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August 22, 2019

Angela Roper, Esq.
Roper & Thyne, LLC
77 Jefferson Place
Totowa, New Jersey 07512

Re: Patalano v. Lysiak
Docket No: BER-L-3679-17
Our File: 4278

Dear Ms. Roper:

You have asked me for my expert opinion as to the actions of attorney Robert E. Lysiak with regard to his representation of his client in the purchase of a commercial building in Dumont, New Jersey.

By way of background, I have been a member of the New Jersey Bar for over 44 years. I have had my own practice for 25 years, and a substantial portion of my practice involves real estate matters, representing both purchasers and sellers in commercial and residential transactions. Previously, I was associated for five years with a law firm that specialized in defending legal malpractice cases (see Curriculum Vitae attached).

In the preparation of this report, I have reviewed the following documents:

1. Defendant's Answers to Plaintiff's Interrogatories.
2. Defendant's Response to Plaintiff's Document Production Request, with attached documents, including Defendant's closing file, subsequent correspondence concerning environmental and title issues, and refinance documents.
3. Affidavit of Merit of Arthur Linderman, Esq.
4. Deposition of Defendant, Robert Lysiak ("Lysiak") with exhibits.
5. Deposition of Plaintiff, John Patalano ("Patalano") with exhibits.
6. Portions of the file of Howard Davis, Esquire.

FACTS

Plaintiff, John Patalano, first met Defendant, Robert Lysiak, Esq., at the closing on his residence. Lysiak was the seller's attorney. Patalano, 12:16-18. Lysiak was first contacted by Patalano in September of 1998 to represent him with reference to this property and he subsequently represented Patalano in reference to the refinance of his home in 2002. Lysiak, 8:24-25.

In September, 1998 Patalano retained Lysiak to represent him in the purchase of a commercial building located at 13 Washington Avenue, Dumont, New Jersey. Patalano intended to use the property as a Domino's Pizza establishment. The property was being used as a pizza parlor by the tenant of the seller, who was going to be evicted. Patalano does not recall being in a particular hurry to close on the property. The only other real estate Patalano had purchased prior to this transaction was his home. Patalano, 18:9-23. Lysiak testified he had no knowledge of Patalano's prior experience of purchasing commercial property. Lysiak, P. 38. Lysiak acknowledged that his experience was primarily handling residential real estate transactions and that commercial real estate transactions were not a large part of his practice. Lysiak, 10:13-5. Lysiak did not have a written retainer agreement with Patalano and there was no writing describing the scope of his representation. Lysiak, P. 18.

Lysiak does not recall much regarding the transaction; he does not recall advising Patalano of any issues regarding the survey or the risk of not performing an inspection. He testified that he did not know if Patalano had done an engineering inspection. Lysiak, P. 42. He does not recall any conversation with Patalano regarding the non-applicability letter. Lysiak, P. 46. Lysiak-26. He does not recall any specific discussions with Patalano regarding the survey which identified a concrete pad. Lysiak, Pp. 52-53. There was a document that provided Patalano would be responsible if there were any hazardous substances located on the property. Lysiak, P. 59. The due inquiry and investigation that Lysiak referred to in this document was the ISRA and the engineering inspection that Patalano had a right to do. Lysiak, P. 61. He was not aware that Patalano had not gotten the inspection done. Lysiak, P. 62.

He does not believe he gave any advice to Patalano about not getting an inspection done. Lysiak testified that he "put into the contract that he had the right to do it, and I had told him by way of letter, two separate letters, that he had the right to do it and he should be doing it. But did I have any further conversations with him regarding that or did he tell that he was not planning on it? No, I never had that conversation with him." Lysiak, P. 63. He again refers to these "two letters" that he sent to Patalano on page 64 of his deposition; there is only one letter that has been produced in the course of discovery, and that letter references an "inspection" as part of a letter with other items, such as a mortgage application and municipal approvals, and could be easily overlooked. There is no specific reference to an "engineering inspection" in that letter. Lysiak never had discussion with Patalano about the fact that the engineering inspection was not done. He described such an inspection at his deposition: "Basically, an engineering inspection is to have someone go into the property and conduct a physical inspection of the building, its various components of the building, and anything that would be on the property that would give him any cause for concern." He never had discussions with Patalano about the concrete pad, never asked

any questions of the seller's attorney, never contacted the surveyor, and doesn't recall having any discussions with Patalano about the survey. Lysiak, P. 65. Lysiak did not try to find out the prior uses of the property prior to the closing of title. Lysiak, P. 67.

