

**Subject:** Re: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et a.  
**Date:** Wednesday, September 19, 2018 at 2:06:41 PM Central Daylight Time  
**From:** Paul Dulberg  
**To:** Sabina Walczyk

Thank You

On 9/19/2018 11:52 AM, Sabina Walczyk wrote:

Hi Paul we are still waiting for the transcript but attached is the Order.

Sabina D. Walczyk  
Associate Attorney  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
(847) 526-0110 (phone)  
(847) 526-0603 (fax)

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**From:** Paul Dulberg <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>  
**Sent:** Wednesday, September 19, 2018 9:07 AM  
**To:** Office Office <[office@goochfirm.com](mailto:office@goochfirm.com)>  
**Cc:** Thomas W. Gooch III <[gooch@goochfirm.com](mailto:gooch@goochfirm.com)>; Sabina Walczyk <[swalczyk@goochfirm.com](mailto:swalczyk@goochfirm.com)>; Nikki <[nikki@goochfirm.com](mailto:nikki@goochfirm.com)>  
**Subject:** Re: Dulberg vs. Law Offices of Thomas J. Popovich, P.C., et a.

Hi Tom, Sabina,

May I get the digital copy of the court order and transcript from 9/12/2018?

Thanks,  
Paul  
847-497-4250

On 9/12/2018 12:33 PM, Paul Dulberg wrote:

Hi Sabina, Tom,

I missed either of you in court this morning. I did not bring my phone into the courthouse so I couldn't call you.  
Hope nothing bad happened to delay you and that everyone is okay.

From what I understood, Judge Meyer moved forward without you and struck down the vast majority of our amended pleading as conclusions or redundant.  
I have a pink copy of the courts order that I can drop off at your office this afternoon.  
Judge Meyer suggested that we get a copy of the hearing transcript that would better explain his order.

Do I need to go get the transcript at the county administrative office or is this something you can do digitally?

Thanks,  
Paul

On 8/31/2018 9:00 AM, Office Office wrote:

Dear Mr. Dulberg:

Attached please find the Defendants Reply in Support of their Motion to Dismiss along with their letter to the Judge.

Please note there is a hearing on their Motion to Dismiss set for September 12, 2018 at 10:00 a.m. We will keep you advised of what transpires that day in Court.

If you have any questions, please let me know.

Melissa J. Podgorski  
Paralegal  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
(847) 526-0110 (phone)  
(847) 526-0603 (fax)

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**Subject:** Re: Dulberg v. Law Offices of Thomas Popovich, et al.  
**Date:** Thursday, August 16, 2018 at 10:17:30 AM Central Daylight Time  
**From:** me  
**To:** Sabina Walczyk  
**Attachments:** ReplytoDraft.txt

Hi Sabina,  
Please find the attached ReplytoDraft.txt file for your review.  
If you have any issues with this file please let me know so I can get you a workable copy asap.

Did you or Tom consult with or pick a premises liability expert?

I'm available all day to discuss the changes suggested in the attached file.

Thank you,  
Paul

847-497-4250

On 8/15/2018 11:50 AM, Sabina Walczyk wrote:

Hi Paul,  
Here is a copy of the draft of our Response.  
I incorporated parts of your notes in the Response as well.

Sabina D. Walczyk  
Associate Attorney  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
(847) 526-0110 (phone)  
(847) 526-0603 (fax)

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**From:** me <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>  
**Sent:** Tuesday, August 14, 2018 8:38 AM  
**To:** Office Office <[office@goochfirm.com](mailto:office@goochfirm.com)>

**Cc:** Thomas W. Gooch III <[gooch@goochfirm.com](mailto:gooch@goochfirm.com)>; Sabina Walczyk <[swalczyk@goochfirm.com](mailto:swalczyk@goochfirm.com)>; Nikki <[nikki@goochfirm.com](mailto:nikki@goochfirm.com)>  
**Subject:** Re: Dulberg v. Law Offices of Thomas Popovich, et al.

Good Morning Sabina and Tom,

Do we have a draft of our response that I can review?

Thanks,  
Paul

On 7/20/2018 1:42 PM, Office Office wrote:

Dear Mr. Dulberg:

Attached please find the Order that was entered today in regards to the above-referenced matter.

