

LAW OFFICES OF
DONALD P. FEDDERLY

88 BARTLEY FLANDERS ROAD
SUITE 104
FLANDERS, NEW JERSEY 07836
TELEPHONE: (973) 584-3131
TELECOPIER: (973) 584-6104
EMAIL: FEDDERLYD@OPTONLINE.NET

DONALD P. FEDDERLY
ADMITTED N.J. & CAL. BARS

10 September 2009

OF COUNSEL
JAMES C. KRAUSE
1010 SECOND AVENUE
SAN DIEGO, CALIFORNIA 92101

VIA OVERNIGHT MAIL

Supreme Court of New Jersey
Attn: Clerk of the Supreme Court
Hughes Justice Complex
25 W. Market Street
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: Joseph M. and Teresa Guido v. Duane Morris, LLP, Frank A. Luchak, Esq.
Patricia Kane Williams, Esq. *et al.*
Docket No. OCN-L-677-07
Appellate Docket No.: A-1162-O8T3
Supreme Court Docket No: 64, 642

Dear Sir or Madam:

We represent plaintiffs Joseph M. and Teresa Guido in the captioned matter.

Enclosed for filing please find an original and eight (8) copies of the following documents in connection with the captioned matter:

1. Brief in Opposition to defendants' Motion for Leave to File Interlocutory Appeal; and
2. Certification of Service.

Very truly yours,


DONALD P. FEDDERLY, ESQ.

DPF/dr
Enc.

cc: Joseph LaSala, Esq.
Mr. and Mrs. Guido

SUPREME COURT OF NEW JERSEY

Docket No. 64, 642

JOSEPH M. GUIDO and
TERESA GUIDO, husband and
Wife,
Plaintiffs/Respondents,
v.
DUANE MORRIS, LLP, a
Limited Liability Part-
nership, FRANK A. LUCHAK,
Esq., PATRICIA KANE
WILLIAMS, ESQ., and JOHN
DOES 1-10,

: Civil Action
:
:
:On Interlocutory Appeal From
:the New Jersey Superior Court
:Appellate Division,
:Docket No. A 001162-08T3, On
:Interlocutory Appeal From
:The New Jersey Superior
:Court, Law Division,
:Docket No. OCN-L-677-07
:
:Sat Below:
:
:Hon. Ariel A. Rodriguez,
:J.A.D.
:Hon. Alexander P. Waugh, Jr.,
:J.A.D.
:And
:
:Hon. Edward M. Oles, J.S.C.
:
:**CERTIFICATION OF SERVICE**

I, DIANE ROGAN, of full age, being duly sworn according to law, upon my oath certify and say:

1. I am a secretary at the Law Offices of Donald P. Fedderly, attorney for plaintiffs-respondents, Joseph and Teresa Guido.

2. On 10 September 2009, I caused to be served via overnight mail to the Clerk of the Court, Supreme Court of New Jersey, Hughes Justice Complex, 25 W. Market Street, Trenton, New Jersey 08625, an original and eight (8) copies each of the 1) Plaintiffs-Respondents Brief and

Appendix in opposition to defendants' Motion for Leave to File Interlocutory Appeal 2) Certification of Service.

3. Also on this date, I caused to be served via overnight mail two (2) copies each of the foregoing documents on McElory, Deutsch, Mulvaney & Carpenter LLP, to the attention of Joseph LaSala, Esq., 1300 Mt. Kemble Avenue, Morristown, New Jersey 07962-2075.

I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are knowingly or intentionally false, I am subject to punishment.

Dated: 10 September 2009


DIANE ROGAN

SUPREME COURT OF NEW JERSEY

Docket No. 64, 642

JOSEPH M. GUIDO and
TERESA GUIDO, husband and
Wife,
Plaintiffs/Respondents,
v.
DUANE MORRIS, LLP, a
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nership, FRANK A. LUCHAK,
Esq., PATRICIA KANE
WILLIAMS, ESQ., and JOHN
DOES 1-10,

: Civil Action
:
:
: On Interlocutory Appeal From
: the New Jersey Superior Court
: Appellate Division,
: Docket No. A 001162-08T3, On
: Interlocutory Appeal From
: The New Jersey Superior
: Court, Law Division,
: Docket No. OCN-L-677-07
:
: Sat Below:
:
: Hon. Ariel A. Rodriguez,
: J.A.D.
: Hon. Alexander P. Waugh, Jr.,
: J.A.D.
: And
:
: Hon. Edward M. Oles, J.S.C.

