberg
4606 Hayden Court
McHenry, IL 60051-7918

Attorney W. Randal Baudin, II
Baudin Law Group, Ltd.
2100 W. Huntington Dr Suite C
Algonquin, IL 60102

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# FEE AGREEMENT

I, Paul Dulberg, hereby agree to retain and employ BAUDIN & BAUDIN, an association of attorneys, to prosecute and/or settle all suits and claims for damages, which may include personal injuries and property damage, against responsible parties, including their insurance companies and my insurance companies, or any other responsible insurance companies, arising out of events which occurred on or about the 28th day of June, 2011, at or near 1016 W. Elder Avenue, McHenry, Illinois.

I agree to pay BAUDIN & BAUDIN as compensation for services (1) a non-refundable retainer fee of $3,333.33; AND (2) a sum of money equal to one-third (1/3) of the gross amount realized from this claim by settlement prior to trial of this matter, OR, if this matter proceeds to trial, which is defined as any time after the final pre-trial conference with the Court has concluded, I agree to pay BAUDIN & BAUDIN as compensation for its services a sum of money equal to forty percent (40%) of the gross amount realized from such action. Should this matter conclude by way of settlement, negotiations, trial, arbitration or judgment in my favor, BAUDIN & BAUDIN agrees to reduce its percentage fee by an amount of $3,333.33 as an offset for the non-refundable retainer fee; however, in no event will the $3,333.33 be refunded to me once this agreement has been executed.

I realize, understand and agree that all expenses and costs related to my claim, such as medical expenses for my/our care and treatment and related costs such as costs for obtaining medical records and bills, as well as court costs, including filing fees, costs of depositions, costs of experts, etc. are my obligation and responsibility and shall be paid as those bills become due from time to time.

It is further agreed and understood that there will be no further charges for legal services over and above the $3,333.33 non-refundable retainer fee by BAUDIN & BAUDIN (with the exception of the aforesaid expenses and costs referred to in paragraph 3) unless recovery is made in this claim, and that no settlement will be made without the consent of the claimant(s).

I hereby authorize and direct that BAUDIN & BAUDIN is authorized to endorse and deposit any proceeds received in regard to the aforesaid claim herein, and to disburse those funds for purposes of client payments, resolution of liens, reimbursement of costs advanced, and attorney's fees.

This cause was not solicited either directly or indirectly from me/us by anyone. This agreement is being executed with duplicate originals.

Signed this 22nd day of September, 2015, and copy received by claimant(s) or claimant(s)'s representative.

Claimant

Paul Dulberg
Claimant

~~BAUDIN & BAUDIN~~
2100 N. Huntington Drive, Suite C
Algonquin, IL 60102
847.658.5295 FAX: 847.658.5015

Revised 9/2015

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

| | | |
|---|---|---|
| PAUL R. DULBERG, | ) | No. 14 B 83578 |
| | ) | Rockford, Illinois |
| | ) | 9:30 a.m. |
| Debtor.) | | October 31, 2016 |

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE THOMAS M. LYNCH

APPEARANCES:

U.S. Trustee: Mr. Joesph D. Olsen.

GROUP
EXHIBIT
6A

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THE CLERK: Paul Dulberg, 14 83578.

MR. OLSEN: Good morning, Your Honor. Joseph Olsen, trustee.

This comes before the Court on two motions. One is to authorize the engagement of special counsel to pursue a personal injury litigation, I think it's in Lake County, involving a chainsaw accident of some sort.

And then, presumably, if the Court grants that, the second one is to authorize the estate to enter into -- I'm not sure what you call it, but binding mediation. But there's a floor of $50,000, and there's a ceiling of $300,000.

And I guess I've talked with his attorney. He seems very enthusiastic about it. There may be some issues about the debtor being a good witness or not, I guess.

It had to do with a neighbor who asked him to help him out with a chainsaw, and then I guess the neighbor kind of cut off his arm, or almost cut off his arm right after that. There's some bitterness involved, understandably, I guess.

But I don't do personal injury work at all, so I'm not sure how that all flows through to a jury, but he didn't seem to want to go through a jury

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process. He liked this process, so...

THE COURT: Very well.

Mr. Olsen, first of all, with regard to the application to employ the Baudin law firm, it certainly appears to be in order and supported by affidavit.

Their proposed fees are more consistent with at least what generally is the market than some of the fees you and I have seen in some other matters.

One question for you: Have you seen the actual engagement agreement?

MR. OLSEN: I thought it was attached to my motion.

THE COURT: Okay.

MR. OLSEN: If it's not, it should have been.

It's kind of an interesting -- actually, this is kind of a unique one. The debtor actually paid them money in advance, and then he's going to get a credit if they actually win, which I guess enures, now, to my benefit, but that's okay.

And there's a proviso for one-third, except if we go to trial, then it's 40 percent. So these are getting more creative by the PI bar as we

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plod along here, I guess, but...

THE COURT: It's a bar that's generally pretty creative.

And my apologies. I saw the affidavit, but you did have the agreement attached, and one was in front of the other.

And the agreement is just as you describe it. It appears to be reasonable, and so I'll approve the application.

Tell me about this binding mediation. It's almost an oxymoron, isn't it?

MR. OLSEN: Well, I guess the mediators don't know there's a floor and a ceiling. I'm not sure where that comes from, but that's -- yeah.

And whatever number they come back at is the number we're able to settle at, except if it's a not guilty or a zero recovery, we get 50,000, but to come back at 3 million, we're capped at 300,000.

THE COURT: Interesting.

MR. OLSEN: A copy of the mediation agreement should also be attached to that motion.

THE COURT: And I do see that. That appears to be in order. It's one of those you wish them luck.

MR. OLSEN: I don't want to micromanage his case.

THE COURT: But that, too, sounds reasonable. There's been no objection?

MR. OLSEN: Correct.

THE COURT: Very well. I will approve -- authorize, if you will, for you to enter into the binding mediation agreement, see where it takes you.

MR. OLSEN: Thanks, Your Honor.

(End of audio to be transcribed.)

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# CERTIFICATE

I, JERRI ESTELLE, CSR, do hereby certify that the foregoing is a true and accurate transcription of proceedings electronically recorded in the matter of PAUL R. DULBERG, 14 B 83578 on October 31, 2016, which was submitted to D&E Reporting for transcription; it contains all the content in said recording; and it has been transcribed to the best of my ability.

Jerri Estelle, CSR /S/
License Number: 084-003284

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**Binding Mediation Agreement**
**ADR Systems File # 33391BMAG**

**Revised for Special Billing**

## I. Parties

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

**SPECIAL BILLING – Section V.B.5 – Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

## II. Date, Time and Location of the Binding Mediation

Date: Thursday, December 8, 2016
Time: 1:30 P.M.
Location: ADR Systems of America, LLC
20 North Clark Street
Floor 29
Chicago, IL 60602
Contact: Alex Goodrich
312-960-2267

## III. Rules Governing the Mediation

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

### A. Powers of the Mediator

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.



EXHIBIT 6B

EXHIBIT "A"

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B. **Amendments to the Agreement**

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

C. **Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

D. **Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
   a. Medical records and medical bills for medical services;
   b. Bills for drugs and medical appliances (for example, prostheses);
   c. Property repair bills or estimates;
   d. Reports of lost time from employment, and / or lost compensation or wages;
   e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
   f. Photographs;
   g. Police reports;
   h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
   i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.