Please note this matter was set for hearing on Defendant's Motion to Dismiss First Amended Complaint on September 12, 2018 at 10:00 a.m. We will keep you advised of what transpires in Court that day.

In the interim, if you have any questions please let us know.

Thank you,

Melissa J. Podgorski  
Paralegal  
The Gooch Firm  
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## Argument

9. In this case, DULBERG was an invitee of the McGuires. An invitee is defined as one who enters the premises of another with the owner's or occupier's express or implied consent for the mutual benefit of himself and the owner, or for a purpose connected with the business in which the owner is engaged. Rhodes v. Illinois Cent. Gulf R.R., supra. The McGuires had a duty of reasonable care to DULBERG as an invitee because DULBERG was on their property for their benefit, to cut down a tree. (See First Amended Complaint, Exhibit B, ¶6.)

DULBERG was not invited on the property to cut down a tree.

DULBERG was invited on the property to see if he wanted the wood from the tree.

While on the property DULBERG was asked by Caroline McGuire if he could help.

## Original:

10. MAST's failure to become familiar with this law, resulted in him coercing and pressuring DULBERG to accept a paltry settlement of \$5,000.00 with the McGuries, when in fact their liability was much more, as presented by the expert during the mediation. Based on this law, MAST would have seen that McGuires as homeowners did in fact owe a duty to DULBERG.

## Should Read:

10. MAST's failure to become familiar with either Premises Liability Law or Chainsaw Ownership Liability, resulted in him coercing and pressuring DULBERG to accept a paltry settlement of \$5,000.00 with the McGuries. Based on Premises Liability Law, MAST would have seen that McGuires as homeowners did in fact owe a duty of reasonable care to DULBERG.

11. Also, had MAST reviewed the law on premise liability, he could have considered the law as to ultrahazardous circumstances and the strict liability of the homeowners. Illinois has recognized strict liability principally in two instances: (2) when a defendant engages in ultrahazardous or abnormally dangerous activity as determined by the courts, giving particular consideration, inter alia, to the appropriateness of the activity to the place where it is maintained, in light of the character of the place and its surroundings. (internal citations omitted) Miller v. Civil Constructors, Inc., 272 Ill.App.3d 263, 266 (2nd Dist., 1995). MAST should have considered strict liability as to the McGuires prior to advising DULBERG to settle.

"premise" should be "premises"  
"\* \* \*", Where is the first instance?

15. As to the specific allegations relating to Defendants' concealment of facts to DULBERT, paragraph 31(k) of the First Amended Complaint, DULBERG stated what was concealed from him by the Defendants. Defendants concealed from DULBERG the actual policy limits from the McGuires and Gagnon, concealed facts relating to the explanation of liability law and what type of duty the McGuires owed to DULBERG, concealed that retaining an expert witness prior to accepting settlement would have been beneficial to DULBERG's case, and concealed the fact that Defendants were handling everything properly when this was not the truth.

"DULBERT" should read "DULBERG"

"actual policy limits from" should read "actual policies and the policy limits for both"

"liability law" could read "Premises Liability law and Chainsaw Ownership Liability"

- the reason for this is the McGuires were subject to both liabilities. The McGuires owned the chainsaw, which clearly stated on page 2 of the owners manual "Allow only persons who understand this manual to operate your chainsaw", on page 7 the owners manual recommends that other people (bystanders) be kept at least 35 feet from someone operating a chainsaw, the McGuires did not heed these warnings nor any other warning contained in the owners manual, and the McGuires also owned the Premises where the work was being done making the McGuires liable not just once but twice as to a breach of duty owed DULBERG. Mast was provided a copy of the Chainsaw Owners Manual at the McGuires Deposition. Mast should have read it since it was Mast who requested it be produced.

Original:

19. DULBERG pled that MAST essentially gave him two options: to take the \$5,000.00 settlement or get nothing. DULBERG was coerced into this decision because he was unaware of any other option and forced to take the only available option.

Can be changed to:

19. DULBERG pled that MAST essentially gave him two options: to take the \$5,000.00 settlement or get nothing. DULBERG was coerced into this decision because he was unaware of any other option and forced to take the only available option under an artificial time constraint constructed by Mast.