BRIEF OF PLAINTIFFS-RESPONDENTS JOSEPH M. AND TERESA
GUIDO, IN OPPOSITION TO DEFENDANTS-MOVANTS MOTION FOR
LEAVE TO APPEAL

LAW OFFICES OF DONALD P. FEDDERLY
88 Bartley Flanders Road
Suite 104
Flanders, New Jersey 07836
Attorney for Plaintiffs
Joseph and Teresa Guido

On the Brief:

Donald P. Fedderly, Esq.

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PRELIMINARY STATEMENT

Plaintiffs-Respondents Guido submit this Brief in opposition to defendants' pending motion for leave to appeal the Appellate Division's interlocutory order of 15 July 2009.

A two-judge panel of the Appellate Division unanimously affirmed the trial court's decision permitting plaintiffs to proceed with their malpractice action, in which defendants are alleged to have negligently advised (or failed to advise) plaintiffs of the disastrous implications of a proposed settlement. The Appellate Division held that where plaintiffs' claims of malpractice included specific allegations which could be found to "negate the element of prior acceptance of the underlying settlement," plaintiffs may proceed with their malpractice claims. Opinion at p. 25. (Da 781)

In their "Statement of Facts," the defendants now attempt to shift responsibility and blame onto plaintiff Joseph Guido. Thus defendants now claim that Mr. Guido

- 1) only hired defendant Duane, Morris to "attempt to mitigate" Mr. Guido's loss of control over his company
- 2) negotiated the settlement deal "without counsel"
- 3) briefly terminated defendant Duane, Morris, and
- 4) ignored defendants' "warnings" to Mr. Guido

In short, defendants' "Statement of Facts" would have this Court conclude that Mr. Guido was running his own case, and that defendant Duane, Morris was simply trying to hang on as Mr. Guido negotiated settlements by himself, briefly fired defendants, and ignored defendants' "warnings."

However, defendant Duane, Morris was in charge of the Guidos' underlying matter. Plaintiff Joseph Guido retained defendants specifically to re-capture control of his own business -- not just to "attempt" to try and "mitigate" Joseph Guido's loss of control. See defendants' Brief, p. 5.

Although Mr. Guido may have had certain dealings with adverse party Sam DiGiralomo, defendant Duane, Morris continued to be the Guido's legal counsel throughout the matter. Despite defendants' claim of having been "terminated," defendants can offer no Substitution of Attorney, letter of termination, letter of re-hiring, or any other document to indicate that the Guidos were ever without counsel.

In fact, even the so-called "warnings" to the Guidos from their original Duane, Morris attorney James Ferrelli were only in the context of the original underlying legal action. Mr. Ferrelli was not part of the second action. The two attorneys who represented the Guidos in the second action --

Frank Luchak and Patricia Kane Williams -- seemed to have known little or nothing of Mr. Ferrelli's original lawsuit.

Only by "spinning" the above facts can defendants go on to make their broad, generic, and rather obvious legal argument: that New Jersey's public policy favors settlements, and supports a strong attorney-client relationship.

PROCEDURAL BACKGROUND

Plaintiffs filed this legal malpractice action on 15 February 2007. (Da 22) On 7 June 2007 defendants filed a second, Amended Answer, which for the first time including a counterclaim for the balance of legal fees, allegedly totaling \$413,790.69. (Da 39) In other words, defendants' original Answer did not include a counterclaim for the balance of their alleged fees. (Pa 1-15).

Although the trial court initially granted summary judgment in favor of defendants (Da 418, Da 456), the trial court reversed itself and vacated the summary judgment order after plaintiffs filed a motion for reconsideration, citing the very recent Appellate Division case of *Hernandez v. Baugh*, 401 N.J. Super 539 (App. Div.) 2008. (Da 18).

