

Edward R. Grossi, Esq.
Attorney ID 03156-2009
LAW OFFICE OF EDWARD R. GROSSI, LLC
7 North Mountain Avenue
Montclair, New Jersey 07042
(973) 419-6481
Attorney for Plaintiffs

SUPERIOR COURT OF NJ
CIVIL DIVISION
ESSEX VICINAGE

2015 NOV -2 P 1:33

FINANCE DIVISION
RECEIVED/FILED
28

| | | |
|--|---|--------------------------------|
| DONNA CHINN and THOMAS McGEE, | : | SUPERIOR COURT OF NEW JERSEY |
| Individually and as Class Representatives, | : | LAW DIVISION: ESSEX COUNTY |
| | : | DOCKET NO.: ESX-L-6629-15 |
| Plaintiffs, | : | |
| | : | CIVIL ACTION |
| vs. | : | |
| | : | FIRST AMENDED COMPLAINT FOR |
| STEPHEN SNYDER, ESQ.; SNYDER & | : | LEGAL MALPRACTICE |
| SNYDER; MADELINE HOUSTON, ESQ.; | : | AND OTHER CAUSES OF ACTION AND |
| HOUSTON & TOTARO; and JOHN DOES, | : | JURY DEMAND |
| ESQS., 1-10 and JANE DOES, ESQS., 1-10 : | : | |
| (a fictitious designation for presently | : | |
| unknown licensed attorneys, professionals | : | |
| and/or unknown persons or entities), | : | |
| | : | |
| Defendants. | : | |

Plaintiffs, Donna Chinn and Thomas McGee, individually and on behalf of the Class Members and Subclass Members similarly situated, as and for their Complaint against the Defendants, allege and state as follows:

I. PARTIES

1. At all relevant times, Plaintiff, Donna Chinn ("Chinn"), resided at 6115 Tidewater Drive, Apt. 252, Norfolk, State of Virginia 23509. Chinn brings this action individually, as a Class Representative, and as a Representative of the Subclass of twenty-nine (29) operations plaintiffs who were represented by Defendants at the time of a settlement in consolidated litigation captioned *In re: Prudential Life*

Insurance Company of American Tort Litigation, Case Number 288, Master Docket Number BER-L-2251-10.

2. At all relevant times, Plaintiff, Thomas McGee (“McGee”), resided at 275 Spring Street, Apt. 11D, Red Bank, County of Monmouth, State of New Jersey 07701. McGee brings this action individually, as a Class Representative and as a Representative of the Subclass of forty-three (43) agent plaintiffs who were represented by Defendants at the time of a settlement in consolidated litigation captioned *In re: Prudential Life Insurance Company of American Tort Litigation*, Case Number 288, Master Docket Number BER-L-2251-10.
3. At all times hereinafter mentioned the law firm of Snyder & Snyder (hereinafter referred to as “S&S”), was either a professional corporation, a partnership, L.L.C. or other entity practicing law in the State of Maryland with its principal place of business at 1829 Reisterstown Road, Baltimore, Maryland 21208.
4. At all times hereinafter mentioned Stephen Snyder, Esquire, (hereinafter referred to as “Snyder”) was an attorney licensed to practice law in the State of Maryland and an agent, employee, shareholder, partner and/or independent contractor engaged in a professional relationship with Snyder & Snyder and as such is liable for all acts of the entity.
5. At all times hereinafter mentioned the law firm of Houston & Totaro (hereinafter referred to as “H&T”), was either a professional corporation, a partnership, L.L.C. or other entity practicing law in the State of New Jersey with its principal place of business at 175 Fairfield Avenue, Unit 1-D, West Caldwell, New Jersey 07006.

H&T acted as local counsel for S&S and Snyder and were responsible for them and for their conduct related to the Prudential litigation.

6. At all times hereinafter mentioned Madeline Houston, Esquire (hereinafter referred to as "Houston") was an attorney licensed to practice law in the State of New Jersey and an agent, employee, shareholder, partner and/or independent contractor engaged in a professional relationship with H&T. Houston acted as local counsel for S&S and Snyder and were responsible for them and for their conduct related to the Prudential litigation.
7. Plaintiffs' case is brought individually and as a Class Action pursuant to R. 4:32 on behalf of a Class consisting of all persons who were represented by Defendants at the time of a settlement in consolidated litigation captioned *In re: Prudential Life Insurance Company of America Tort Litigation*, Case Number 288, Master Docket Number BER-L-2251-10. Additionally, the Action is brought on behalf of two Subclasses: the first consisting of forty-three (43) agent plaintiffs with McGee acting as Subclass Representative, and the second consisting of twenty-nine (29) operations plaintiffs with Chinn acting as Subclass Representative.
8. John and Jane Does (1-10) are persons and/or entities whose identities or deeds are not presently known to Plaintiffs, who Plaintiffs believe conspired together with the named Defendants for the tortious and illegal purposes which will be described below. Plaintiffs will amend this Complaint to join such persons or entities as parties hereto when their identities and deeds have become sufficiently known through the course of discovery in this action.

