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ESTATE OF MARK D. KENTOS,

Plaintiff,

v.

RICHARD D. SCHIBELL, ESQ.,
SCHIBELL & MENNIE, LLC and
SCHIBELL, MENNIE & KENTOS, LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
MONMOUTH COUNTY

DOCKET NO. MON-L-3180-17

Civil Action

ERIN KENTOS,

Plaintiff,

v.

RICHARD D. SCHIBELL, ESQ. and
SCHIBELL & MENNIE, LLC,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PROBATE PART
MONMOUTH COUNTY
Docket No. MON-P-67-17

Civil Action

**AMENDED COMPLAINT JURY DEMAND,
DESIGNATION OF TRIAL COUNSEL, R.
4:5-1 CERTIFICATION**

v.

MARK J. FELDMAN

Plaintiff Estate of Mark D. Kentos, by way of Amended Complaint against Defendants,
Richard D. Schibell, Esq., Schibell & Mennie, LLC and Schibell, Mennie & Kentos, LLC, states:

VENUE AND JURISDICTION

1. Venue is laid pursuant to and in accordance with R. 4:3-1(a)(4).

2. Jurisdiction is predicated upon the relief sought sounding in contract and tort between New Jersey residents.

PARTIES

3. Plaintiff Estate of Mark D. Kentos (“*Estate*” or “*Plaintiff*”) represents the interests of the late Mark D. Kentos, Esq. (“*Kentos*”), a former employee, member and/or partner of the law firm of Schibell, Mennie & Kentos LLC, who died on November 6, 2016.

4. Kentos’ mother, Mary Kentos, is the executrix of the Estate and prosecutes this action on behalf of the Estate.

5. On November 21, 2006, the Law Offices of Schibell, Mennie & Kentos, LLC was formed with an office located at 1806 Highway 35, Oakhurst, New Jersey 07755.

6. On December 5, 2006, the name of the Law Offices of Schibell, Mennie & Kentos, LLC was changed to Schibell, Mennie & Kentos, LLC (“*SMK*”).

7. Richard D. Schibell, Esq. (“*Schibell*”), John Mennie, Esq. (“*Mennie*”) and Kentos were members and/or partners of Schibell, Mennie & Kentos, LLC or otherwise had an ownership interest in Schibell, Mennie & Kentos, LLC. Schibell, Mennie, Schibell & Mennie, LLC and Schibell, Mennie & Kentos, LLC shall collectively be referred to as “*Defendants*.”

8. On January 3, 2017, the Certificate of Formation for Schibell, Mennie & Kentos, LLC was amended and filed with the State Treasurer “To change name of law firm from Schibell, Mennie & Kentos, LLC to Schibell & Mennie, LLC in that Mark Kentos died November 6, 2016.”

SPECIFIC ALLEGATIONS

9. Kentos was employed as an attorney of Schibell, Mennie & Kentos LLC.

10. Kentos was also a member of Schibell, Mennie & Kentos, LLC, which referred to him as a partner on its website and other marketing materials and which utilized his name in the law firm's name. Kentos owned a 1% membership interest in Schibell, Mennie & Kentos, LLC.

11. At the time of his death on November 6, 2016, Kentos resided at 20 Buena Vista Drive, Freehold, New Jersey, 07728.

12. Kentos had three children at the time of his death.

13. In connection with his employment and as a member and partner of Schibell, Mennie & Kentos LLC, the firm agreed to provide Kentos with certain employee benefits in addition to his compensation, including life insurance coverage.

14. In or about December 2008, Kentos applied for and was issued a life insurance policy by Northwestern Mutual, Policy No. 18464894, with a death benefit in the amount of \$1,500,000.00 (the "*Policy*").

15. In the application for the Policy, Schibell, on behalf of Schibell, Mennie & Kentos, LLC, declared that the following information regarding the Policy was true:

- a. \$500,000 of the life insurance benefits was to be used to fund a business buy / sell agreement with Kentos;
- b. There was in existence a buy / sell agreement; and
- c. Kentos owned a 1% ownership interest in Schibell, Mennie & Kentos, LLC which business had a value of \$8,000,000.