The Appellate Division granted defendants' motion for leave to file an interlocutory appeal. (Da 758).

The Appellate Division affirmed the trial court on 15 July 2009. (Da 757).

FACTUAL BACKGROUND

The Appellate Division's opinion sets forth the factual background of this matter. See Opinion, at pp. 2-12. (Da 758-767)

Although couched in language which subtly favors their side, defendants have also laid out the essential underlying factual background of this matter. However, certain key facts have been either overlooked or mis-stated by defendants.

A. Defendant Duane Morris Did Virtually Nothing On The Underlying Case For Twenty (20) Months

Plaintiff retained defendant Duane, Morris on 20 January 2003. (Da 78-80). Until 16 August 2004 -- twenty months later -- defendants apparently did nothing on behalf of plaintiffs Joseph and Teresa Guido. At that time

defendants finally served some papers on the underlying defendants' (seeking to amend the bylaws and increase the size of the board of directors). Defendants' Brief, pp. 2-3.

Since the Guidos owned nearly sixty (60) percent of the company, and since Joseph Guido's clear goal was to strengthen his control of his own company, why did defendants sit on the underlying case for some twenty months? This caused further prejudice to plaintiff Guidos' causes for action.

B. Defendants Point To Mr. Guido's "Previous Employment Agreement" As The Source Of Mr. Guido's Loss Of Corporate Control -- But Where Is That Agreement?

Defendant Duane, Morris attempts to favorably position the underlying matter by claiming that Mr. Guido had a "previous employment agreement" which "eventually froze Mr. Guido out by restricting his right to control Allstates - the company he co-founded over thirty years prior." Defendants' Brief at pp. 4-5.

Defendants fail to include a copy of this alleged "previous employment agreement" in their Appendix. Instead, defendants cite "Da 64," which is merely the second page of defendants' Verified Complaint (filed on behalf of plaintiffs Guido on or about 14 October 2004).

There was no "previous employment agreement" that somehow hamstrung defendant Duane, Morris. Rather, it was a matter of an elderly, 60% owner, in poor health, and with only a ninth grade education, who had been pushed aside by his fellow three board members. Mr. Guido came to defendant Duane, Morris to regain control of his company. Instead, defendants sat on the case for twenty months, and then commenced an ill-fated effort to amend by-laws and add directors - and bill plaintiffs Guido more than \$700,000 in the process.

LEGAL ARGUMENT

I

THE TRIAL COURT AND APPELLATE DIVISION
AGREED THAT PLAINTIFFS GUIDOS' MATTER
SHOULD PROCEED - DEFENDANTS' CLAIM OF
"IRREPARABLE INJURY" IS WITHOUT MERIT

Defendant Duane, Morris base their instant motion as "necessary to prevent irreparable injury." Defendants' Brief

at p. 13, *citing* R. 2:2-2(b).

Defendants advise this Court that there is "little decisional law elaborating on what constitutes 'irreparable injury.'" *Id.*

Bluntly put, there is no "irreparable injury" in this matter. Defendants argue that this Court has jurisdiction "to address significant legal issues that require a balancing of several competing policies" *Id.* at p. 14. Of course this Court has such authority. The issue is whether or not there is "irreparable injury." There is none. Hence the Court should deny defendants' motion to file an interlocutory appeal.

II

THE DECISIONS OF THE TRIAL COURT AND
THE APPELLATE DIVISION DO NOT 1)
UNDERMINE THE ATTORNEY-CLIENT
RELATIONSHIP, OR 2) HAVE A CHILLING
EFFECT ON SETTLEMENTS.

The decisions of the lower court and the Appellate Division in this matter strengthen the attorney-client relationship, and will assist counsel in entering into fully informed settlements.

Defendant Duane, Morris initially provided plaintiffs

Guido with lead counsel/partner James J. Ferrelli.