Original:

26. The pleading and exhibit show that DULBERG made the decision to settle after meeting with MAST in person, and MAST telling him that he had no choice but to accept the settlement. DULBERG acted quickly to accept the settlement based on the information that MAST told him that if he would not accept it, the offer would be withdrawn.

Should be Changed to:

26. The pleading and exhibit show that DULBERG made the decision to settle after meeting with MAST in person, and MAST telling him that he had no choice but to accept the settlement. DULBERG acted quickly to accept the settlement based on the information that MAST told him that if he would not accept it, the offer would be withdrawn and the McGuires would win on a summary judgement and get off free.

Original:

27. Simply because Exhibit E states that the release was mailed weeks later, does not mean that DULBERG was not coerced into accepting the settlement based on the information that he was given by his attorney whom he trusted.

Why not reference and exhibit the emails between November 18th and the December 26th letter sent from Mast to Auto Owners Attorney Barch which clearly shows the small time frame Dulberg actually had? Perhaps this is evidence reserved for discovery and should not be needed at this stage?  
Perhaps these facts need to be determined by a jury and not the Judge at this stage?  
not sure, need more explanation

Original:

29. Last Defendants raise the issue of proximate cause as to MAST's improper determination of Gagnon's insurance coverage limit being \$300,000.00 and not \$100,000.00. (See Motion to Dismiss attached as Exhibit A, pg. 7.) As argued above, this allegation supports DULBERG's argument that MAST did not conduct the proper discovery, as evidenced by the incorrect policy limit. Had MAST not breached the standard of care and had he conducted discovery, DULBERG would have had the correct policy amount for Gagnon, and would have the insurance policy for the McGuires in order to make an informed decision as to settlement.

Should Read:

29. Last Defendants raise the issue of proximate cause as to MAST's improper determination of Gagnon's insurance coverage limit being \$300,000.00 and not \$100,000.00. (See Motion to Dismiss attached as Exhibit A, pg. 7.) As argued above, this allegation supports DULBERG's argument that MAST did not conduct the proper discovery, as evidenced by the incorrect policy limit. Had MAST not breached the standard of care and had he conducted proper discovery, DULBERG would have had the correct policy amount for Gagnon, and would have the insurance policy for the McGuires in order to make an informed decision as to settlement.

Original:

32. DULBERG has proved that the actions and inactions of the Defendants have caused DULBERG damages. (See First Amended Complaint, Exhibit B, ¶31, 32.) Any dispute as to the proximate cause and damages must be left to the jury as it is a factual question. The issues of proximate cause and damages must be determined by a jury or trier of fact after all proper evidence and testimony is presented at trial. Proximate cause is a question of fact to be decided by a jury. (internal citation omitted) (Emphasis added) Hooper v. County of Cook, 366 Ill.App.3d 1, 7 (1st Dist., 2006). "The determination of damages is a question of fact that is within the discretion of the jury and is entitled to substantial deference." (Emphasis added.) Linhart v. Bridgeview Creek Development, Inc., 391 Ill.App.3d 630, 636 (1st Dist., 2009).

Should Read:

32. DULBERG has proven that the actions and inactions of the Defendants had caused DULBERG damages. (See First Amended Complaint, Exhibit B, ¶31, 32.) Any dispute as to the proximate cause and damages must be left to the jury as it is a factual question. The issues of proximate cause and damages must be determined by a jury or trier of fact after all proper evidence and testimony is presented at trial. Proximate cause is a question of fact to be decided by a jury. (internal citation omitted) (Emphasis added) Hooper v. County of Cook, 366 Ill.App.3d 1, 7 (1st Dist., 2006). "The determination of damages is a question of fact that is within the discretion of the jury and is entitled to substantial deference." (Emphasis added.) Linhart v. Bridgeview Creek Development, Inc., 391 Ill.App.3d 630, 636 (1st Dist., 2009).

**Subject:** Re: Dulberg v. Law Offices of Thomas Popovich, et al.  
**Date:** Wednesday, August 15, 2018 at 4:42:29 PM Central Daylight Time  
**From:** me  
**To:** Sabina Walczyk

Thank You,

After a quick read I see a few issues that are easily fixed. I will go through this thoroughly overnight and in the morning. I should have a text document to you by early afternoon tomorrow.