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a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and

b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.

3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**

4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016.**

5. The items are considered delivered as of the date that one of the following events occur:

   a. If mailed, by the date of the postmark;

   b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and

   c. The date transmitted by facsimile or email.

6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

   If emailing Submissions, please send to submissions@adrsystems.com, however, please do not send anything over 50 pages, including exhibits.

   The Honorable James P. Etchingham, (Ret.) (Mediator)
   C/O ADR SYSTEMS
   20 North Clark Street
   Floor 29
   Chicago, IL 60602

   Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)
   BAUDIN LAW GROUP
   304 McHenry Avenue
   Crystal Lake, IL 60039

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Shoshan Reddington, Esq. (Defense Attorney)
LAW OFFICES OF STEVEN LIHOSIT
200 N. La Salle Street
Suite 2550
Chicago, IL 60601

E. **Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

F. **Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").

   a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.

   b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

      The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **$50,000.00**. Also, the maximum award to Paul Dulberg will be **$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Gagnon shall be liable to pay to Paul Dulberg.

**IV. Effect of this Agreement**

A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

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B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

## V. Mediation Costs

### A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is $2,590.00 from Party B and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

| | |
|---|---|
| Administrative Fee | $390.00 (Non-refundable) |
| Mediator's Review Time | $450.00 per hour |
| Session Time | $450.00 per hour |
| Mediator's Decision Writing Time | $450.00 per hour |
| Mediator's Travel Time (if any) | $75.00 per hour |

### B. Responsibility for Payment **Special Billing

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.

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3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.
5. ****Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

## VI. Acknowledgment of Agreement

A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Paul Dulberg / Plaintiff Date

By: _____
Kelly N. Baudin / Attorney for the Plaintiff Date

By: _____
Randall Baudin, II / Attorney for the Plaintiff Date

By: _____
Shoshan Reddington / Attorney for the Defendant Date

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Western Division

FILED DATE: 11/17/2022 3:45 PM 2022LO10905

| | | |
|---|---|---|
| In Re: | ) | BK No.: 14-83578 |
| PAUL DULBERG | ) | |
| | ) | Chapter: 7 |
| | ) | Honorable Thomas M. Lynch |
| | ) | |
| | ) | |
| Debtor(s) | ) | |

**ORDER TO EMPLOY SPECIAL COUNSEL**

THIS CAUSE coming on to be heard on this 31st day of October, 2016 upon the Trustee's Motion to employ the law office of Baudin Law Group, Ltd. as attorneys for the estate, the Court after considering the Motion, the statements of counsel, pleadings on file and being fully advised in the premises:

IT IS HEREBY ORDERED that Joseph D. Olsen, Trustee herein, is authorized to employ the Baudin Law Group, Ltd. to represent the estate in regards to the Debtor's personal injury claim, more fully described in the Trustee's Motion, and that the Trustee is allowed to adopt the contingency contract between Debtor, Paul Dulberg and Baudin Law Group, Ltd. as described in the Trustee's Motion, and the Trustee may execute such documents as are necessary to accomplish the matters set forth herein.

Enter:

Honorable Thomas M. Lynch
United States Bankruptcy Judge

Dated: October 31, 2016

**Prepared by:**

Joseph D. Olsen
Yalden, Olsen & Willette
1318 East State Street
Rockford, IL 61104
815-965-8635 (phone)
815-965-4573 (fax)

EXHIBIT
7

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Western Division

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| | | |
|---|---|---|
| In Re: | ) | BK No.: 14-83578 |
| PAUL DULBERG | ) | |
| | ) | Chapter: 7 |
| | ) | Honorable Thomas M. Lynch |
| | ) | |
| | ) | |
| Debtor(s) | ) | |

**ORDER**

THIS CAUSE coming on to be heard on this 31st day of October, 2016 upon the Trustee's Motion for Authority to Enter into a "Binding Mediation Agreement", the Court after considering the Motion, the statements of counsel, pleadings on file and being fully advised in the premises:

IT IS HEREBY ORDERED that Joseph D. Olsen, Trustee herein, is authorized to enter into a "Binding Mediation Agreement" as described in the Trustee's Motion, and the Trustee may execute such documents as are necessary to accomplish the matters set forth herein.

Enter:

Honorable Thomas M. Lynch
United States Bankruptcy Judge

Dated: October 31, 2016

**Prepared by:**

Joseph D. Olsen
Yalden, Olsen & Willette
1318 East State Street
Rockford, IL 61104
815-965-8635 (phone)
815-965-4573 (fax)

EXHIBIT
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**From:** **Joe Olsen** jolsenlaw@comcast.net
**Subject:** Fwd: Re: Paul Dulberg 14-83578 & 12LA178
**Date:** December 2, 2019 at 2:05 PM
**To:** juliawilliams@clintonlaw.net

JO

Joseph D. Olsen - Yalden, Olsen & Willette
838 North Main Street, Rockford, IL 61103-6906
(815) 965-8635 | Fax (815) 965-4573 | jolsenlaw@comcast.net

**We have moved! Our new address is noted above. Our phone, fax, and email addresses will remain the same. Thank you.**

---------- Original Message ----------
From: Joe Olsen <jolsenlaw@comcast.net>
To: Randy Baudin II <randybaudin2@gmail.com>
Cc: jolsenlaw <jolsenlaw@comcast.net>
Date: December 13, 2016 at 2:33 PM
Subject: Re: Paul Dulberg 14-83578 & 12LA178

Randy-

Just a follow up to our conf. this afternoon, where you advised the results of the binding mediation;

First off, thank you.

Difficult having a Ch. 7 Trustee hovering around your file. I appreciate your professionalism and cooperation;

Secondly, Re medical liens, I reviewed what I had. I came across 1 lien claim, that from U.S. Physical Therapy, Inc., it looks pretty defective. Did you or one of the prior attys. on file ever get notice from them? From any other lien claimant? If you have any such information, could you send me a complete copy of whatever it is you have?

Third, Re your compensation (most important), do we have to worry about any of the debtor's previous atty's possible claim for lien?

If so, can you give me whatever you have re same? The quickest way to get you paid, is if you can provide me w/ the equivalent of a settlement statement which would show how much is owed under the contingent fee contract, plus any costs/expenses claimed by you.

If there is any other claim by any other party to the settlement proceeds, please let me know;

As soon as I get the "settlement statement" I'll file w/ court to get it approved. It's a 21 day notice.

Can you let me know when you expect to receive the settlement funds? Again, you must turn over the gross proceeds to me.

Thanks again.

Joseph D. Olsen
Yalden, Olsen & Willette
1318 East State Street
Rockford, IL 61104
(815)965-8635
Fax (815)965-4573

On October 31, 2016 at 10:50 AM Randy Baudin II <randybaudin2@gmail.com> wrote:

You can good ahead sign it. Thank you so much.

EXHIBIT 9

FILED DATE: 11/7/2022 3:45 PM 2022L010905

On Mon, Oct 31, 2016 at 10:41 AM, < jolsenlaw@comcast.net> wrote:

Randy-
The Court authorized your appointment this morning, as well as entry into that "Binding Mediation Agreement";
Do you want the debtor to /s/ the form, or me as trustee?
Let me know, thanks.

---

**From:** "Randy Baudin II" < randybaudin2@gmail.com>
**To:** "jolsenlaw" < jolsenlaw@comcast.net>
**Sent:** Monday, September 26, 2016 2:09:00 PM
**Subject:** Re: Paul Dulberg 14-83578 & 12LA178

Any luck on appointing us as attorneys on this case yet?