Once the initial underlying matter had been dismissed, however, Mr. Ferrelli no longer represented plaintiffs. Two different attorneys/partners, Frank Luchak and Patricia Kane Williams, took over what turned out to be an entirely new and separate lawsuit. Attorneys Luchak and Williams failed to advise plaintiffs that the proposed settlement in the second action would render their stock nearly valueless, and leave plaintiff Joseph Guido with no control of his company.¹

III

**THE APPELLATE DIVISION COGENTLY ANALYZED
PUDER AND ZIEGELHEIM, FINDING THAT
PLAINTIFFS GUIDOS' CLAIMS ARE SIMILAR TO
THOSE IN ZIEGELHEIM**

The Appellate Division analyzed the two cases of *Ziegelheim v. Apollo*, 128 N.J. 250 (1992), and *Puder v. Buechel*, 183 N.J. 428 (2005). The courts noted that in *Ziegelheim* the Supreme Court "refused to adopt a *per se* rule barring malpractice actions by dissatisfied litigants absent actual fraud." Opinion at p. 15. (Da 771).

¹ Since that time Mr. Guido has been noted to "chairman *emeritus*;" he has no day-day responsibilities, and has effectively been shut out of his own business.

The Appellate Division cited *Ziegelheim* for the proposition that settlements are encouraged under New Jersey public policy, and that in reaching a settlement clients tend to rely strongly on their counsel's legal advice:

Although we encourage settlements, we recognize that litigants rely heavily on the professional advice of counsel when they decide whether to accept or reject offers of settlement, and we insist that the lawyers of our state advise clients with respect to settlements with the same skill, knowledge, and diligence with which they pursue all other legal tasks. Opinion at p. 17, citing *Ziegelheim, supra*. (Da 773). (Da 773)

IV

THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT PLAINTIFFS GUIDO HAD NO DUTY TO MOVE TO VACATE THE UNDERLYING SETTLEMENT BEFORE FILING THIS MALPRACTICE ACTION

After carefully reviewing this issue, the Appellate Division concluded that plaintiffs Guido had no obligation to first move to set aside the underlying settlement before filing the instant action:

We see no basis in the record before us to believe that the General Equity judge would, after almost two years, have set

aside the settlement of the Guidos' General Equity action, particularly given the extensive settlement negotiations and mediation that had preceded and the fact that the judge had already enforced its terms when the parties had difficulties agreeing on the written settlement agreement.
See opinion at p. 23 (*citations omitted*; (Da 779).

After citing the cases of *Prospect Rehab. Servs. V. Squitieri*, 392 N.J. Super. 157, 163-54 (App. Div. 2007), *certif. denied*, 192 N.J. 293 (2007); *Covino v. Peck*, 233 N.J. Super. 612, 619 (App. Div. 1989), the court found that, given the specific facts of this matter, plaintiffs Guido had no obligation to move to vacate the underlying settlement:


Under the circumstances of this case, we conclude that plaintiffs had no reasonable expectation of success on a motion to set aside the General Equity settlement, and consequently had no obligation to make such an application.
Opinion at p. 24 (Da 780).

CONCLUSION

Given the well-considered opinions of the trial court and Appellate Division, plaintiffs Guido respectfully ask this Court to deny defendants' motion for leave to file an interlocutory appeal.

Respectfully submitted,

LAW OFFICES OF DONALD P. FEDDERLY

By: 
Donald P. Fedderly, Esq.
Attorney For Plaintiffs

Dated: September 10, 2009

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
 1300 Mount Kemble Avenue
 P.O. Box 2075
 Morristown, New Jersey 07962
 (973) 993-8100
 Attorneys for Defendants,
 Duane Morris, LLP, Frank A. Luchak, Esq., and Patricia Kane Williams, Esq.