16. Schibell signed the application on behalf of Schibell, Mennie & Kentos, LLC. The Application provided, directly below Schibell's signature, that "Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties."

17. All or a portion of the Policy was intended for the benefit of Kentos and his children.

18. Schibell, Mennie & Kentos, LLC did not provide any other life insurance to Kentos and the Policy was intended, in part, to be an employee benefit.

19. In a Premarital Agreement dated October 22, 2012 between Kentos and Erin Kelly (the "*Prenuptial Agreement*"), Kentos listed the Policy as his personal asset, along with another life insurance policy issued to him by Northwestern Mutual with a similar death benefit of \$1.5 million.

20. In reliance on the Policy being a personal asset of Kentos, a Property Settlement Agreement dated April 10, 2014 was prepared which provided, "Furthermore, Mr. Kentos currently has life insurance in the aggregate amount of \$3,000,000, in two separate policies with Northwestern Mutual Life Insurance (one personal policy and one business 'buy out' policy)."

21. In the Property Settlement Agreement, Kentos was required to maintain his existing life insurance policies pursuant to the terms of the Prenuptial Agreement, which included the Policy. Under the Property Settlement Agreement, Kentos' youngest child was to share equally with her siblings in Kentos' insurance policies, including the Policy.

22. A Judgment of Divorce was prepared by Schibell, Mennie & Kentos, LLC in the matter of Mark Kentos v. Erin Kentos, Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-921-15A (the "*Family Part Action*"), and was signed by the Honorable James J. McGann, J.S.C. on June 29, 2015.

23. The Judgment of Divorce, prepared by Schibell, Mennie & Kentos, LLC, expressly incorporated the Prenuptial Agreement and the Property Settlement Agreement and constituted a

judicial order that Kentos maintain the Policy and the second Northwestern Mutual life insurance policy for the equal benefit of his three children.

24. The Judgment of Divorce, prepared by Schibell, Mennie & Kentos, LLC, expressly recognized that the Policy was for the benefit of Kentos and his children and was not for the benefit of Schibell, Mennie & Kentos, LLC. In entering the Judgment of Divorce, the court relied upon and accepted as true the terms of the Prenuptial Agreement and Property Settlement Agreement providing that the Policy was for the benefit of Kentos and his children.

25. The Prenuptial Agreement, as incorporated in the Property Settlement Agreement and Judgment of Divorce, provided that Kentos is a 1% equity partner in Schibell, Mennie & Kentos, LLC.

26. Upon Kentos' death, Schibell, Mennie & Kentos, LLC undertook to represent the Estate. Defendants' representation of the Estate lasted from roughly November 14, 2016 through February 6, 2017. Defendants opened a file for the Estate of Mark Kentos and assigned a firm file number to the file.

27. Mary Kentos met with Mennie on November 14, 2016. Mennie prepared a memorandum to the file dated November 15, 2016 (the "*November 15, 2016 Memo*").

28. In the November 15, 2016 Memo, Mennie listed as an asset of the Estate Kentos' 1% equity interest in Schibell, Mennie & Kentos, LLC.

29. In the November 15, 2016 Memo, Mennie further wrote, after reviewing the Judgment of Divorce, Prenuptial Agreement and Property Settlement Agreement, that "of utmost importance is Article 6 of the Property Settlement Agreement which required him [Kentos] to maintain his existing life insurance policies [plural, including the Policy] pursuant to the terms of

the Prenuptial Agreement [which] required [the youngest child] to be granted same amount as to her siblings.”

30. Mennie and Mary Kentos discussed the Kentos family’s desire to secure Policy proceeds during the time the Estate was represented by Defendants.

31. Mennie wrote a series of letters on behalf of the Estate during that timeframe which affirmed that Defendants represented Mary Kentos as executrix of the Estate.

32. On November 7, 2016, unbeknownst to Mennie, Kentos’ death was reported to Northwestern Mutual by someone at Schibell, Mennie & Kentos, LLC.

33. Schibell exchanged correspondence with Northwestern Mutual during November and December 2016, submitting a Beneficiary Claim Statement with a certified copy of Kentos’ death certificate and listing Schibell’ s home address as the beneficiary address.