Paul

On 8/15/2018 11:50 AM, Sabina Walczyk wrote:

Hi Paul,  
Here is a copy of the draft of our Response.  
I incorporated parts of your notes in the Response as well.

Sabina D. Walczyk  
Associate Attorney  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
(847) 526-0110 (phone)  
(847) 526-0603 (fax)

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**From:** me <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>  
**Sent:** Tuesday, August 14, 2018 8:38 AM  
**To:** Office Office <[office@goochfirm.com](mailto:office@goochfirm.com)>  
**Cc:** Thomas W. Gooch III <[gooch@goochfirm.com](mailto:gooch@goochfirm.com)>; Sabina Walczyk <[swalczyk@goochfirm.com](mailto:swalczyk@goochfirm.com)>; Nikki <[nikki@goochfirm.com](mailto:nikki@goochfirm.com)>  
**Subject:** Re: Dulberg v. Law Offices of Thomas Popovich, et al.

Good Morning Sabina and Tom,

Do we have a draft of our response that I can review?

Thanks,  
Paul

On 7/20/2018 1:42 PM, Office Office wrote:

Dear Mr. Dulberg:

Attached please find the Order that was entered today in regards to the above-referenced matter.

Please note this matter was set for hearing on Defendant's Motion to Dismiss First Amended Complaint on September 12, 2018 at 10:00 a.m. We will keep you advised of what transpires in Court that day.

In the interim, if you have any questions please let us know.

Thank you,

Melissa J. Podgorski  
Paralegal  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
(847) 526-0110 (phone)  
(847) 526-0603 (fax)

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**Subject:** Re: Dulberg v. The Law Offices of Thomas J. Popovich  
**Date:** Wednesday, July 11, 2018 at 4:40:48 PM Central Daylight Time  
**From:** me  
**To:** Sabina Walczyk

Kind of... yes

I'll be there on the 20th

Paul

On 7/11/2018 4:22 PM, Sabina Walczyk wrote:

Hi Paul,

So the last court order states that we have a status of pleadings on July 20, 2018.

On this date, since the Defendants filed a Motion to Dismiss, the Court will give us the briefing schedule--setting out when our Response is due, when their Reply is due and when the hearing will be set.

So to answer your question, the briefing schedule gives us the due date, which we will know what it is on the next court date.

Please let me know if that answered your question.

Sabina D. Walczyk  
Associate Attorney  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
(847) 526-0110 (phone)  
(847) 526-0603 (fax)

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-----Original Message-----

From: me <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>  
Sent: Wednesday, July 11, 2018 4:15 PM  
To: Sabina Walczyk <[swalczyk@goochfirm.com](mailto:swalczyk@goochfirm.com)>  
Subject: Re: Dulberg v. The Law Offices of Thomas J. Popovich

Hi Sabina,  
ok i'm confused  
Is the briefing schedule not the due date for our response?

On 7/11/2018 4:09 PM, Sabina Walczyk wrote:

On 7/11/2018 4:03 PM, Sabina Walczyk wrote:

Hi Paul,

Thanks for the information.

We do not have a due date yet for our response but I have saved this information and will use it when we start drafting the response.

We will enter into a briefing schedule on the next court date, July 20, 2018.

Thanks,

Sabina D. Walczyk  
Associate Attorney  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
(847) 526-0110 (phone)  
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-----Original Message-----

From: me <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>

Sent: Wednesday, July 11, 2018 4:01 PM

To: Office Office <[office@goochfirm.com](mailto:office@goochfirm.com)>

Cc: Thomas W. Gooch III <[gooch@goochfirm.com](mailto:gooch@goochfirm.com)>; Sabina Walczyk <[swalczyk@goochfirm.com](mailto:swalczyk@goochfirm.com)>; Nikki <[nikki@goochfirm.com](mailto:nikki@goochfirm.com)>

Subject: Re: Dulberg v. The Law Offices of Thomas J. Popovich

Hi Tom & Sabina,

Please find the attached file

DULBERG-AMENDED-COMPLAINT-MOTION-TO-DISMISS-REPLY.txt

Note: The Mast to Barch letter dated December 26th, 2013 is in the files I last brought to your office and should be added as an exhibit.