Lysiak indicated that he wanted to make sure there was an inspection contingency in the contract that would ensure that Patalano would have a right to inspect the property and make sure he could operate a Domino's Pizza there. Lysiak, P. 23. He doesn't recall giving any advice to Patalano about Paragraph 38 of the contract. Lysiak imagines that he would have advised Patalano that an inspection of the property which was provided for in the contract that he should do a complete inspection when he inspects the property. Lysiak, P. 29. An engineering inspection would have looked for underground tanks on the property; Lysiak did not have a specific recollection of the conversations he had with Patalano regarding an inspection. Lysiak, P. 30. Lysiak does not recall any conversations he had with the seller's attorney about tanks. Lysiak, P. 31. He sent a letter to the attorney stating that the client was proceeding with inspection of the property. He claims not to recall any conversation with Patalano about Patalano gutting the property. Lysiak, P. 34. Lysiak-10. He does not recall why he did not make a request of the seller concerning prior uses of the property. Lysiak, Pp. 36-37. Patalano did not hire an inspection company or engineer, because he discussed it with Lysiak and indicated he would be gutting the building to four walls and removing all of the existing electric and plumbing. It was decided by him and Lysiak that an inspection would not be necessary given this fact. Patalano, 21:1-14.

From the initial notes contained in Mr. Lysiak's file, Lysiak recognized that since this was a commercial property, environmental issues were a concern, and at minimum clearance from the State of New Jersey under the Industrial Site Recovery Act (ISRA) was needed. However, nothing in the notes indicates any discussion with Patalano about the risks of not having any doing inspections performed prior to closing. Lysiak00061-00079. Lysiak's Answers to Interrogatories do not contend any such specific conversation occurred. Rather, the only discussion Lysiak claims therein was to say that the Hazardous Substance and Indemnity Agreement was discussed "at the closing of title when it was presented to us by the bank's representative." Lysiak, Interrogatory Answer No. 61. Lysiak specifically disavows any discussion regarding the prior use of the property with Plaintiff (Lysiak, Interrogatory Answer No. 62), or any discussion regarding obtaining an environmental professional. Interrogatory Answer No. 63. When asked if he relayed any advice to Plaintiff regarding performing environmental inspections and due diligence, Lysiak responds by saying only that pursuant to the contract he required the seller to obtain a letter of non-applicability of industrial site recovery act from the New Jersey Department of Environmental Protection, which was provided to Plaintiff. Lysiak, Interrogatory Answer No. 64. On September 17, 1998, Mr. Lysiak wrote a letter to the seller's attorney, Robert Binetti, requesting changes to the original draft contract that Mr. Binetti has prepared. The contract, in paragraph 35, stated that the property was not subject to the Industrial Site Recovery Act (ISRA). His letter stated that Paragraph 35 be amended to include the following language:

> "The seller is obligated to obtain a letter of non-applicability or other clearance from the New Jersey Department of Environmental Protection prior to closing."

This language was included in the final version of the contract of sale. Paragraph 38 of the contract contained provisions with regard to underground oil tanks, calling for removal of a tank if leakage was found. That paragraph concludes by stating "Notwithstanding the above, this property is heated by gas, and to the best of Seller's knowledge, there are no oil tanks on the property.

The hostile tenant only agreed to vacate the property on December 1, 1998 – shortly before closing. Lysiak000014. Shortly before the scheduled closing date, on December 7, 1998, Mr. Binetti filed a request for an applicability determination with the Industrial Site Evaluation Element of the Bureau of Applicability & Compliance of the Department of Environmental Protection. The accompanying Affidavit signed by the seller stated that the building had been previously used as a pizza parlor, but under Section G1 fails to set forth the history of on-site operations for each owner. Lysiak000223. It appears Lysiak made no inquiry regarding this omission. A few days later, a letter was received from the DEP stating that this transaction was not subject to the provisions of the Industrial Site Recovery Act. The letter goes on to state that this determination "does not relieve the above referenced establishment of any responsibilities under any other environmental statutes, regulations or permits." In addition, the letter states that this determination does not constitute any finding by the State of New Jersey of existence or non-existence of any other environmental hazard at this location. No other efforts were made by Lysiak to investigate any possible contamination of the site, or to ascertain of there were any abandoned fuel tanks on the property prior to the closing.