34. Mary Kentos provided SMK with copies of the death certificate and Schibell obtained Kentos’ certified death certificate through the firm’s representation of the Estate.

35. At Schibell’s request, the Policy proceeds were delivered by check to his personal residence rather than to the place of business of SMK.

36. The Policy proceeds of \$1,500,342.99 were deposited into Defendants’ special escrow account at First Constitution Bank on December 22, 2016.

37. Schibell wrote checks out of the special escrow account for \$100,000 and \$400,000 on December 27, 2016 and December 29, 2016 respectively to pay firm obligations.

38. Schibell also wrote a \$1,000,000 check to himself out of the special escrow account on December 23, 2016.

39. Schibell did not tell Mennie he had obtained the proceeds of the Policy, that the check was delivered to his personal residence, and that he had distributed the entire proceeds of the Policy, including by paying \$1 million to himself.

40. Schibell took the entire proceeds of the Policy and distributed the proceeds as aforesaid, at the same time that SMK was representing the Estate. Schibell did not disclose to Mennie or to the Estate that he was obtaining and distributing the full Policy proceeds while SMK continued to represent the Estate.

41. The Policy was in effect, with all premiums paid, at the time of Kentos' death on November 6, 2016. It was the intention and expectation of Kentos and Defendants that upon Kentos' death, certain benefits under the Policy would be paid for the benefit of the Estate.

42. The entire \$1,500,000 in Policy proceeds were paid directly to Schibell after Kentos' death, at his personal residence, and no portion of the Policy proceeds have been paid for the benefit of Kentos' children, as intended.

43. On March 21, 2017, counsel for the Estate wrote a letter to Mennie advising of the Estate's position with regard to the Policy. The letter requested that certain documents be provided to the Estate, including information regarding the Policy, a copy of same, the application and all related documents.

44. Defendants refused to provide any of the documents requested by Plaintiff. Instead, on April 13, 2017, counsel for Schibell wrote a letter ("*April 13, 2017 Letter*") in which Schibell maintained that the Estate of Kentos has no interest in the Policy and no entitlement to the proceeds of same. Despite the application for the Policy being signed by Schibell, despite the Judgment of Divorce prepared by Schibell, Mennie & Kentos, LLC, which unequivocally established that all or some of the benefits of the Policy were intended for Kentos and his family, and despite Mennie's

recognition in his November 15, 2016 Memo of the “utmost importance” of the provision in the Property Settlement Agreement requiring Kentos to maintain the Policy for the benefit of his children, Schibell maintained, via the April 13, 2017 Letter, that the Policy was a key man policy taken out to reimburse the firm for anticipated expenses associated with the possible death of Kentos.

45. Schibell has wrongfully maintained that he is solely entitled to all of the proceeds of the Policy.

46. Schibell has wrongfully taken possession of the full Policy proceeds of \$1.5 million notwithstanding Plaintiff’s request that the proceeds be paid to the Estate.

47. Defendants have refused to surrender any portion of the Policy proceeds to the Estate despite repeated requests that they do so.

48. By taking possession of the entirety of the \$1.5 million in life insurance proceeds, Schibell has deprived Kentos’ minor children of the money which otherwise would have been paid to them.

49. Discovery in this matter has revealed that Plaintiff is entitled to at least \$500,000 in Policy proceeds.

50. Defendants have also failed to pay Kentos for other compensation to which he was entitled as an employee and member of Schibell, Mennie & Kentos, LLC, including but not limited to his 1% equity interest in Schibell, Mennie & Kentos, LLC and for files that he originated which remained with SMK after his death.

FIRST COUNT
(Breach of Contract)

51. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 50 of the Amended Complaint as if more fully set forth herein.

52. Kentos and Schibell, Mennie & Kentos LLC had a valid and enforceable agreement providing that the firm would provide compensation to Kentos in consideration for the legal services that Kentos provided for the firm. Such compensation included, but is not limited to, salary, referral fees, bonuses and other employee benefits, including maintaining the Policy for the benefit of Kentos and his family and providing Kentos with a 1% equity interest in the firm.