JOSEPH M. GUIDO and THERESA GUIDO, husband and wife,	:	SUPERIOR COURT OF NEW JERSEY
	:	OCEAN COUNTY
Plaintiffs,	:	LAW DIVISION
	:	DOCKET NO.: OCN-L-677-07
v.	:	
	:	Civil Action
DUANE MORRIS, LLP a Limited Liability Partnership, FRANK A. LUCHAK, ESQ., PATRICIA KANE WILLIAMS, ESQ., and JOHN DOES 1 through 10,	:	ANSWER TO COMPLAINT, SEPARATE DEFENSES, DEMAND FOR STATEMENT OF DAMAGES, DESIGNATION OF TRIAL COUNSEL AND JURY DEMAND ON BEHALF OF DEFENDANTS
Defendants.	:	

Defendants, Duane Morris, LLP, Frank A. Luchak, Esq., and Patricia Kane Williams, Esq., (“Defendants”), by and through their attorneys, McElroy, Deutsch, Mulvaney & Carpenter, LLP by way of Answer to Plaintiffs, Joseph M. Guido and Theresa Guido, Complaint, state as follows:

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs’ Complaint, and leave Plaintiffs to their proofs.

2. Defendants admit the allegations contained in the first sentence of the second paragraph of Plaintiffs’ Complaint and admit that they represented Plaintiff Joseph M. Guido. Defendants deny the remainder of the allegations contained in the second sentence of the second paragraph of Plaintiffs’ Complaint. Insofar as the remainder of the allegations contained in Paragraph 2 of the Plaintiffs’ Complaint are not directed to or against Defendants, Defendants make no response thereto and leave Plaintiffs to their proofs.

Pa 1

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 3 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs. Defendants deny the allegations contained in the second sentence of Paragraph 3 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of Paragraph 3 of Plaintiffs' Complaint and leave Plaintiffs to their proofs.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

5. Defendants deny the allegations contained in Paragraph 5 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

6. Defendants deny the allegations contained in Paragraph 6 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

8. Defendants deny the allegations contained in Paragraph 8 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

9. Defendants deny the allegations contained in Paragraph 9 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

10. Defendants neither admit nor deny the allegations contained in Paragraph 10 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

Pa 2

11. Defendants neither admit nor deny the allegations contained in the first sentence of Paragraph 11 insofar as the documents referred to therein speak for themselves. Defendants deny the allegations contained in the second sentence of Paragraph 11 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

13. Defendants deny the allegations contained in Paragraph 13 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

14. Defendants neither admit nor deny the allegations contained in Paragraph 14 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

15. Defendants neither admit nor deny the allegations contained in Paragraph 15 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

16. Defendants neither admit nor deny the allegations contained in Paragraph 16 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

17. Defendants deny the allegations contained in Paragraph 17 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

18. Defendants deny that they were retained to represent Joseph Guido in a "simple exercise of the rights of a majority shareholder" and further deny any mishandling in the representation of him. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of Paragraph 18 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

Pa 3

19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

21. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

23. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

24. Defendants admit that Joseph Guido retained Duane Morris, LLP in December 2003. Defendants deny the remainder of the allegations contained in Paragraph 24 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

25. Defendants admit that they prepared an Amended and Restated Bylaws of Allstate's WorldCargo, Inc. Defendants neither admit nor deny the remainder of the allegations contained in Paragraph 25 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

26. Defendants admit that they prepared a Written Consent in Lieu of a Special Meeting of Stockholders of Allstates WorldCargo, Inc. Defendants neither admit nor deny the

remainder of the allegations contained in Paragraph 26 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

27. Defendants admit the allegations contained in Paragraph 27 of Plaintiffs' Complaint.

28. Defendants admit the allegations contained in Paragraph 28 of Plaintiffs' Complaint.

29. Defendants admit the allegations contained in Paragraph 29 of Plaintiffs' Complaint.

30. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

31. Defendants neither admit nor deny the allegations contained in Paragraph 31 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

32. Defendants neither admit nor deny the allegations contained in Paragraph 32 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

33. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 33 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs. Defendants deny the allegations contained in the second sentence of Paragraph 33 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs. Defendants admit subparts (1) through (4) of the third sentence contained in Paragraph 33 of the Plaintiffs' Complaint. Defendants deny the remainder of the allegations contained in Paragraph 33 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

34. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 34 of Plaintiffs' Complaint

and leave Plaintiffs to their proofs. Defendants deny the remainder of the allegations contained in Paragraph 34 of Plaintiffs' Complaint and leave Plaintiffs' to their proofs.