Thanks,
Randy

On Fri, Sep 16, 2016 at 11:24 AM, < jolsenlaw@comcast.net> wrote:

Randy-
Nice talking w/ you today, below is contact info.
Thanks.

Joseph D. Olsen
Yalden, Olsen & Willette
1318 East State Street
Rockford, IL 61104
(815)965-8635
Fax (815)965-4573

--

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

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ADR systems

# Binding Mediation Award

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

| Comments/Explanation | |
|---|---|
| medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

EXHIBIT 10

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**Binding Mediation Agreement**
**ADR Systems File # 33391BMAG**

## I. Parties

A. Paul Dulberg, by attorneys, Kelly N. Baudin and Randall Baudin, II

B. David Gagnon, by attorney, Shoshan Reddington

## II. Date, Time and Location of the Binding Mediation

Date: Thursday, December 8, 2016
Time: 1:30 P.M.
Location: ADR Systems of America, LLC
20 North Clark Street
Floor 29
Chicago, IL 60602
Contact: Alex Goodrich
312-960-2267

## III. Rules Governing the Mediation

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for binding mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems") in accordance with the following terms:

### A. Powers of the Mediator

1. The Parties agree that The Honorable James P. Etchingham (Ret.) shall serve as the sole Mediator in this matter (the "Mediator").
2. The Mediator shall have the power to determine the admissibility of evidence and to rule upon the law and the facts of the dispute pursuant to Section III(D)(1). The Mediator shall also have the power to rule on objections to evidence which arise during the hearing.
3. The Mediator is authorized to hold joint and separate caucuses with the Parties and to make oral and written recommendations for settlement purposes.
4. **The Parties agree that the Mediator shall decide all issues concerning liability and damages arising from the dispute if this matter cannot be settled, unless any of the above is waived. Any other issues to be decided must be agreed upon by the Parties, and included in this contract.**
5. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

### B. Amendments to the Agreement

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems of America.



EXHIBIT
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2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the contract changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended contract made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

C. **Pre-Hearing Submission**

1. Mediation statements are permitted provided that the statement is shared among the other parties. The Mediation Statement may include: statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred; and a theory of liability and damages and authorities in support thereof.

D. **Evidentiary Rules**

1. The Parties agree that the following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the Mediator and the opposing Party at least **17 (seventeen)** days prior to the hearing date:
   a. Medical records and medical bills for medical services;
   b. Bills for drugs and medical appliances (for example, prostheses);
   c. Property repair bills or estimates;
   d. Reports of lost time from employment, and / or lost compensation or wages;
   e. The written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;
   f. Photographs;
   g. Police reports;
   h. Any other document not specifically covered by any of the foregoing provisions that a Party believes in good faith should be considered by the Mediator; and
   i. Each Party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.
2. The Parties agree that they will not disclose any and all dollar figures relating to the high/low agreement; last offer and last demand; policy limits; and /or set-offs orally or in written form, to the Mediator at any time before or during the conference, or while under advisement, prior to the Mediator's final decision.
   a. Violation of this rule set forth in (D)(2) shall constitute a material breach of this Agreement. The non-disclosing Party must formally object to the Mediator upon learning of the breach, or the breach will be considered waived. The non-disclosing Party shall then have the option to continue the Mediation from the point of objection to its completion; or to terminate the Mediation at the point of objection as null and void. The ADR Systems case manager must be made aware of this breach at the time of the objection, so the objection is addressed in accordance with the Agreement; and



ADR

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b. If the Mediation is terminated as null and void, all costs of the Mediation will be charged entirely to the disclosing Party. A new Mediation shall then take place with a new Mediator on a new date. If the Mediation is not terminated, the costs of the Mediation shall remain the responsibility of each Party or in accordance with the Agreement.

3. The Parties agree if a Party has an objection to the evidence or material submitted by any other Party pursuant to Paragraph (D)(1), notice of the objection shall be given to the ADR Systems case manager and opposing counsel by telephone and in writing at least seven days prior to the Mediation. If resolution cannot be obtained, the case manager will forward the objection to the Mediator to be ruled upon before or at the Mediation. The case manager will notify each of the Parties of the objection. The objection may result in a postponement of the proceedings. **If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical/wage loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.**
4. The Parties agree that any Party desiring to introduce any of the items described in Paragraph (D)(1) without foundation or other proof, must deliver said items to the Mediator and to the other Parties no later than **Monday, November 21, 2016**.
5. The items are considered delivered as of the date that one of the following events occur:
   a. If mailed, by the date of the postmark;
   b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and
   c. The date transmitted by facsimile or email.
6. The Parties agree to deliver any of the items described in Paragraph (C)(1) and (D)(1) to the following addresses:

   If emailing Submissions, please send to submissions@adrsystems.com, however, please do not send anything over 50 pages, including exhibits.

   The Honorable James P. Etchingham, (Ret.) (Mediator)
   C/O ADR SYSTEMS
   20 North Clark Street
   Floor 29
   Chicago, IL 60602

   Kelly N. Baudin, Esq. / Randall Baudin, II, Esq. (Plaintiff Attorneys)
   BAUDIN LAW GROUP
   304 McHenry Avenue
   Crystal Lake, IL 60039

   Shoshan Reddington, Esq. (Defense Attorney)
   LAW OFFICES OF STEVEN LIHOSIT
   200 N. La Salle Street
   Suite 2550
   Chicago, IL 60601



ADR

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E. **Conference Procedure**

1. The Parties may present opening statements but there will be no live testimony.
2. The Parties will attempt to reach a voluntary settlement through negotiation with the assistance of the Mediator.
3. If the Parties cannot voluntarily reach a settlement, the Mediator will advise the Parties that settlement cannot be reached. The Mediator will then take the matter under advisement and render an award that will be binding to all Parties, (the "Award"), subject to the terms of any high/low agreement that the Parties may have as described below in Paragraph (F)(1).

F. **Award Limits**

1. The Parties may agree prior to the Mediation that a minimum and maximum amount will serve as parameters for the Award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff or claimant shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award").
   a. If liability is disputed and comparative fault or negligence is asserted as an affirmative defense, the Mediator shall make a finding regarding comparative fault or negligence, if any. In the event that there is a finding of comparative fault or negligence of the plaintiff that is greater than 50% (fifty percent), the plaintiff shall receive the negotiated minimum award. In the event that there is a finding of comparative fault or negligence of 50% (fifty percent) or less against the plaintiff, then any damages awarded in favor of the plaintiff shall be reduced by the amount of the plaintiff's comparative fault or negligence, but shall be no less than the minimum parameter or more than the maximum parameter.
   b. All award minimum and maximum parameters are subject to applicable set-offs if any, as governed by policy provisions if not specified in the Agreement.

      The Parties agree that for this Mediation the minimum award to Paul Dulberg will be **$50,000.00**. Also, the maximum award to Paul Dulberg will be **$300,000.00**. These amounts reflect the minimum and maximum amounts of money that David Dulberg shall be liable to pay to Paul Dulberg.

## IV. Effect of this Agreement

A. After the commencement of the Mediation, no Party shall be permitted to cancel this Agreement or the Mediation and the Mediator shall render a decision that shall be in accordance with the terms set forth in this Agreement. When the Award is rendered, the Mediation is resolved, and any Award arising from this Mediation shall operate as a bar and complete defense to any action or proceeding in any court or tribunal that may arise from the same incident upon which the Mediation is based.