53. Schibell, through the April 13, 2017 Letter, denied that Kentos was entitled to the Policy proceeds despite the fact that: (1) in the application for the Policy signed by Schibell it was expressly represented that there was a buy / sell agreement with Kentos which was to be funded by \$500,000 of the Policy proceeds; (2) the Judgment of Divorce prepared by Schibell, Mennie & Kentos, LLC expressly incorporated the terms of the Prenuptial Agreement and Property Settlement Agreement in which it was acknowledged that the Policy was for the benefit of Kentos who was obligated to maintain the Policy for the benefit of his children; and (3) in the November 15, 2016 Memo Mennie recognized the “utmost importance” of this provision.

54. Schibell further denied that Kentos had a 1% interest in Schibell, Mennie & Kentos, LLC, despite the fact that: (1) in the November 15, 2016 Memo — at a time when Schibell, Mennie & Kentos, LLC was representing the Estate — Mennie acknowledged that Kentos was a “1% equity partner” in Schibell, Mennie & Kentos, LLC and that this was a personal asset of Kentos; (2) in the application for the Policy Schibell represented that Kentos was a 1% equity owner of the firm; (3) Defendants have used Kentos’ name in the name of the firm, and to this date still have a sign in the front of their office building continuing to use Kentos’ name; (4) the

Prenuptial Agreement, Property Settlement Agreement and, by incorporation, the Judgment of Divorce prepared by Schibell, Mennie & Kentos, LLC, provide that Kentos owned a 1% interest in the firm; and (5) Defendants have acknowledged that Kentos was a 1% equity owner of the firm.

55. Defendants have breached their contractual obligation to provide Kentos with all of the compensation and employee benefits that he was promised, including but not limited to the proceeds of the Policy upon his death for the benefit of his children, his 1% equity interest in the firm and other compensation.

56. Defendants have further refused to provide documents or meaningful answers to Plaintiff's inquiries regarding the compensation due to Kentos.

57. As a direct and proximate result of Defendants' breach of the agreement with Kentos, Plaintiff has suffered and will continue to suffer damages.

SECOND COUNT
(Breach of Covenant of Good Faith and Fair Dealing)

58. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 57 of the Amended Complaint as if more fully set forth herein.

59. Defendants' actions constitute a breach of the covenant of good faith and fair dealing, an implied term of the employment contract between Kentos and Schibell, Mennie & Kentos, LLC, with regard to the compensation and employee benefits to be paid to Kentos, including, but not limited to, the proceeds of the Policy, his 1% equity interest in the firm and other compensation payable to him.

60. As a direct and proximate result of Defendants' breach of the covenant of good faith and fair dealing, Plaintiff has suffered and will continue to suffer damages.

THIRD COUNT
(Conversion)

61. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 60 of the Amended Complaint as if more fully set forth herein.

62. Plaintiff has a valid and cognizable right to at least \$500,000 in Policy proceeds and to a 1% equity interest in Schibell, Mennie & Kentos, LLC, now known as Schibell & Mennie, LLC.

63. Defendants were advised expressly of Plaintiff's valid and cognizable right to the Policy proceeds and of his 1% equity interest.

64. Defendants have misappropriated, converted and wrongfully exercised dominion and control over the Policy proceeds, refusing to surrender the proceeds to Plaintiff despite repeated requests that they do so, and have wrongfully converted the life insurance proceeds intended to be paid to Kentos' family.

65. Defendants have further wrongfully converted to their own use Kentos' 1% equity interest in Schibell, Mennie & Kentos, LLC, now known as Schibell & Mennie, LLC, without paying Kentos or his Estate for such interest.

66. As a direct and proximate result of Defendants' wrongful conversion, Plaintiff has suffered and will continue to suffer damages.

FOURTH COUNT
(Unjust Enrichment)

67. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 66 of the Amended Complaint as if more fully set forth herein.

68. Defendants have no right to the Policy proceeds.

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69. It would be inequitable to permit the Defendants to retain the Policy proceeds without paying Plaintiff compensation equivalent to the amount of Policy proceeds received by Defendants.

70. Defendants have been unjustly enriched by taking possession of the insurance proceeds which were intended to be paid to Kentos' children.