If you need another copy please let me know.

If you have any problems with the attached file please let me know.

Thank you,

Paul

847-497-4250

On 7/10/2018 2:05 PM, me wrote:

Hi Tom and Sabina,

Just wanted to touch base and let you know that by sometime tomorrow

I should have a very detailed response to questions at the heart of the defendants motion to dismiss for you to review and will get it to you via email.

Please give me a call or lets set up an appointment time, There are a few things I'd like to discuss...

a.) Hiring a premises liability expert specializing in ultrahazardous situations (I realized that the Chainsaw expert I hired (Dr. Lanford) for the case against GAGNON only spoke of the MCGUIRES partial liability as the owners of the chainsaw, not as The owners of the property and the premises liability issue. I believe these are two very different liabilities and must be addressed.)

b.) Hiring a premises liability attorney specializing in ultrahazardous situations (To argue any mock trial or whatever it is that needs to be done for us that may very well be in our future)

c.) Discuss the pros and cons of accepting the GAGNON award amounts vs. a separate trial over the MCGUIRES homeowners liabilities and responsibilities under ultrahazardous situations. (chainsaws and felling trees puts this in a whole new catagory of Ultrahazardous situations and I believe moves us from "reasonable care for invitees or licensees" to "strict liability" against the homeowners

If I am correct about the change in level of liabilities, which I am pretty darn positive I am, It further shows how Mast and Popovich completely dropped the ball and mishandled this case.

Thank you both for so much,  
Paul  
847-497-4250

On 7/6/2018 11:23 AM, Office Office wrote:

I will find out from the attorney and let you know. It really depends on the Judge.

I will let Tom & Sabina know.

Thank you and have a great weekend!

Melissa J. Podgorski  
Paralegal  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
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-----Original Message-----

From: me <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>

Sent: Friday, July 6, 2018 11:13 AM

To: Office Office <[office@goochfirm.com](mailto:office@goochfirm.com)>

Cc: Thomas W. Gooch III <[gooch@goochfirm.com](mailto:gooch@goochfirm.com)>; Sabina Walczyk <[swalczyk@goochfirm.com](mailto:swalczyk@goochfirm.com)>; Nikki <[nikki@goochfirm.com](mailto:nikki@goochfirm.com)>

Subject: Re: Dulberg v. The Law Offices of Thomas J. Popovich

Hi Melissa,

Thank you for a copy of the defendants motion to dismiss.  
I will read this in detail over the next few days.

Please let me know of anything in this motion that is remotely concerning or gives the defendant a leg to stand on.

Please let Tom and Sabina know that I will provide anything they feel they need to defeat the defendants motion.

Thank you again,  
Paul

Paul Dulberg  
847-497-4250

On 7/6/2018 9:12 AM, Office Office wrote:

Dear Mr. Dulberg,

Sorry for the inconvenience, we did receive the attached Motion to Dismiss from the Defendant's yesterday. For some reason it was in my junk email.

Please note they set their motion for July 20, 2018. We will keep you advised of what transpires in Court that day. Also, please know that them filing a Motion to Dismiss is most common in response to a Complaint. The Judge will hear their motion and decide if he will allow it or not. If he does, we will have to file a response to their Motion to Dismiss. If the Judge denies their motion, we will have to amend the Complaint.

Basically, you have nothing to worry about at this time. This matter will not be dismissed based on that motion.

-----Original Message-----

if you have any questions, please let me know.

Thank you,

Melissa J. Podgorski  
Paralegal  
The Gooch Firm  
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**Subject:** Re: Dulberg v. The Law Offices of Thomas J. Popovich  
**Date:** Wednesday, July 11, 2018 at 4:15:03 PM Central Daylight Time  
**From:** me  
**To:** Sabina Walczyk

Hi Sabina,  
ok i'm confused  
Is the briefing schedule not the due date for our response?