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FILED DATE: 12/8/2022 3:50 PM 2022L010905

B. The Parties further agree that any pending litigation will be dismissed, with prejudice, as to those Parties participating in this Mediation upon the conclusion thereof. Any and all liens, including contractual rights of subrogation owed are subject to existing Illinois law. By agreement of the Parties, the Mediator's Award will be final and binding and not subject to appeal or motion for reconsideration by any Party.

## V. Mediation Costs

### A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Binding-Mediations are billed at a four hour per day minimum. **The required deposit amount is $1,295.00 per Party and is due by November 21, 2016.** Any unused portion of the deposit will be refunded based on the four hour minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**
3. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
4. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Binding-Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, additional review time, and any other expenses incurred("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

| | |
|---|---|
| Administrative Fee | $195.00 per Party (Non-refundable) |
| Mediator's Review Time | $450.00 per hour, split equally between Parties |
| Session Time | $450.00 per hour, split equally between Parties |
| Mediator's Decision Writing Time | $450.00 per hour, split equally between Parties |
| Mediator's Travel Time (if any) | $75.00 per hour, split equally between Parties |

### B. Responsibility for Payment

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed equally to the Parties at the time of the invoice.
3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs,



ADR

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3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.
5. ****Defendant agrees to pay up to $3,500.00 of Plaintiff's Binding Mediation Costs.**

## VI. Acknowledgment of Agreement

A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.

B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

14 By: Paul Dulberg
Paul Dulberg / Plaintiff — Date

14 By:
Kelly N. Baudin / Attorney for the Plaintiff — Date 12/8/16

14 By:
Randall Baudin, II / Attorney for the Plaintiff — Date 12/8/16

14 By: Walter Norman
Shoshan Reddington / Attorney for the Defendant — Date 12/8/16

ADR Systems File # 33391BMAG
ADR Systems Tax I.D. # 36-3977108
Date of Hearing: Thursday, December 8, 2016



ADR

FILED DATE: 11/17/2023 3:45 PM 2022L010905

# EXHIBIT B

Hearing Date: 3/28/2023 9:45 AM - 9:50 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, U

FILED
2/24/2023 1:23 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010905
Calendar, U
21615792

FILED DATE: 12/27/2023 3:23 PM 2022L010905

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

| | | |
|---|---|---|
| PAUL DULBERG, THE PAUL DULBERG REVOCABLE TRUST,<br><br>Plaintiffs,<br><br>v.<br><br>KELLY N. BAUDIN A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, WILLIAM RANDAL BAUDIN II A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd., JOSEPH DAVID OLSEN, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, CRAIG A WILLETTE, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, RAPHAEL E YALDEN II, A/K/A YALDEN, OLSEN & WILLETTE LAW OFFICES, ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES, ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY,<br><br>Defendants. | ) | Case No. 2022 L 010905 |

**DEFENDANT ADR SYSTEMS OF AMERICA, LLC'S**
**SECTION 2-615 MOTION TO DISMISS**

Defendant ADR Systems of America, L.L.C., ("ADR"), pursuant to Section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615) respectfully moves the Court to dismiss Plaintiffs' Complaint with prejudice for failure to state a cause of action as to ADR. In support of its Motion, ADR states as follows:

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1. Plaintiffs Paul Dulberg and the Paul Dulberg Revocable Trust (collectively, "Dulberg") have brought a 107 paragraph, 34-page rambling Complaint. (*See* Complaint, attached hereto as **Exhibit A**.) Among Dulberg's various claims is "**Count 4**", which attempts to allege a claim against ADR for breach of contract. Dulberg's claim against ADR comes nowhere close to stating a valid cause of action and should be dismissed with prejudice.

**STANDARD OF REVIEW**

2. A Section 2-615 motion tests whether the complaint contains sufficient facts "which, if proved, would entitle the plaintiff to relief." *Evers v. Edward Hosp. Ass'n*, 247 Ill. App. 3d 717, 724 (2d Dist. 1993). "Illinois is a fact-pleading state, and conclusions of law and conclusory factual allegations unsupported by specific facts are not deemed admitted." *Alpha Sch. Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 735 (1st Dist. 2009).

3. Courts may take judicial notice of public documents and records in ruling on motions to dismiss pursuant to Section 2-615 and Section 2-619. *Kopnick v. JL Woode Mgmt. Co., LLC*, 2017 IL App (1st) 152054, ¶ 26.

**ARGUMENT**

4. ADR, based in Chicago, provides alternative dispute resolution services, which include arbitrations and mediations.

5. The gist of Dulberg's Complaint arises from his personal bankruptcy filed in the United States Bankruptcy Court for the Northern District of Illinois (Case No. 14-83578). It appears that Dulberg is unhappy that Defendant Joseph Olsen (the "Trustee"), who served as the bankruptcy trustee overseeing Dulberg's personal bankruptcy (Case No. 14-83578), agreed to the recommendation of the Bankruptcy Court-approved special counsel, the Baudin Law Group, to participate in a binding mediation held at ADR in December 2016 with Allstate Insurance

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concerning a personal injury claim the trustee controlled (*Dulberg v. Gagnon*) ("Dulberg's Injury Claim"). (*See* Complaint, Ex. 7).

6. In an October 31, 2016 hearing, the Bankruptcy Court approved (i) the proposal to hold a binding mediation of Dulberg's Injury Claim, (ii) that this mediation would be subject to a $50,000-$300,000 (reflecting the applicable insurance policy limit) high/low agreement, and (iii) that the mediator who would preside over the binding mediation would *not* be made aware of that high/low agreement. (Complaint, Ex. 6A (October 31, 2016 Transcript of Proceedings) at 2-5).

7. The Bankruptcy Court approved the submission of the claim to binding mediation before ADR. ADR played no role in the bankruptcy proceedings. ((Complaint, Ex. 8 ("Joseph D. Olsen, Trustee herein, is authorized to enter into a 'Binding Mediation Agreement' as described in the Trustee's Motion, and the Trustee may execute such documents as are necessary to accomplish the matters set forth herein.").)

8. On December 8, 2016, the parties, *including Dulberg*, participated in the binding mediation at ADR before the Honorable James Etchingham (ret.). (Complaint, ¶ 57).

9. Prior to that binding mediation, the attorneys for the parties and Dulberg executed a Binding Mediation Agreement (Complaint, Ex. 11). That agreement reflects the "high/low" agreement that the Bankruptcy Court approved.[1]

10. On December 12, 2016, Judge Etchingham rendered an award in Dulberg's favor of $561,000. The issuance of the award terminated ADR's involvement in the proceeding. (Complaint, ¶ 64 and Ex. 10 thereto).

[1] According to the Complaint, Dulberg's attorneys "*may* have forged Dulberg's signature of the Binding Mediation Agreement." (Complaint, ¶ 72 (p).) This equivocating allegation is noteworthy because Dulberg admits he *attended* the binding mediation. In any event, the Complaint is clear that the binding mediation occurred at ADR and ADR performed the services required of under the Binding Mediation Agreement.