71. Defendants have been further unjustly enriched by retaining the other compensation and employee benefits to which Kentos was entitled, including the 1% equity interest in Schibell, Mennie & Kentos, LLC, now known as Schibell & Mennie, LLC.

72. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff has suffered and will continue to suffer damages.

FIFTH COUNT
(Promissory Estoppel)

73. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 72 of the Amended Complaint as if more fully set forth herein.

74. Defendants promised Kentos that Schibell, Mennie & Kentos, LLC, in which Kentos was a named partner, would maintain a portion of the Policy for the benefit of Kentos. The Policy was applied for and accepted in reliance upon that promise.

75. Kentos relied to his detriment upon the clear and definite promise by Defendants that they would maintain a portion of the Policy for Kentos' benefit and he did not obtain a separate life insurance policy. In reliance upon Defendants' promise, Kentos did not obtain a separate life insurance policy for the benefit for his youngest child, who may be left with no life insurance proceeds if Defendants are allowed to keep the proceeds of the Policy wrongfully paid to them.

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76. Kentos further relied on the promise that the Policy would be maintained for his benefit and his family in entering into the Property Settlement Agreement and Prenuptial Agreement pursuant to which he agreed to maintain the Policy and in agreeing to the Judgment of Divorce which incorporated the Prenuptial Agreement and the Property Settlement Agreement.

77. As a result of their wrongful actions as aforesaid, Defendants are estopped from asserting any right to or interest in the proceeds of the Policy.

SIXTH COUNT
(Judicial Estoppel)

78. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 77 of the Amended Complaint as if more fully set forth herein.

79. The Judgment of Divorce was prepared by Schibell, Mennie & Kentos, LLC, attorneys for Kentos.

80. The Judgment of Divorce provided in relevant part:

The Property Settlement Agreement last signed on April 10, 2014 and annexed hereto as Exhibit J1 and the Prenuptial Agreement last signed on October 22, 2012 and annexed hereto as Exhibit J2 are hereby made a part of this Judgment of Divorce and shall not merge with but shall survive this Judgment of Divorce and the parties are hereby directed to comply with the terms of said agreements.

81. The Prenuptial Agreement, which was incorporated into the Judgment of Divorce, provided, "Mr. Kentos currently has Life Insurance in the aggregate amount of \$3,000,000 in two separate policies with Northwestern Mutual Life Insurance (one personal policy and one business 'buy out' policy [the Policy])."

82. The Prenuptial Agreement further provided that Kentos owned 1% of Schibell, Mennie & Kentos, LLC.

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83. In seeking and obtaining the Judgment of Divorce, Schibell, Mennie & Kentos, LLC, and Kentos, as a member, employee and agent of Schibell, Mennie & Kentos, LLC successfully asserted that the terms of the Prenuptial Agreement and Property Settlement Agreement were true and accurate.

84. In seeking judicial approval of the Judgment of Divorce, Schibell, Mennie & Kentos, LLC, and Kentos as a member, employee and agent of Schibell, Mennie & Kentos, LLC, and by requesting that the terms of the Prenuptial Agreement and Property Settlement Agreement be incorporated into the Judgment of Divorce, requested that the court rely upon the representations in the Prenuptial Agreement and Property Settlement Agreement.

85. In entering the Judgment of Divorce in the Family Part Action, the court relied upon the positions asserted by Schibell, Mennie & Kentos, LLC, as expressed in the Prenuptial Agreement and Premarital Agreement, which Schibell, Mennie & Kentos, LLC expressly requested be incorporated in the Judgment of Divorce, that: (1) Kentos had \$3 million in life insurance with Northwestern Mutual, including the Policy; (2) Kentos was obligated to maintain the Policy for the benefit of his children; and (3) Kentos was a 1% owner of Schibell, Mennie & Kentos, LLC.

86. Because Schibell, Mennie & Kentos, LLC successfully asserted in the Family Part Action in seeking and obtaining the Judgment of Divorce, which expressly incorporated the Prenuptial Agreement and Property Settlement Agreement, that: (1) Kentos had \$3 million in life insurance with Northwestern Mutual, including the Policy; (2) Kentos was obligated to maintain the Policy for the benefit of his children; and (3) Kentos was a 1% owner of Schibell, Mennie & Kentos, LLC, it is judicially estopped from taking a contrary position in this action.