On 7/11/2018 4:09 PM, Sabina Walczyk wrote:

Hi Paul,  
Thanks for the information.  
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-----Original Message-----

**From:** me <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>  
**Sent:** Wednesday, July 11, 2018 4:01 PM  
**To:** Office Office <[office@goochfirm.com](mailto:office@goochfirm.com)>  
**Cc:** Thomas W. Gooch III <[gooch@goochfirm.com](mailto:gooch@goochfirm.com)>; Sabina Walczyk <[swalczyk@goochfirm.com](mailto:swalczyk@goochfirm.com)>; Nikki <[nikki@goochfirm.com](mailto:nikki@goochfirm.com)>  
**Subject:** Re: Dulberg v. The Law Offices of Thomas J. Popovich

Hi Tom & Sabina,

Please find the attached file  
DULBERG-AMENDED-COMPLAINT-MOTION-TO-DISMISS-REPLY.txt

Note: The Mast to Barch letter dated December 26th, 2013 is in the files I last brought to your office and should be added as an exhibit

added as an exhibit.

If you need another copy please let me know.

If you have any problems with the attached file please let me know.

Thank you,  
Paul  
847-497-4250

On 7/10/2018 2:05 PM, me wrote:

Hi Tom and Sabina,

Just wanted to touch base and let you know that by sometime tomorrow I should have a very detailed response to questions at the heart of the defendants motion to dismiss for you to review and will get it to you via email.

Please give me a call or lets set up an appointment time, There are a few things I'd like to discuss...

a.) Hiring a premises liability expert specializing in ultrahazardous situations (I realized that the Chainsaw expert I hired (Dr. Lanford) for the case against GAGNON only spoke of the MCGUIRES partial liability as the owners of the chainsaw, not as The owners of the property and the premises liability issue. I believe these are two very different liabilities and must be addressed.)

b.) Hiring a premises liability attorney specializing in ultrahazardous situations (To argue any mock trial or whatever it is that needs to be done for us that may very well be in our future)

c.) Discuss the pros and cons of accepting the GAGNON award amounts vs. a separate trial over the MCGUIRES homeowners liabilities and responsibilities under ultrahazardous situations. (chainsaws and felling trees puts this in a whole new category of Ultrahazardous situations and I believe moves us from "reasonable care for invitees or licensees" to "strict liability" against the homeowners

If I am correct about the change in level of liabilities, which I am pretty darn positive I am, It further shows how Mast and Popovich completely dropped the ball and mishandled this case.

Thank you both for so much,  
Paul  
847-497-4250

On 7/6/2018 11:23 AM, Office Office wrote:

I will find out from the attorney and let you know. It really depends on the Judge.

I will let Tom & Sabina know.

Thank you and have a great weekend!

Melissa J. Podgorski

Paralegal  
The Gooch Firm  
209 South Main Street  
Wauconda, Illinois 60084  
(847) 526-0110 (phone)  
(847) 526-0603 (fax)

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

-----Original Message-----

From: me <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>  
Sent: Friday, July 6, 2018 11:13 AM  
To: Office Office <[office@goochfirm.com](mailto:office@goochfirm.com)>  
Cc: Thomas W. Gooch III <[gooch@goochfirm.com](mailto:gooch@goochfirm.com)>; Sabina Walczyk <[swalczyk@goochfirm.com](mailto:swalczyk@goochfirm.com)>; Nikki <[nikki@goochfirm.com](mailto:nikki@goochfirm.com)>  
Subject: Re: Dulberg v. The Law Offices of Thomas J. Popovich

Hi Melissa,

Thank you for a copy of the defendants motion to dismiss.  
I will read this in detail over the next few days.

Please let me know of anything in this motion that is remotely concerning or gives the defendant a leg to stand on.

Please let Tom and Sabina know that I will provide anything they feel they need to defeat the defendants motion.

Thank you again,  
Paul

Paul Dulberg  
847-497-4250

On 7/6/2018 9:12 AM, Office Office wrote:  
Dear Mr. Dulberg,

Sorry for the inconvenience, we did receive the attached Motion to Dismiss from the Defendant's yesterday. For some reason it was in my junk email.