II. PLAINTIFFS BRING THIS CASE INDIVIDUALLY AND AS A CLASS ACTION

9. Members of the Class are so numerous that joinder of all Members is impracticable. The Class consists of at least seventy-two (72) Plaintiffs and consists of two (2) Subclasses. One subclass consists of forty-three (43) agent plaintiffs, and the other consists of and twenty-nine (29) operation plaintiffs.
10. Plaintiffs' claims are typical of the claims of the Class and the respective Subclasses. Plaintiffs and all Class Members sustained damages as a result of Defendants' wrongful conduct complained of herein. Plaintiffs and all Class Members are entitled to an award of damages in the amount of the improper costs, expenses and fees charged. The Class Members refer to Plaintiffs and those other clients represented by Defendants in the consolidated litigation captioned *In re: Prudential Life Insurance Company of America Tort Litigation*, Case Number 288, Master Docket Number BER-L-2251-10.
11. All of Defendants' clients eventually on Defendants' advice agreed to a settlement resulting from a daylong mediation on November 11, 2010. All of Defendants' clients entered into this confidential settlement.
12. Plaintiffs received settlement monies from which were deducted Defendants' legal fees and supposed costs and expenses.
13. Several of the costs and expenses deducted by the Defendants were not properly costs and expenses but rather were payments to other lawyers to do legal work or act as

local counsel or were costs and expenses not properly attributable to the Plaintiffs' claims or authorized by Plaintiffs.

14. The improper and illegal deduction of costs and expenses are contrary to New Jersey law.
15. Plaintiffs will fairly and adequately protect the interests of the Class Members and have retained counsel competent to prosecute the Class litigation. Plaintiffs have no interests that are adverse or antagonistic to those of the Class.
16. A Class Action is superior to other available method for the fair and efficient adjudication of this controversy.
17. All costs were charged to the clients proportionally and reflected costs unattributable to Plaintiffs' claims.
18. Common questions of law and fact exist as to all Class Members and they predominate over any questions affecting solely individual Members of the Class.

**III. DEFENDANTS CHARGED PLAINTIFFS COSTS AND EXPENSES
IN EXCESS OF THOSE PERMITTED BY LAW AND GAVE
NEGLIGENT ADVICE REGARDING THE SETTLEMENT**

19. Defendants were retained on the basis of a 50% contingency fee and deducted expenses which were not costs, but rather were legal fees and for travel and lodging to New Jersey not spelled out in the retainer agreement.
20. The improper expenses charged were supposed expert/consultant fees for a New Jersey law firm, which, in fact, was local counsel for the Defendants.
21. Defendants negligently charged Plaintiffs expenses characterized as reimbursement of costs and attorney's fees paid to LeClairRyan to act as local counsel.

22. Defendants advised Plaintiffs to accept settlements that did not reflect the value of their cases.
23. Upon information and belief, Defendants failed to comply with RPC 1.5(e) and indicate that other attorneys were sharing in the attorney's fees they were being paid.
24. Upon information and belief, certain Members of the Class had costs charged by Defendants and said costs have been returned to those clients in exchange for the clients' silence.

COUNT ONE
LEGAL MALPRACTICE

1. Plaintiffs repeat, reiterate and reallege Paragraphs 1 through 23 of the Complaint as if fully set forth herein.
2. The Defendants had an attorney-client relationship with Plaintiffs and the Class Members. Thus, the Defendants had the duty to exercise the knowledge, skill and ability possessed and employed by members of the legal profession similarly situated in connection with the discharge of their responsibilities to Plaintiffs and to utilize reasonable care and prudence in connection with those responsibilities.
3. The Defendants breached their duties to Plaintiffs and the Class Members to utilize reasonable care and prudence in their representation of Plaintiffs and Class Members, which negligence was a direct and proximate cause of damages suffered by Plaintiffs and Class Members. The Defendants neglected and mismanaged Plaintiffs' and Class Members' cases and are therefore liable for all damages.

4. Defendants conspired with each other, causing Defendants to commit legal malpractice in the representation of Plaintiffs and other Class Members, for which they are jointly and severally liable.
5. Plaintiffs and Class Members suffered harm and damages as a result of Defendants' negligence, legal malpractice, and participation in the conspiracy to breach the Defendants' fiduciary duties to Plaintiffs and Class Members.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly, severally, and in the alternative, for:

- a. Compensatory damages;
- b. Disgorgement of all fees received the Defendants from their representation of Plaintiffs and other Class Members;
- c. Reasonable attorney's fees, filing fees and costs of suit;
- d. Interest;
- e. Punitive damages; and/or
- f. Any further relief which the Court may deem just, proper, and/or equitable.