35. Defendants neither admit nor deny the allegations contained in Paragraph 35 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

36. Defendants admit the allegations contained in the first sentence of Paragraph 36 of Plaintiffs' Complaint. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 36 of Plaintiffs' Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

38. Defendants deny the allegations contained in Paragraph 38 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

39. Defendants neither admit nor deny the allegations contained in Paragraph 39 of Plaintiffs' Complaint insofar as the "record" of the June 6, 200[5] sic proceeding speaks for itself.

40. Defendants neither admit nor deny the allegations contained in Paragraph 40 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

41. Defendants neither admit nor deny the allegations contained in Paragraph 41 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

42. Defendants neither admit nor deny the allegations contained in Paragraph 42 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

43. Defendants neither admit nor deny the allegations contained in Paragraph 43 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

Pa 6

44. Defendants neither admit nor deny the allegations contained in Paragraph 44 of Plaintiffs' Complaint insofar as the documents referred to therein speak for themselves.

45. Defendants deny the allegations contained in Paragraph 45 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

COUNT I

46. Defendants deny the allegations contained in Paragraph 46 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

47. Defendants deny the allegations contained in Paragraph 47 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

48. Defendants deny the allegations contained in Paragraph 48 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

49. Defendants deny the allegations contained in Paragraph 49 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

50. Defendants deny the allegations contained in Paragraph 50 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

WHEREFORE, Defendants demand judgment and request that the Court dismiss Plaintiffs' Complaint and declare that:

- a. Defendants have no legal obligation to pay for any damages, interest, legal costs and/or other expenses associated with the action;
- b. Defendants are entitled to reasonable counsel fees and costs of suit incurred in defending this action; and
- c. Defendants are entitled to any further relief which the Court deems to be just and equitable.

COUNT II

51. Defendants repeat and reallege their responses to paragraphs 1 through 50 of their Answer hereof as if fully set forth at length herein.

52. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

53. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.


54. Defendants deny the allegations contained in Paragraph 54 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

55. Defendants deny the allegations contained in Paragraph 55 of Plaintiffs' Complaint, and leave Plaintiffs to their proofs.

WHEREFORE, Defendants demand judgment and request that the Court dismiss Plaintiffs' Complaint and declare that:

- a. Defendants have no legal obligation to pay for any damages, interest, legal costs and/or other expenses associated with the action;
- b. Defendants are entitled to reasonable counsel fees and costs of suit incurred in defending this action; and
- c. Defendants are entitled to any further relief which the Court deems to be just and equitable.

By:



Joseph P. La Sala, Esq.
**McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP**
Attorneys for Defendants
Duane Morris, LLP, Frank A. Luchak, Esq.,
and Patricia Kane Williams, Esq.

DATED: April 5, 2007

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE TO ALL COUNTS

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE TO ALL COUNTS

Plaintiffs' claims against Defendants must fail as Defendants exercised the knowledge, skill, ability and devotion ordinarily possessed and employed by members of the legal profession similarly situated, and utilized reasonable care and prudence in connection with those responsibilities.

THIRD SEPARATE DEFENSE TO ALL COUNTS

Defendants' actions or inactions, if any, were not the legal or proximate cause of any losses or damages sustained or to be incurred by Plaintiffs.

FOURTH SEPARATE DEFENSE TO ALL COUNTS

At all times relevant hereto, Defendants did not breach any duty that may have been owed to Plaintiffs.

FIFTH SEPARATE DEFENSE TO ALL COUNTS

While denying all of the allegations of the Complaint regarding liability and damages allegedly sustained by Plaintiffs, to the extent that Plaintiffs may be able to prove any such damages, they were proximately caused by intervening and/or superseding acts, negligence and/or fault of the Plaintiffs and/or other parties to this action and/or third persons over whom Defendants had no control or right of control and for whose actions Defendants are not liable.

SIXTH SEPARATE DEFENSE TO ALL COUNTS

While denying all of the allegations of the Complaint regarding liability and damages allegedly sustained by Plaintiffs, to the extent that Plaintiffs may be able to prove any negligence or fault on the part of Defendants, it was not the proximate cause of any of the damages at issue.