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11. In or about April 2017, the Trustee sought approval for the distribution of assets from the proceeds received as a result of the binding mediation to various attorneys and creditors. The Trustee's request also included a distribution to Dulberg of more than $117,000. The Bankruptcy Court approved the distribution, and it appears Dulberg accepted his $117,000 without objection to the Bankruptcy Court. *See* Chapter 7 Trustee's Final Account", of which the Court may take judicial notice, attached hereto as **Exhibit B**.

12. Now, six years later, Dulberg complains that his lawyers forced him into binding mediation against his will.

13. Without commenting on the validity of the claims against the other parties, Dulberg's claim against ADR is unfounded in fact or law.

14. Dulberg admits that "there was a valid and enforceable contract" between Dulberg, Allstate and ADR. (Complaint, ¶ 94).

15. Apparently, there was an unsigned and undated draft of a Binding Mediation Agreement that the Trustee submitted to the Bankruptcy Court as part of his motion seeking approval to submit the matter to binding mediation. (Complaint, ¶ 95.) Dulberg does not allege that this draft constituted a "valid and enforceable contract."

16. According to Dulberg, "Major terms within the two agreements were changed." (Complaint, ¶ 96.) Dulberg offers no explanation as to the alleged relevance of the cited terms. (*See*, *e.g.*, notifications, "Language under Parties B; "who is liable to plaintiff"; ADR's fee schedule, ADR's "Fee Schedule boxed information"; "page 6 section v number 5".).

17. Dulberg then alleges that ADR breached the Binding Mediation Agreement by not following the terms regarding amending the contract. However, Dulberg, by his own allegations,

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admits that the only enforceable contract to which ADR was a party is the one the parties signed. (Complaint, Ex. 11).

18. Dulberg then asserts in perplexing fashion that "Plaintiff suffered pecuniary injury in an amount in excess of $261,000 because the contract under the changed terms should not be allowed to regulate the procedure." (Complaint, ¶ 100).

19. Beyond the fact that Count 4 makes little sense, Count 4 fails as to ADR because a valid breach of contract claim must identify the specific contractual provision at issue and the conduct constituting a breach thereof. *See Babbitt Municipalities, Inc. v. Health Care Serv. Corp.*, 2016 IL App (1st) 152662, ¶ 15 (affirming dismissal of breach of contract claim).

20. Plaintiff's Complaint admits (i) the enforceable contract to which ADR is a party is the Binding Mediation Agreement embodied in Exhibit 11 to the Complaint; (ii) a binding mediation dispute was presented to ADR for resolution; (iii) Dulberg attended the binding mediation; and (iv) Judge Etchingham rendered an award consistent with the terms of the Binding Mediation Agreement, which the parties accepted.

21. ADR was not a party to the draft agreement that the Trustee attached to his motion, and the Complaint lacks any allegation that ADR engaged in any material breach of the executed Binding Mediation Agreement.

22. Dulberg's attempt, six years later, to hold ADR liable for anything relating to this matter should be rejected. Count 4 should be dismissed for failure to state a valid cause of action.

23. As no basis exists by which Dulberg can remedy the defects in Count 4, the dismissal of the Complaint as to ADR should be *with prejudice*.

WHEREFORE, Defendant ADR SYSTEMS OF AMERICA, L.L.C. respectfully prays that this Court enter an order dismissing Plaintiffs' Complaint against ADR with prejudice.

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Respectfully submitted:

**ADR SYSTEMS OF AMERICA, L.L.C.**

By: /s/ Robert A. Chapman
One of Its Attorneys

Robert A. Chapman
**CHAPMAN SPINGOLA, LLP**
190 South LaSalle Street, Suite 3850
Chicago, Illinois 60603
(312) 606-8752
rchapman@chapmanspingola.com
wdickmann@chapmanspingola.com
Firm I.D. No. 29411

FILED DATE: 12/27/2023 3:13 PM 2022L010905

## VERIFICATION

I, Robert A. Chapman, pursuant to section 1-109 of the Illinois Code of Civil Procedure, state that the statements set forth in the above motion are true and correct to the best of my knowledge.

By: /s/ Robert A. Chapman

FILED DATE: 12/27/2023 3:25 PM 2022L010905

## CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Robert A. Chapman, an attorney, hereby certify that on February 24, 2023, I caused the foregoing (i) to be filed electronically using the Odyssey eFileIL system and (ii) to be served on counsel of record through the Odyssey eFileIL system, if registered, and by PDF/email at the following addresses:

| | |
|---|---|
| Alphonse A. Talarico<br>Law Offices of Alphonse Talarico<br>707 Skokie Blvd., Suite 600<br>Northbrook, IL 60084<br>*contact@lawofficeofalphonsetalarico.com* | George J. Manos<br>Jason W. Jochum<br>**LEWIS BRISBOIS BISGAARD & SMITH, LLP**<br>550 W. Adams Street, Suite 300<br>Chicago, Illinois 60661<br>George.Manos@lewisbrisbois.com<br>Jason.Jochum@lewisbrisbois.com |
| Jeremy N. Boeder<br>**TRIBLER ORPETT & MEYER, P.C.**<br>225 W. Washington Street, Suite 2550<br>Chicago, Illinois 60606<br>(312) 201-6400<br>docket@tribler.com | |

/s/ Robert A. Chapman

FILED DATE: 11/17/2023 3:45 PM 2022L010905

# EXHIBIT C

FILED DATE: 11/17/2023 3:45 PM 2022L010905

chapman|spingola
ATTORNEYS AT LAW

Robert A. Chapman
Phone | (312) 606-8752
E-mail | rchapman@chapmanspingola.com

January 31, 2023

**VIA PDF/EMAIL**
Alphonse A. Talarico, Esq.
**LAW OFFICES OF ALPHONSE TALARICO**
120 West 22nd Street, Suite 100
Oak Brook, Illinois 60523
contact@lawofficeofalphonsetalarico.com

Re: *Dulberg, et al v. ADR Systems of America, et al.* Case No. 2022 L 010905

Dear Alphonse:

As you know, we are counsel for ADR Systems of America, LLC ("ADR").

We write pursuant to Illinois Supreme Court Rule 137 to put you on notice that if the Complaint that you filed on behalf of Paul Dulberg and the Paul Dulberg Revocable Trust (collectively, "Dulberg") is not withdrawn as to ADR, ADR will seek sanctions from the Court equal to the attorneys' fees and any other costs it expends in responding to the meritless claim against ADR.

While the Complaint you filed is incomprehensible in large part, it appears that the foundation of Dulberg's claim is that he is unhappy that Joseph Olsen, the bankruptcy trustee overseeing his bankruptcy (Case No. 14-83578), agreed to the recommendation of the Bankruptcy Court-approved special counsel (the Baudin Law Group) to participate in a binding mediation held at ADR in December 2016 with Allstate Insurance concerning a personal injury claim the trustee controlled (*Dulberg v. Gagnon*).

Our review of the bankruptcy court file indicates that the Bankruptcy Court approved the submission of the claim to binding mediation before ADR, and Dulberg received notice of the trustee's request for approval and failed to object. ADR played no role in the bankruptcy proceedings. The pleadings and transcript of proceedings further indicate that the Bankruptcy Court and the parties (including Dulberg) (i) received notice of the proposed binding mediation and (ii) were made aware that the mediation would be subject to a $50,000-$300,000 (policy limit) high/low agreement.

On December 8, 2016, the parties, including Dulberg, participated in the binding mediation at ADR before the Honorable James Etchingham (ret.).