Please note they set their motion for July 20, 2018. We will keep you advised of what transpires in Court that day. Also, please know that them filing a Motion to Dismiss is most common in response to a Complaint. The Judge will hear their motion and decide if he will allow it or not. If he does, we will have to file a response to their Motion to Dismiss. If the Judge denies their motion, we will have to amend the Complaint.

Basically, you have nothing to worry about at this time. This matter will not be dismissed based on that motion.

If you have any questions, please let me know.

Thank you,

Melissa J. Podgorski  
Paralegal  
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**Subject:** Re: Dulberg v. Popovich 17 LA 377

**Date:** Tuesday, June 5, 2018 at 2:10:24 PM Central Daylight Time

**From:** me

**To:** Sabina Walczyk

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Page 4, Paragraph 18: You are correct, the language is stronger and using force isn't always a physical act. In my mind I just pictured the defense making the argument, "How was he Forced?" Did Mast have a gun to his head?

No Proof! Must be dismissed.

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**Cc:** Sabina Walczyk; Office Office  
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**Subject:** Hi Low Agreement

**Date:** Friday, June 1, 2018 at 9:20:20 AM Central Daylight Time

**From:** me

**To:** Sabina Walczyk

Hi Sabina,

Something I forgot to ask yesterday, do you need a copy of the Hi-Low agreement?

It seems the defense is asking to see it.

I do not seem to have any printed documentation on it in the Baudin case file but was only told about it by Randy and Kelly Baudin just prior to the ADR hearing.

Without the documentation I can't confirm that it was even real.

Thank you,

Paul

PS. Please forgive my rant yesterday about being paid for silence, etc...

As you know I was very tired and having to go over all those emails, case file and virtually reliving that bad experience it just makes me more angry at both the popovich firm and myself for not being able to see the damages they caused earlier. For those of us with virtually no experience in civil litigation It is hard to know if the attorneys you hired are telling the truth.

Anyway, Im sorry you had to listen to all that nonsense and thank you for putting up with it.

Paul

**Subject:** Re: Dulberg v. Popovich 17 LA 377

**Date:** Tuesday, June 5, 2018 at 10:53:43 AM Central Daylight Time

**From:** me

**To:** Sabina Walczyk, Nikki

**CC:** Office Office

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**Subject:** Re: Dulberg v. Popovich 17 LA 377  
**Date:** Monday, June 4, 2018 at 8:07:12 AM Central Daylight Time  
**From:** me  
**To:** Sabina Walczyk, Nikki  
**CC:** Office Office  
**Attachments:** amended\_complaint\_comments2.txt

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He claimed the McGuires would be dismissed for nothing if DULBERG did not accept the offer promptly. This can be proven through DULBERG as a witness and by his brother, THOMAS KOST, who was also present at the meeting. The claim can also be proven through emails.

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page 4, section 20: correct. Proof of direct quote in file 2-180.pdf.

page 4, section 22: correct. Proof of direct quote is in file 2-104.pdf

page 6, section 29: "reasonable" should read "reasonably". "forcing" could be changed to "pressuring" or "coercing".

page 7, section 31 j): correct. Direct quote from file 2-201.pdf.

I am available anytime to discuss any of this.

Thank you,

Paul

847-497-4250

On 6/1/2018 10:32 AM, Sabina Walczyk wrote:

Yes it does thank you.

Get [Outlook for iOS](#)

---

**From:** me <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>  
**Sent:** Friday, June 1, 2018 10:31:04 AM  
**To:** Nikki  
**Cc:** Sabina Walczyk; Office Office  
**Subject:** Re: Dulberg v. Popovich 17 LA 377

Hi Sabrina,

Thank you for providing this for my review.

I opened it and by the 3rd page already noticed some simple but fundamental errors we need to correct.

I'm going to read it in detail and hope to have all corrections to you by Monday the 4th of June.

Does that give you enough time to review my concerns and still meet the deadline of the 6th?

Thanks again,

Paul

On 6/1/2018 9:33 AM, Nikki wrote:

Hi Paul,

I have attached a draft of the First Amended Complaint for your case. Please review and advise. Thank you.