The site in question has a cement slab in the middle of the parking lot that would appear to be a raised "island" on which a gas tank formerly located; this is obvious not only by observing the property, but it is shown on the survey that was prepared in connection with this purchase, that was ordered by Mr. Lysiak and was in Mr. Lysiak's possession prior to the closing.

In February, 1999, it was discovered that there were abandoned unregistered underground tanks at the site. Patalano became aware of the storage tanks in February of 1999 when they were renovating the property. One of the contractors suggested that he should have someone look under there because there was a concrete pad in the parking lot. Patalano, 24:12-25. When they excavated, they found four gigantic tanks and a fifth tank was discovered a couple of years later. Patalano, 27:16-23. Patalano testified that what were in the tanks were not oil, but gas tanks. When he found out there were tanks, his first call was to Lysiak. Patalano, 23:7-24. He was contacted by Patalano in February of 1999 regarding the tanks. Lysiak, P. 72. He never recommended a Phase I environmental study to any client or Patalano. Lysiak, P. 75. He consulted attorney, Judith Reilly, who told him it was very difficult to show liability of the seller. He shared this knowledge with Patalano, but did not have any discussion with Patalano regarding rescission. Lysiak, P. 77. He ordered and received copies of the deeds from the prior owners and sent them to Reilly. One of the deeds was from ownership by Mullane Ford who obtained it from Mullane Mobil which indicated there was a gas station operated there. Lysiak claimed it was not standard practice to obtain these deeds prior to closing. Lysiak, Pp. 78-79.

Patalano retained an environmental attorney, Howard Davis, Esquire. A supplemental title search revealed that in the early 1980s the property had been used as an automobile dealership, Mullane Ford, and later a gas station, Mullane Mobil, which deeded out the property in 1982. It was ultimately determined that there were two 2,000 gallon tanks on the site. An environmental company was retained to clean up the site, but contamination was found that took years to remediate. He filed a lawsuit against prior owners of the property. Patalano, 32:5-16. The purpose of the lawsuit was an attempt to find someone to pay for the remediation of the property, however, Patalano was completely broke and could not afford to continue with the lawsuit. Patalano, 33:5.

It was determined as early as 2004 that Mr. Lysiak was going to be sued by Patalano as a result of the failure to detect the existence of the tanks prior to the closing; however a tolling agreement was entered into between the parties delaying the commencement of litigation until the clean-up of the property was completed. For this reason, the suit was not filed until 2017.

OPINION

Robert E. Lysiak represented the Plaintiff John Patalano in this transaction. As an inexperienced and unsophisticated purchaser, Patalano retained Lysiak for his advice. In this context, to bring a legal malpractice action against Lysiak the Plaintiff must satisfy three essential elements (1) the existence of an attorney-client relationship creating a duty of care by the attorney (2) the breach of that duty by the attorney and (3) proximate causation of the damage claimed by the Plaintiff. Jerista v. Murray, 185 NJ 175 (2005).

> In order to set forth a claim for malpractice, a client must establish that the attorney deviated from accepted standards of practice and as a proximate cause thereof the plaintiff was damaged.

See Vort v. Hollander, 257 N.J. Super. 54(App. Div., 1991). An attorney is not a guarantor of all errors in judgment but is responsible when the conduct or advice falls below accepted standards of practice. See 2176 Lemoine Ave. v. Finco, 272 N.J. Super. 376 (App. Div. 1994). However, an attorney is required to use the knowledge, skill, and ability ordinarily possessed and exercised by members of the legal profession similarly situated. Lovett v. Estate of Lovett, 250 N.J. Super. 79 (1991).

> Like most professionals, lawyers owe a duty to their clients to provide their services with reasonable knowledge, skill, and diligence. *St. Pius X House of Retreats v. Diocese of Camden,* 88 *N.J.* 571, 588, 443 *A.*2d 1052 (1982). We have consistently recited that command in rather broad terms, for lawyers' duties in specific cases vary with the circumstances presented. "What constitutes a reasonable degree of care is not to be considered in a vacuum but with reference to the type of service the attorney undertakes to perform." *Id.* at 588, 443 *A.*2d 1052. The lawyer must take "any steps necessary in the *261 proper handling of the case." *Passanante v.*

> *Yormark,* 138 *N.J.Super.* 233, 239, 350 *A.*2d 497 (1975). Those steps will include, among other things, a careful investigation of the facts of the matter, the formulation of a legal strategy, the filing of appropriate papers, and the maintenance of communication with the client. *Id.* at 238-39, 350 *A.*2d 497.