Prior to that binding mediation, the attorneys for the parties and Dulberg executed a Binding Mediation Agreement (Complaint, Exhibit 11). That agreement reflects the "high/low" agreement that the Bankruptcy Court approved.

On or about December 12, 2016, Judge Etchingham rendered an award in Dulberg's favor of $561,000. The issuance of the award terminated ADR's involvement in the proceeding.

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In or about April 2017, the trustee sought approval for the distribution of assets from the award to various attorneys and creditors. The trustee's request also included a distribution to Dulberg of more than $117,000. Dulberg received notice of the request and made no objection on the record. The Bankruptcy Court approved the distribution, and it appears Dulberg accepted his $117,000 without objection to the Bankruptcy Court. Now, six years later, Dulberg complains that his lawyers forced him into the binding mediation against his will.[1]

Without commenting on the validity of the claims against the other parties, Dulberg's claim against ADR is not well-grounded in fact nor warranted by existing law. It appears you are asserting that ADR engaged in a breach of the Binding Mediation Agreement because the signed Binding Mediation Agreement has some minor differences from the unsigned agreement that was attached to the trustee's motion before the Bankruptcy Court. Needless to say, it is undisputed that (i) a binding mediation dispute was presented to ADR for resolution; (ii) Judge Etchingham rendered an award, which the parties accepted, based on the evidence presented; (iii) the binding mediation high/low agreement was enforced; and (iv) Dulberg received more than $117,000 from that award in 2017 without objection. ADR did not engage in any material breach of the executed Binding Mediation Agreement, and your attempt to hold ADR liable for anything relating to this matter is beyond frivolous.

Under these overwhelming circumstances, you have an affirmative duty to voluntarily dismiss the Complaint against ADR immediately. *See Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 964 (1st Dist. 2001) (reversing denial of motion for Rule 137 sanctions where attorney did not dismiss factually and legally unsupported and frivolous claim).

We request that you and Dulberg withdraw the Complaint against ADR now. Otherwise, you and Dulberg are on notice that ADR intends to seek reimbursement from you and your client for ADR's fees and costs in defending against this claim under Supreme Court Rule 137.

Very truly yours,

Robert A. Chapman (electronic signature)

Robert A. Chapman

[1] Following the December 2016 mediation, ADR had no contact with Dulberg until you contacted ADR in or about October 2022 when you requested a copy of the Binding Mediation Agreement (which ADR provided).

FILED DATE: 11/17/2023 3:45 PM 2022L010905

# EXHIBIT D

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, U

FILED
4/25/2023 3:51 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010905
Calendar, U
22445446

FILED DATE: 4/25/2023 3:51 PM 2022L010905

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

| | | |
|---|---|---|
| PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST | ) | |
| Plaintiffs, | ) | CASE NO. 2022L010905 |
| vs. | ) | |
| KELLY N. BAUDIN *A/KIA* BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, WILLIAM RANDAL BAUDIN II *A/K/A* BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, KELRAN, INC *AIK/A* THE BAUDIN LAW GROUP, Ltd., JOSEPH DAVID OLSEN, *AIKJA* YALDEN, OLSEN & WILLETTE LAW OFFICES, CRAIG A WILLETTE, *A/KIA* YALDEN, OLSEN & WILLETTE LAW OFFICES, RAPHAEL E YALDEN II, *AIK/A* YALDEN, OLSEN & WILLETTE LAW OFFICES, ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES, ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY | ) | |
| Defendants | | |

FILED DATE: 4/28/2023 3:45 PM 2022L010905

**PLAINTIFFS' RESPONSE TO DEFENDANT ADR SYSTEMS OF AMERICA, LLC'S SECTION 2-615 MOTION TO DISMISS**

NOW COMES the Plaintiffs PAUL R. DULBERG AND THE PAUL R. DULBERG REVOCABLE TRUST by and through their attorney, Alphonse A. Talarico and for their **RESPONSE TO DEFANDANT ADR SYSTEMS OF AMERICA, LLC'S SECTION 2-615 MOTION TO DISMIS** states as follows:

1.) Defendant ADR misstates and misinterprets the clear meaning of the allegation contained in Plaintiffs' Complaint At Law and as such Plaintiffs' Count 4 should not be stricken pursuant to 735 ILCS 5/2-615.

2.) The ADR contract that the Bankruptcy Court approved was presented to the Court informing the Court that Paul R. Dulberg knew that he was a poor witness, that he did not want to go to trial on this matter and that he wanted to enter into the ADR Binding Mediation Agreement.

3.) Nothing could be further from the truth as is clearly stated in Plaintiffs Complaint at Law and incorporated into Plaintiffs Count 4. Paragraph 93. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 89, inclusive, of this complaint, as if fully restated herein.

4.) Plaintiff complains that the fully enforceable contract was legally so because the terms of the ADR contract empowers agents of the parties to sign, and although Plaintiff states that he did not sign the contract nor participate in the hearing, he states under oath that he sat with his Mother in the waiting room and never attended the hearing in the hearing room assigned.

5.) Plaintiff satisfied the requirements necessary to avoid dismissal pursuant to 735 ILCS 5/2-615 by alleging with specificity :

**COUNT 4**

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## BREACH OF CONTRACT AGAINST DEFENDANT ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES

93. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 89, inclusive, of this Complaint, as if fully restated herein.

94. There was a valid and enforceable contract between Plaintiff Paul R. Dulberg and Defendants ADR SYSTEMS OF AMERICA, LLC., ASSUMED NAME ADR COMMERCIAL SERVICES and ALLSTATE PROPERTY AND CASULTY INSURANCE COMPANY dated December 8, 2016. (Please see Exhibit 11 attached)

95. There existed an unsigned/undated draft of this agreement presented to Plaintiff's Bankruptcy Judge on October 31, 2016 by Defendant Joseph David Olsen (Please see Group Exhibit 6B attached)

96. Major terms within the two agreements were changed including but not limited to:

a. Notifications under the title on page one;

b. Language under Parties B;

c. page 4 F1.b. regarding who is liable to Plaintiff;

d. page 5 V.A.1. ADR Systems Fee Schedule;

e. page 5 V ADR Systems Fee Schedule boxed information;

f. page 6 section v number 5.

97. The specified language of Paragraph III. B. Amendments to the Agreement were not followed.

98. Plaintiff did all that was required of him under the terms of the contract.

99. Defendant breached the contract by not following the terms regarding amending the contract.

100. Plaintiff suffered pecuniary injury in an amount in excess of $261,000.00 because

FILED DATE: 4/25/2023 3:45 PM 2022L010905

the contract under the changed terms should not be allowed to regulate the procedure.

WHEREFORE, Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST that this Honorable Court Deny The OLSEN DEFENDANTS 735 ILCS 5/2-61 Motion in its entirety or either to permit or require pleading over or amending pursuant to 735 ILCS 5/2-615(d).