COUNT TWO
BREACH OF FIDUCIARY DUTY

1. Plaintiffs repeat, reiterate and reallege each and every Paragraph of the First Count of the Complaint as though the same were set forth at length herein.
2. There was an attorney-client relationship between Plaintiffs and the Defendants. A fiduciary relationship such as the attorney-client relationship is one of special trust and confidence. The law requires that all dealings between an attorney and client be characterized by the utmost good faith, candor and honesty. An attorney must

affirmatively disclose to his client all material facts bearing on the client's case, as well as the legal consequences flowing from the facts. As such Defendants owed Plaintiffs a duty of loyalty.

3. The Defendants breached their fiduciary duties to Plaintiffs and the other Class Members, and John and Jane Does (1-10) by active participation, aided and abetted and conspired to cause the Lawyer Defendants to breach their professional and fiduciary duties to Plaintiffs.
4. Plaintiffs suffered harm and damages as a result of Defendants' breaches of fiduciary duties and participation in the conspiracy to defraud Plaintiffs. The conduct of Defendants was malicious and/or in wanton and willful disregard of Plaintiffs' rights. Defendants knew or should have known that their actions would harm Plaintiffs and were recklessly indifferent to the consequences of their actions to Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally, and in the alternative, for:

- a. Compensatory damages;
- b. Disgorgement of all fees received by the Defendants from their representation of Plaintiffs and the other Class Members;
- c. Reasonable attorney's fees, filing fees and costs of suit;
- d. Interest;
- e. Punitive damages; and/or
- f. Any further relief which the Court may deem just, proper, and/or equitable.

COUNT THREE
BREACH OF CONTRACT

1. Plaintiffs repeat, reiterate and reallege each and every Paragraph of Counts One and Two of the Complaint as though the same were set forth at length herein.
2. The Snyder Defendants breached their contract with Plaintiffs by among other things, charging legal fees as costs.
3. Plaintiffs suffered harm and damages as a result of the breaches of contract and the participation in the conspiracy to breach the contract. The conduct of Defendants was malicious and/or in wanton and willful disregard of the Plaintiffs' rights. Defendants knew or should have known that their actions would harm Plaintiffs and were recklessly indifferent to the consequences of their actions to Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly, severally, and in the alternative, for:

- a. Compensatory damages;
- b. Disgorgement of all fees received by the Defendants from their representation of Plaintiffs and other Class Members.
- c. Reasonable attorney's fees, filing fees and costs of suit;
- d. Interest;
- e. Punitive damages; and/or
- f. Any further relief which the Court may deem just, proper, and/or equitable.

COUNT FOUR
UNJUST ENRICHMENT

1. Plaintiffs repeat, reiterate and reallege each and every Paragraph of the First, Second and Third Counts of the Complaint as though the same were set forth at length herein.
2. Based upon the foregoing, the Defendants have been unjustly enriched to the detriment of the Plaintiffs and Class Members in that they received payment for costs that they were not entitled to receive.
3. By reason of Defendants' unjust enrichment, Plaintiffs and Class Members have incurred financial loss.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly, severally, and in the alternative, for:

- a. Compensatory and consequential damages;
- b. Disgorgement of all monies paid to Defendants;
- c. Attorney's fees and costs of suit;
- d. Any further relief which the Court may deem just, proper, and/or equitable.

COUNT FIVE
DEMAND FOR ACCOUNTING

1. Plaintiffs repeat, reiterate and reallege each and every Paragraph of the First, Second, Third and Fourth Counts of the Complaint as though the same were set forth at length herein.
2. The Lawyer Defendants represented that they would pay all costs and expenses. This was an intentional misrepresentation.

3. Plaintiffs never received any accounting of the purported costs incurred.
4. The Defendants were required to provide Plaintiffs with a breakdown of expenses pursuant to the Rules of Professional Conduct.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly, severally, and in the alternative, for:

- a. An accounting of all costs purportedly incurred and charged to Plaintiff and other Class Members;
- b. An accounting of all funds distributed pursuant to the aggregate settlement;
- c. Disgorgement of all costs charged by the Defendants;
- c. Reasonable attorney's fees, filing fees, and costs of suit;
- d. Interest;
- e. Punitive damages; and/or
- f. Any further relief which the Court may deem just, proper, and/or equitable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is hereby advised that Edward R. Grossi, Esq., is designated as trial counsel herein.

JURY DEMAND

Plaintiffs hereby demand a trial by a jury of twelve on all issues so triable.

Dated: 10/30/15




Edward R. Grossi, Esq.
Attorney for Plaintiffs

CERTIFICATION

This is to certify that the within matter is not the subject of any other action pending in any court or arbitration proceeding.

Dated:

10/30/15



Edward R. Grossi, Esq.
Attorney for Plaintiffs

SUPERIOR COURT OF NJ
CIVIL DIVISION
ESSEX VICINAGE
2015 NOV -2 P 1:33

FINANCE DIVISION
RECEIVED FILED
23