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87. Schibell, Mennie & Kentos, LLC is judicially estopped from asserting that it is entitled to the proceeds of the Policy and the proceeds of the Policy should be distributed to the Estate and Kentos' children as Schibell, Mennie & Kentos, LLC successfully asserted in the Family Part Action. It is further judicially estopped from maintaining that Kentos was not a 1% equity owner of Schibell, Mennie & Kentos, LLC and that he is not entitled to receive compensation for his 1% interest.

SEVENTH COUNT
(Legal Fraud)

88. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 87 of the Amended Complaint as if more fully set forth herein.

89. Defendants represented to Kentos that Schibell, Mennie & Kentos, LLC, in which Kentos was a named partner, and 1% equity owner, would maintain a portion of the Policy for the benefit of Kentos. The Policy was applied for and accepted in reliance upon that promise.

90. At the time that Defendants made such representation, and at all times thereafter, Defendants knew that the representation was false.

91. Kentos relied to his detriment upon the false representation made to him.

92. As a result of Defendants' fraudulent actions as aforesaid, Plaintiff has suffered damages.

EIGHTH COUNT
(Equitable Fraud)

93. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 92 of the Amended Complaint as if more fully set forth herein.

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94. Defendants represented to Kentos that Schibell, Mennie & Kentos, LLC, in which Kentos was a named partner, and 1% equity owner, would maintain a portion of the Policy for the benefit of Kentos. The Policy was applied for and accepted in reliance upon that promise.

95. At the time that Defendants made such representation, and at all times thereafter, the representation was false.

96. Kentos relied to his detriment upon the false representation made to him.

97. As a result of Defendants' fraudulent actions as aforesaid, Plaintiff has suffered damages.

NINTH COUNT
(Relief Under N.J.S.A. 42:2C-48a(5))

98. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 97 of the Amended Complaint as if more fully set forth herein.

99. Kentos owned a 1% membership interest in Schibell, Mennie & Kentos, LLC.

100. Through their actions in refusing to pay the proceeds of the Policy to Plaintiff despite their contrary representations and promises, and in refusing to acknowledge his 1% membership interest in Schibell, Mennie & Kentos, LLC, Defendants have acted in a manner that is fraudulent to Kentos as a member of Schibell, Mennie & Kentos, LLC.

101. In addition, in refusing to provide documents despite their contrary representations and promises or meaningful answers to Plaintiff's inquiries regarding the compensation due to Kentos, and in refusing to pay the proceeds of the Policy to Plaintiff, Defendants have acted and are acting in a manner that was oppressive and was directly harmful to Plaintiff.

102. Plaintiff hereby applies for relief under N.J.S.A. 42:2C-48a(5).

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103. Pursuant to N.J.S.A. 42:2C-48b, in a proceeding brought under paragraph (5) of subsection a. of this section, a party may seek a remedy other than dissolution, including the sale of all interests held by a member who is a party to the proceeding to either the limited liability company or any other member who is a party to the proceeding, if the court determines in its discretion that such order would be fair and equitable to all parties under all of the circumstances of the case.

104. Plaintiff hereby seeks the entry of judgment compelling Defendants to purchase the 1% membership interest held by Kentos.

TENTH COUNT
(Legal Malpractice)

105. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 104 of the Complaint as if more fully set forth herein.

106. An attorney-client relationship existed between Plaintiff and SMK from November 14, 2016 through February 6, 2017.

107. The attorney client-relationship between Plaintiff and SMK imposed a duty of care upon Defendants.

108. Under RPC 1.7(a)(2) a lawyer shall not represent a client if there is a significant risk that the representation of the client will be materially limited by the lawyer's responsibilities to a third person or by the personal interest of the lawyer.

109. Defendants knew during their representation of Plaintiff that Plaintiff had an interest in the proceeds of the Policy, as reflected in the Judgment of Divorce and as recognized in the November 15, 2016 Memo prepared by Mennie and the application signed by Schibell.

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110. Defendants should have taken legal action to safeguard the proceeds of the Policy and to prevent distribution of same to anyone other than their client, the Estate. Instead, Schibell surreptitiously, without the knowledge of Mennie or the Estate, arranged to have a check for the full Policy proceeds delivered to his personal residence.