Regards,

Nikki Justiniani

*Office Assistant*

The Gooch Firm  
209 S. Main Street  
Wauconda, IL 60084

P: 847-526-0110

F: 847-526-0603

E: [nikki@goochfirm.com](mailto:nikki@goochfirm.com)

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and all attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

Comments on FIRST AMENDED COMPLAINT

Very well stated arguments. Some possible corrections and changes...

page 2, section 7: "lost control ..." could be changed to "inadvertently cut the arm of DULBERG"

Question: How were the amounts \$260,000 and \$250,000 arrived at?

page 3, section 11: "property" should read "properly".

page 3, section 13: Incorrect. MAST incorrectly informed DULBERG that the insurance policy limit for Gagnon was only \$100,000, when in reality the policy limit was \$300,000. (Proof: see file 2-104.pdf in email folder).

At no time was DULBERG ever informed of the McGuires' policy limits.

In addition, when MAST later gave DULBERG all documents related to his case, DULBERG noticed that the Gagnon policy information and the McGuires' policy information was not included among the files. The medical depositions were also missing from the files. (Much email proof of this.)

page 3, section 15: correct. direct quotes from file 2-207.pdf and 2-205.pdf email exchanges from file 2-208.pdf to file 2-182.pdf show clearly that DULBERG does not agree or understand why McGuires are not liable for injury.

page 3, section 16: correct. Direct quote from 2-201.pdf. Extracted from the sentence: "We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion."

page 4, section 17: Why the quotations? It cannot be proven that this is a direct quote, though the emails quoted above can be proven. Not sure about the quote. Not sure that the meeting was the day before a court appearance yet, that is what DULBERG was told by MAST but Tom Kost who is DULBERGS' brother and was in the meeting does not exactly recall this but says he remembers it was time sensitive. There were actually 2 meetings in Hans Mast office on the McGuires. The first Dulberg attended with his Mother Barbara Dulberg and the second was with Thomas Kost, Dulbergs' brother. However, I, DULBERG, am currently putting together a timeline of all documented court events along with the emails and this should narrow down the dates of these meetings. I, DULBERG, believe that we should not include anything in the complaint that is not backed up by verifiable documented proof. Witness testimony can come out during the discovery phase, not the complaint. I dont want anything the defense can pounce on.

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page 7, section 31 j): correct. Direct quote from file 2-201.pdf.

**Subject:** Dulberg v. Popovich

**Date:** Thursday, July 5, 2018 at 12:56:25 PM Central Daylight Time

**From:** me

**To:** Sabina Walczyk, Thomas W. Gooch III

Hi Sabina and Tom,

Have we receive the defendants response?

Hope you had a good 4th and Thank you both,  
Paul

Paul Dulberg  
847-497-4250

**Subject:** Fwd: Agreement  
**Date:** Friday, June 1, 2018 at 1:29:56 PM Central Daylight Time  
**From:** me  
**To:** Sabina Walczyk, Thomas W. Gooch III, Office Office  
**Attachments:** Outlook-1520366325.png, 33391BMAG - Dulberg v. Gagnon Rvsd. - 12-8-16  
%2800600056xB3A5A%29.pdf

Hi Sabina and Tom,  
Baudin Law Group just sent this. see attachment  
It is the Binding Mediation Agreement.  
At Quick glance, I noticed that it only limits collection from Allstates Client Gagnon to \$300,000 and no one else.  
I will take a more detailed look at this over the weekend.  
Thank you,  
Paul

----- Forwarded Message -----

**Subject:**Agreement  
**Date:**Fri, 1 Jun 2018 18:16:51 +0000  
**From:**myrna blg ltd.com <[myrna@blg ltd.com](mailto:myrna@blg ltd.com)>  
**To:**Paul Dulberg <[pdulberg@comcast.net](mailto:pdulberg@comcast.net)>

Very truly yours,

Myrna



**Myrna E. Boyce, Legal Assistant | The Baudin Law Gro**  
**Telephone 815.526.3202 | Fax 3:**

This e-mail and any attachments may contain protected, privileged  
the recipient(s) named above. Dissemination, distr



**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.

## **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.

- 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](mailto: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

**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.

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.



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

ADR Systems File # 33391BMAG  
 ADR Systems Tax I.D. # 36-3977108  
 Date of Hearing: Thursday, December 8, 2016