SEVENTH SEPARATE DEFENSE TO ALL COUNTS

While denying all of the allegations of the Complaint regarding liability and damages allegedly sustained by Plaintiffs, to the extent that Plaintiffs may be able to prove any such damages, same were solely and proximately caused as the result of the failure to exercise reasonable and ordinary care, caution and vigilance by Plaintiffs and/or other persons over whom Defendants had no control or right of control.

EIGHTH SEPARATE DEFENSE TO ALL COUNTS

While denying all of the allegations of the Complaint regarding liability and damages allegedly sustained by Plaintiffs, to the extent that Plaintiffs may be able to prove any such damages, they are the sole and proximate result of intentional, willful and/or unlawful acts of third persons, the occurrence of which was not reasonably foreseeable to Defendants.

NINTH SEPARATE DEFENSE TO ALL COUNTS

Plaintiffs' claims are barred by the doctrine of avoidable consequences.

TENTH SEPARATE DEFENSE TO ALL COUNTS

Plaintiffs' damages, if any, occurred as the direct and proximate result of Plaintiffs' voluntary and intentional acts.

ELEVENTH SEPARATE DEFENSE TO ALL COUNTS

While denying all of the allegations of the Complaint regarding liability and damages allegedly sustained by Plaintiffs, to the extent that Plaintiffs may be able to prove any such damages, it is asserted that such damages, if any, arose out of pre-existing conditions and/or as a result of certain events and/or circumstances over which Defendants had no control or right of control.

TWELFTH SEPARATE DEFENSE TO ALL COUNTS

Plaintiffs' claims are barred by the Doctrines of Laches, Waiver and/or Estoppel.

THIRTEENTH SEPARATE DEFENSE TO ALL COUNTS

Defendants reserve the right to amend their Answer to allege any and all additional counterclaims against the Plaintiffs, if applicable, and to assert additional separate defenses, if appropriate.

FOURTEENTH SEPARATE DEFENSE TO ALL COUNTS

While denying all the allegations of Plaintiffs' Complaint regarding liability and damages allegedly sustained by Plaintiffs, to the extent that Plaintiffs may be able to prove any such damages, they are not entitled to an award of costs of suit.

FIFTEENTH SEPARATE DEFENSE TO ALL COUNTS

Defendants did not deviate from accepted standards of legal practice at any time relevant hereto.

SIXTEENTH SEPARATE DEFENSE TO ALL COUNTS

Defendants reserve the right to seek an award of counsel fees and costs due to the frivolous nature of this action pursuant to N.J.S.A. 2A:15-59.1.

SEVENTEENTH SEPARATE DEFENSE TO ALL COUNTS

Plaintiffs' claims are barred by Agreement(s) entered into with Defendants in the underlying litigation, the terms and provisions of which speak for themselves.

JURY DEMAND

Defendants demand a trial by jury on all issues.

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to Rule 4:5-2, Defendants hereby request that Plaintiffs furnish a written statement of the amount of damages claimed within five (5) days.

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DESIGNATION OF TRIAL COUNSEL

Defendants hereby designate Joseph P. La Sala, Esq. as trial counsel.

REQUEST FOR PRODUCTION OF DOCUMENTS

Please take notice that in accordance with Rule 4:18-2, the undersigned requests that, within five (5) days of service hereof, Plaintiffs shall serve all documents and papers referred to in the Complaint.

By:




Joseph P. La Sala, Esq.
**McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP**
Attorneys for Defendants
Duane Morris, LLP, Frank A. Luchak, Esq.,
and Patricia Kane Williams, Esq.

DATED: April 5, 2007

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to Rule 4:5-1, it is stated that the matter in controversy is not related to any other actions pending in the Superior Court of the State of New Jersey. Further, other than the parties set forth in this pleading, we know of no other parties who should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended Certification if there is a change in the facts stated in this original Certification.

By:



Joseph P. La Sala, Esq.
**McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP**
Attorneys for Defendants
Duane Morris, LLP, Frank A. Luchak, Esq.,
and Patricia Kane Williams, Esq.