Dated: April 25, 2023,

Respectfully submitted,

By: /s/ Alphonse A. Talarico
ARDC 6184530
CC 53293
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

Attorney for Plaintiffs: Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST

FILED DATE: 11/17/2023 3:45 PM 2022L010905

# EXHIBIT E

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, U

FILED
5/9/2023 12:30 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010905
Calendar, U
22640537

FILED DATE: 5/9/2023 12:30 PM 2022L010905

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

| | | |
|---|---|---|
| PAUL DULBERG and THE PAUL DULBERG REVOCABLE TRUST,<br><br>Plaintiffs,<br><br>v.<br><br>KELLY N. BAUDIN a/k/a Baudin & Baudin, Baudin & Baudin, an Association of Attorneys, Law Offices of Baudin & Baudin, Baudin & Baudin Law Offices; WILLIAM RANDAL BAUDIN II a/k/a Baudin & Baudin, Baudin & Baudin an Association of Attorneys, Law Offices of Baudin & Baudin, Baudin & Baudin Law Offices; KELRAN, INC. a/k/a The Baudin Law Group, Ltd.; JOSEPH DAVID OLSEN a/k/a Yalden, Olsen & Willette Law Offices; CRAIG A WILLETTE a/k/a Yalden, Olsen & Willette Law Offices; RAPHAEL E YALDEN II a/k/a Yalden, Olsen & Willette Law Offices; ADR SYSTEMS OF AMERICA, LLC, assumed name ADR Commercial Services; ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,<br><br>Defendants. | ) | Case No. 2022 L 010905 |

**DEFENDANT ADR SYSTEMS OF AMERICA, LLC'S**
**REPLY IN SUPPORT OF ITS SECTION 2-615 MOTION TO DISMISS**

Defendant ADR Systems of America, L.L.C. ("ADR"), for its Reply in support of its Section 2-615 Motion to Dismiss, makes the following brief comments concerning Plaintiffs' Response:

1. In their Response, Plaintiffs first assert without explanation that "ADR misstates and misinterprets the clear meaning of the allegations contained in Plaintiffs' Complaint," then offer three paragraphs summarizing their breach of contract claim, and close by repeating verbatim "Count 4" of their Complaint. Simply stated, Plaintiffs fail to offer any legal or factual basis why

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the Court should not grant ADR's Motion and dismiss Count 4 with prejudice for failure to state a claim.

2. In Paragraphs 2 and 3 of the Response, Plaintiffs claim, in substance, that the Trustee[1] who controlled Dulberg's Injury Claim was not truthful when he informed the Bankruptcy Count that Dulberg was a poor witness, that Dulberg did not want to go to trial on his Injury Claim, and that Dulberg wanted to enter into the ADR Binding Mediation Agreement. Whether the Trustee was truthful with the Bankruptcy Court, which approved the Trustee's entering into a Binding Mediation Agreement with ADR, is irrelevant to the issue of whether ADR breached that Binding Mediation Agreement (which the Trustee's special counsel signed).

3. Likewise, whether the signature on the Binding Mediation Agreement is actually Dulberg's or whether Dulberg sat in ADR's waiting room during the mediation (*see* Response, Paragraph 4) are of no moment. Judge Etchingham (ret.) heard the evidence and entered an award of $561,000 in Dulberg's favor. The parties' application of the $50,000-$300,000 high/low agreement to that award was consistent with the Binding Mediation Agreement and the Bankruptcy Court's order.

4. In sum, the Complaint admits (i) the enforceable contract to which ADR is a party is the Binding Mediation Agreement embodied in Exhibit 11 to the Complaint (Complaint ¶ 94), (ii) a binding mediation dispute was presented to ADR for resolution, (iii) Dulberg was present at ADR when the binding mediation occurred, and (iv) Judge Etchingham rendered an award consistent with the terms of the Binding Mediation Agreement, which award the parties accepted.

[1] Defined terms set forth in this Reply have the same meaning as the defined terms in ADR's motion.

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5. Plaintiffs' Response confirms the obvious – the Complaint lacks any legitimate allegation to support a claim that ADR materially breached the Binding Mediation Agreement, and Count 4 should, therefore, be dismissed for failure to state a valid cause of action.

6. ADR emphasizes that the dismissal of the Complaint as to ADR should be **with prejudice** because no basis exists by which Dulberg can remedy the defects in Count 4.

Respectfully submitted,

**ADR SYSTEMS OF AMERICA, L.L.C.**

By: /s/ Robert A. Chapman
One of Its Attorneys

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## CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Robert A. Chapman, an attorney, hereby certify that on May 9, 2023, I caused the foregoing (i) to be filed electronically using the Odyssey eFileIL system and (ii) to be served on counsel of record through the Odyssey eFileIL system, if registered, and by PDF/email at the following addresses:

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/s/ Robert A. Chapman

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# EXHIBIT F

FILED DATE: 11/17/2023 3:45 PM 2022L010905

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

| | | |
|---|---|---|
| PAUL DULBERG and THE PAUL DULBERG REVOCABLE TRUST, | ) | |
| Plaintiffs, | ) | Case No. 2022 L 010905 |
| v. | ) | |
| KELLY N. BAUDIN a/k/a Baudin & Baudin, Baudin & Baudin, an Association of Attorneys, Law Offices of Baudin & Baudin, Baudin & Baudin Law Offices, et al. | ) | |
| Defendants. | ) | |

**ORDER**

This matter coming before the Court for hearing on Defendant ADR Systems of America, L.L.C.'s Section 2-615 Motion to Dismiss, the parties being present, and the Court being duly advised in the premises,

IT IS HEREBY ORDERED:

1. For the reasons stated on the record, Defendant ADR Systems' Motion to Dismiss is granted and Plaintiffs' Complaint is dismissed without prejudice;

2. This matter as to ADR is continued for status to July 31, 2023 at 9:45 a.m.

By: _____
Hon. Michael Otto

Robert A. Chapman
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Judge Michael F. Otto

MAY 2 5 2023

Circuit Court – 2065

FILED DATE: 11/17/2023 3:45 PM 2022L010905

# EXHIBIT G

FILED DATE: 11/17/2023 3:45 PM 2022L010905

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

| | | |
|---|---|---|
| PAUL DULBERG and THE PAUL DULBERG REVOCABLE TRUST,<br><br>Plaintiffs,<br><br>v.<br><br>KELLY N. BAUDIN a/k/a Baudin & Baudin, Baudin & Baudin, an Association of Attorneys, Law Offices of Baudin & Baudin, Baudin & Baudin Law Offices, et al.<br><br>Defendants. | ) | Case No. 2022 L 010905 |

**ORDER**

This matter coming before the Court for hearing on Defendant ADR Systems of America, L.L.C.'s Request for Status, due notice having been given, counsel for the Baudin defendants being present, counsel for Plaintiffs not being present,

IT IS HEREBY ORDERED:

1. As Plaintiffs have not filed an Amended Complaint against ADR Systems since the May 25, 2023 Order granting Defendant ADR Systems' Motion to Dismiss without prejudice, the Court dismisses Plaintiffs' claims against ADR Systems of America, L.L.C. with prejudice.

2. This Order is final and appealable.

By: _____
Hon. Michael Otto

Robert A. Chapman
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*Counsel for Defendant ADR Systems of America, L.L.C.*

Judge Michael F. Otto
OCT 3 1 2023
Circuit Court – 2065

FILED DATE: 11/17/2023 3:45 PM 2022L010905

## CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Robert A. Chapman, an attorney, hereby certify that on November 17, 2023, I caused the foregoing to be (i) filed electronically using the Odyssey eFileIL system and (ii) to be served on known counsel for Defendants by PDF/email at the following addresses:

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/s/ Robert A. Chapman

# Exhibit 29

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

| | |
|---|---|
| PAUL DULBERG and THE PAUL DULBERG REVOCABLE TRUST,<br><br>Plaintiffs,<br><br>v.<br><br>ADR SYSTEMS OF AMERICA, LLC. et al.,<br><br>Defendant. | Case No. 2022L010905<br><br>Judge Anthony C. Swanagan<br><br>Calendar U |

**ORDER**

This cause coming to be heard on Petitioner ADR Systems of America, LLC's Petition for Sanctions Under Rule 137 ("Petition for Sanctions"), after notice and hearing, the Court having heard argument on the Petition and being fully advised, Petitioner's Petition for Sanctions is granted for the reasons stated below.