111. Without making any disclosure to Mennie or the Estate, Schibell then distributed the full proceeds of the Policy by writing checks for \$500,000 to satisfy firm loans and by writing a check for \$1,000,000 to himself. This was done at the time SMK was representing the Estate and at a time when SMK knew that the Estate had a competing claim to some or all of the proceeds of the Policy.

112. Defendants breached the duty of care they owed to Plaintiff by not safeguarding the proceeds of the Policy and instead taking possession of the full proceeds and distributing such proceeds for the benefit of SMK and Schibell personally thereby depriving their client, the Estate, of its right to obtain the proceeds of the Policy.

113. Defendants violated RPC 1.7(a)(2) by undertaking the representation of the Estate when there was a significant risk that its representation of the Estate would be materially limited by the Defendants' own personal interests in the proceeds of the Policy.

114. Defendants further breached their duty of care by failing to inform Plaintiff of the inherent conflict that existed in their representation, given that Plaintiff was seeking or should have been seeking the Policy proceeds for the benefit of the Estate and Plaintiffs' children, while Schibell sought to take possession of all Policy proceeds for his personal benefit and that of the firm.

115. Defendants' legal malpractice has proximately caused damage to the Estate.

ELEVENTH COUNT
(Breach of Fiduciary Duty)

116. Plaintiff repeats and realleges each and every allegation contained within paragraphs 1 through 112 of the Complaint as if more fully set forth herein.

117. An attorney-client relationship existed between Plaintiff and Defendants from November 14, 2016 through February 6, 2017.

118. As Plaintiff's attorney, Defendants owed Plaintiff a fiduciary duty of fairness, good faith and loyalty.

119. In accordance with that fiduciary duty, Defendants were obligated to place Plaintiff's interests ahead of their own.

120. Defendants violated their fiduciary duty to Plaintiff by, *inter alia*, (1) failing to disclose to Plaintiff the conflict of interest which existed; (2) representing the Estate with knowledge of the blatant conflict of interest which existed; (3) violating RPC 1.7(a)(2) by representing the Estate when its representation was materially limited by its own personal interests; (4) failing to safeguard the proceeds of the Policy for the benefit of their client, the Estate, but instead secretly obtaining and distributing the full proceeds of the Policy for the benefit of SMK and for Schibell personally; and (5) subordinating the interests of its client, the Estate, to the interests of SMK and Schibell personally.

121. As a direct and proximate result of the Defendants' breach of their fiduciary duty, Plaintiff has been and will continue to suffer damages.

WHEREFORE, Plaintiff demands judgment against Defendants for:

- (a) Compensatory and consequential damages and interest thereon;
- (b) Punitive damages;
- (c) Disgorgement of at least \$500,000 of the proceeds of the Policy plus interest thereon;

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- (d) An accounting of all compensation and other employee benefits payable to Plaintiff;
- (e) Imposition of a constructive trust over the proceeds of the Policy;
- (f) Valuation and payment of Kentos' 1% membership interest in Schibell, Mennie & Kentos, LLC;
- (g) Reasonable attorneys' fees and costs; and
- (h) All other relief the Court deems just and equitable.

JURY DEMAND

Demand is hereby made for trial by jury on those issue so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25, Michael J. Canning, Esq. is hereby designated as trial counsel for the Plaintiff.

CERTIFICATION PURSUANT TO R. 4:5-1

1. The consolidate matter in controversy is not the subject of any other action pending in any court or of any pending proceeding other than an action instituted by the Estate, In the Matter of The Estate of Mark David Kentos, Deceased, Superior Court of New Jersey, Chancery Division, Probate Part, Monmouth County, Docket No. MON-P-0067-17, Surrogate #247892.
2. All parties known by Plaintiff are named and identified in the action filed herein.

GIORDANO, HALLERAN & CIESLA, P.C.
Attorneys for Plaintiff Estate of Mark D. Kentos

Dated: May 29, 2019

Docs #3779372-v2

By: _____
MICHAEL J. CANNING, ESQ.
Attorney ID No. 032541984