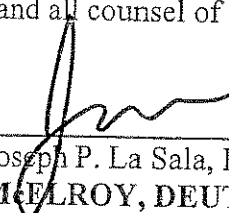
DATED: April 5, 2007

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CERTIFICATION OF SERVICE

I hereby certify that on this date the original and one copy of the Answer to the Complaint, Separate Defenses, Jury Demand, Demand for Statement of Damages, Designation of Trial Counsel, and Request for Documents on Behalf of Defendants Duane Morris, LLP, Frank A. Luchak, Esq., and Patricia Kane Williams, Esq. have been served within the time period allowed by R. 4:6, via hand delivery, upon the Court and all counsel of record.

By:



Joseph P. La Sala, Esq.
**MCELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP**
Attorneys for Defendants
Duane Morris, LLP, Frank A. Luchak, Esq.,
and Patricia Kane Williams, Esq.

DATED: April 5, 2007

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**CIVIL CASE INFORMATION STATEMENT
(CIS)**

Use for Initial Law Division
Civil Part pleadings (not motions) under Rule 4:5-1
Pleading will be rejected for filing, under Rule 1:5-6(c),
If information above the black bar is not completed or
if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHG/CK NO.

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

1. ATTORNEY/PRO SE NAME

Joseph P. La Sala, Esq.

2. TELEPHONE NUMBER

(973) 993-8100

3. COUNTY OF VENUE

Ocean

4. FIRM NAME (if applicable)

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

5. DOCKET NUMBER (When available)

OCN-L-677-07

6. OFFICE ADDRESS

1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075

7. DOCUMENT TYPE

ANSWER

8. JURY DEMAND

YES NO

9. NAME OF PARTY (e.g., John Doe,
Plaintiff)

Duane Morris, LLP, Frank A. Luchak,
Esq., Patricia Kane Williams, Esq.

10. CAPTION

Guido v. Duane Morris, LLP, et als.

11. CASE TYPE NUMBER
(See reverse side for listing)

607

12. IS THIS A PROFESSIONAL MALPRACTICE CASE? YES NO
IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW
REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.

13. RELATED CASES
PENDING? YES NO

14. IF YES, LIST DOCKET NUMBERS

15. DO YOU ANTICIPATE
ADDING ANY PARTIES YES NO
(arising out of same transaction
or occurrence)?

16. NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF
KNOWN

NONE
 UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

17.A. DO PARTIES HAVE A CURRENT,
PAST OR RECURRENT
RELATIONSHIP? YES NO

IF YES, IS THAT RELATIONSHIP

EMPLOYER-EMPLOYEE FRIEND/NEIGHBOR OTHER (explain) _____
 FAMILIAL BUSINESS

18.B. DOES THE STATUTE GOVERNING THIS
CASE PROVIDE FOR PAYMENT OF FEES
BY THE LOSING PARTY?

YES NO

19. USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL
MANAGEMENT OR ACCELERATED DISPOSITION:

 20. DO YOU OR YOUR CLIENT NEED
ANY DISABILITY ACCOMMODATIONS? YES NO

IF YES, PLEASE IDENTIFY THE
REQUESTED ACCOMMODATION: _____

21. WILL AN INTERPRETER BE NEEDED?

YES NO

IF YES, FOR WHAT LANGUAGE: _____

22. ATTORNEY SIGNATURE

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SIDE 2

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I – 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

Track II – 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE – PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 699 TORT – OTHER

Track III – 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV – Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Mass Tort (Track IV)

- | | |
|---|-----------------------------------|
| 240 REDUX/PHEN-FEN (formerly "DIET DRUG") | 268 MANUFACTURING GAS PLANT (MGP) |
| 241 TOBACCO | 271 ACCUTANE |
| 248 CIBA GEIGY | 272 BEXTRACE/CELEBREX |
| 264 PPA | 601 ASBESTOS |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 619 VIOXX |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

- Verbal Threshold Putative Class Action Title 59

Effective: 09/01/2006, CN: 10517-English

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