## I. Background

On December 8, 2022, Plaintiff Paul Dulberg ("Dulberg") filed his Complaint at Law (the "Complaint") against several defendants, among them Petitioner Alternative Dispute Resolution Systems, LLC ("Petitioner"). The Complaint alleges that Dulberg submitted an unsigned draft of a binding mediation agreement (the "Draft") to the United States Bankruptcy Court for the Northern District of Illinois, Case No. 14-83578, in initiation of a binding mediation process between Dulberg and Allstate Property and Casualty Insurance Co. ("Allstate"), which would be overseen by the Petitioner. According to the Complaint, the Bankruptcy Court approved and authorized the Draft. However, the Complaint alleges that the signed Binding Mediation Agreement (the "Agreement") which was later submitted to the Petitioner, and executed between Petitioner, Dulberg, and Allstate, differed from the Draft in several ways, including:

a. notifications under the title on page one;
b. language under Parties B;
c. page 4 F1.b regarding who is liable to Plaintiff;
d. page 5 V.A.1. ADR Systems Fee Schedule;
e. page 5 V ADR Systems Fee Schedule boxed information;
f. page 6 section v number 5.

Complaint, ¶ 96.

Count IV of the Complaint alleged Breach of Contract against Petitioner, arguing that Petitioner breached Paragraph III, Section B. Amendments to the Agreement, by its failure to follow the procedure for amending the Agreement outlined therein.

After the Complaint was filed, Petitioner sent a letter (the "Letter") to Dulberg and his counsel, Mr. Talarico. The Letter asserted that Count IV had no basis in law or fact, and therefore urged Dulberg and Mr. Talarico to withdraw the Count. The Letter further stated that if Count IV were not withdrawn, Petitioner would seek sanctions against Dulberg and Mr. Talarico. Count IV was not withdrawn.

Petitioner then moved for dismissal as to Count IV, which was granted without prejudice. Dulberg did not filed an amended complaint, and this Court therefore dismissed the claims against Petitioner with prejudice.

Petitioner now moves for sanctions against Dulberg and Mr. Talarico.

## II. Legal Standard

Illinois Supreme Court Rule 137(a) provides:

> Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee.

Ill. Sup. Ct., R 137.

The party calling for sanctions bears the burden of proof that sanctions are appropriate. *Tech. Innovation Ctr. v. Advanced Multiuser Techs. Corp.*, 247 Ill. Dec. 797, 802 (1st Dist. 2000). The party petitioning for sanctions must show the opposing party made untrue and false allegations without reasonable cause. *Id.* The trial court must then decide whether the allegations in the underlying complaint were warranted by existing law or a good-faith argument for a change in existing law, or whether the allegations were merely meant to harass or unduly delay the proceedings. *Id.* The attorney's conduct must be assessed by an objective standard; subjective good faith is not sufficient. *Id.*

Generally, the party requesting sanctions must show that the opposing party made assertions of fact which were untrue and made without reasonable cause. *Rubino v. Circuit City Stores*, 324

Ill. App. 3d 931, 946 (2001). The standard for evaluating a party's conduct under this rule is one of reasonableness under the circumstances existing at the time of the filing. *Id.* The purpose of Rule 137 is not to penalize litigants merely because they were not successful in the litigation, and sanctions are not warranted simply because the facts ultimately determined are adverse to those set forth in the pleadings. *Id.* Finally, because the rule is penal in nature it must be strictly construed. *Id.*

## III. Analysis

### *A. Timeliness of the Petition for Sanctions*

Dulberg also argues that the Petition for Sanctions is untimely brought, as Petitioner was allowed 30 days beginning on September 21, 2023 (the date of Judge Otto's Final and Appealable Order to file a Petition for Sanctions. As the Petition was only filed on November 17, 2023, the Petition is untimely, according to Dulberg.

Petitioner argues in reply that the September 21, 2023 order granted summary judgment for Allstate, not Petitioner. The order granting final judgment in Petitioner's favor was entered on October 31, 2023. Therefore, according to Petitioner, the November 17, 2023 Petition for Sanctions was filed well within the allowed period.

As the Petitioner points out, the docket clearly shows that final, appealable judgment regarding the Petitioner was not entered until October 31, 2023. Therefore, the Petition for Sanctions is timely.

### *B. Appropriateness of Sanctions*

Petitioner's argument for sanctions is that Dulberg had no legitimate basis for filing Count IV of the Complaint. Petitioner argues that the only agreement to which it is party is the Agreement, which was signed and executed by itself, Dulberg, and Allstate. Petitioner argues that the Draft is not even signed by any party, and that Petitioner cannot possibly be bound by any terms of the Draft. Petitioner also emphasizes that it had absolutely nothing to do with the drafting of either the Draft or the Agreement. Because Count IV alleged Breach of Contract, Petitioner could only possibly be held liable for a breach of the Agreement, which Dulberg did not allege in his Complaint, according to Petitioner. Rather, Petitioner argues that Dulberg alleged that Petitioner breached the Draft. Finally, Petitioner emphasizes that Dulberg has never, in his Complaint, arguments against dismissal, nor arguments in response to this Petition for Sanctions, how any alleged difference between the Agreement and the Draft was substantial or had any detrimental effect on Dulberg.

Dulberg responds that in light of the fact that a Binding Mediation Agreement which differed from the Draft which was authorized and approved by the Bankruptcy Court was submitted to the Petitioner, due diligence required Dulberg to add the Petitioner as a Defendant in its claim of Breach of Contract, as Petitioner was party to that breach.

This Court notes that it is unclear, from the language of Count IV, whether Count IV alleges that it is the Draft that has been breached, or the Agreement that has been breached. For example, ¶ 97 of the Complaint states that "The specific language of Paragraph III. B. Amendments to the

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Agreement were not followed." The Complaint does not specify whether "Agreement" as used in ¶ 97 refers to the Agreement, or the Draft. If Dulberg means the Draft, then his argument is a non-starter, as Petitioner cannot possibly breach an unsigned draft of an agreement, to which no one is party nor bound. Dulberg does not allege that Petitioner had any hand in the drafting of the Draft or the Agreement, nor does Dulberg allege that Petitioner had any knowledge of any differences between the Draft and the Agreement. Dulberg has never described how any of the alleged differences between the Agreement and the Draft had any detrimental effect on Dulberg. Therefore, per the Complaint, Petitioner could never have been liable for any breach of the Draft.

If, on the other hand, Dulberg means the Agreement, then the argument is similarly a non-starter, because Dulberg does not argue how Petitioner has changed the terms of Agreement after the Agreement was executed, in a way which violated the Agreement.

It is not apparent that Petitioner could have been liable to Dulberg in either event. Considering the facts known to him at the time the Complaint was filed and the factual allegations asserted, the Court cannot conclude that there was a basis for a reasonable belief by Dulberg that Petitioner was liable for a breach of contract. The Petition for sanctions is accordingly granted. Petitioner may spindle a motion for fees on the Court's motion calendar.

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Judge Anthony C. Swanagan

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