Ziegelheim v. Apollo, 128 N.J. 250, 260-61, 607 A.2d 1298, 1303 (1992). See also, New Jersey Model Jury Charge 5.51A.

As observed by the Carol M. Boman in the ABA's publication, *Environmental Aspects of Real Estate Transactions*:

> The undeniable impact that environmental laws have had in recent years on real estate owners and on business and real estate transactions has led to the development of an entirely new industry, one composed of experts in the field of environmental due diligence. Because of the importance of taking environmental laws and regulations into account when structuring an acquisition, sale, leasing, or financing transaction, the parties need to know whether the underlying real estate is contaminated and what effect that contamination will have on the economics of the transaction.
>
> Environmental due diligence has become important for a number of reasons. Buyers, for example, need to assess potential costs that may be associated with environmental contamination, such as leakage from an underground fuel storage tank. *Environmental Aspects of Real Estate Transactions*, James B. Witkin, Editor, American Bar Association (1995).

As noted by Stewart M. Saft, in his treatise, *Commercial Real Estate Transactions* (Thomson Reuters (3d Ed. 2018)):

> Environmental concerns have become significantly important in our daily lives and nowhere more so than in the acquisition, operation, financing, and disposition of real estate. . .
>
> Every purchaser must assure itself that a property being considered for purchase complies not only with all the existing statutory and regulatory requirements, but also with those likely to develop in the future since environmental laws are usually applied retroactively. This will not only avoid difficulties and violations after the closing, but will prepare the purchaser for the day when the purchaser will be selling the property and will have to represent to the purchaser that the property complies with the laws and regulations then in effect.
>
> Due to the proliferation of these laws, the purchaser should ascertain that the property will comply with the most stringent of the existing state laws.
>
> This review should identify whether prior owners or tenants utilized the property in such a way as to create a future environmental problem. Environmental problems can be caused by the use to which the property was put,

> what was stored on the property, what was used to kill termites or crabgrass, or materials used in the construction of the property (i.e., asbestos). When considering environmental issues, one must remember that things which were valid and legal at the time they were done may have become improper or illegal. 5-2 – 5-2.1.

Saft further notes:

> The potential liability for remediating an environmental hazard that occurred on property long before it was acquired, leased, or financed by a current purchaser, tenant, or mortgagee makes it imperative that a full environmental due diligence investigation be undertaken prior to the acquisition, leasing, or financing of the property. 5-17.

In this case, it is clear that Mr. Lysiak was retained by Mr. Patalano to represent him in this transaction. The question that must be addressed is whether any action or inaction by Lysiak could be considered the proximate cause of the damage suffered by Mr. Patalano as a result of the finding of the abandoned underground tanks on the property he had purchased.

The problem of underground abandoned storage tanks containing petroleum based products first became a matter of public concern in the 1980s. In 1986, the New Jersey Underground Storage Act, N.J.S.A. 58:10A-21 et seq., was enacted. The statute states that " The legislature finds and declares that millions of gallons of gasoline and other hazardous substances are stored in underground storage tanks, that a significant portion of these underground storage tanks are leaking due to corrosion or structural defect,…" and this leakage is causing groundwater pollution. The Act calls for the registration of all underground tanks, and sets forth strict requirements for the monitoring and closure of an underground tank.

In this case, the underground tanks were apparently installed prior to 1982, before the passing of the Act, and no effort was made to register the tanks since the property had changed hands.

By the early 1990s, municipalities had begun to require underground tanks, even in residential properties, to be decommissioned or removed. Attorneys had become cognizant of this problem, and it had become standard to have clauses placed into all contracts with regard to underground oil tanks. This is evidenced that in this case, the seller's attorney had a standard clause in his contract (Paragraph 38) concerning the right to test an oil tank and require its removal if leakage was found.

By the mid-1990s oil tank insurance was available for residential properties, to insure homeowners for the cost of a clean-up if a leaking tank was discovered

This issue was certainly a concern to Mr. Patalano's mortgage lender, PNC Bank. Among the documents the mortgagor was required to execute to obtain his loan was entitled "Hazardous Substances Certificate and Indemnity." Lysiak000657. The definition of Hazardous Substances

contained in this document includes specifically "without limitation, petroleum and petroleum-based substances." In this document, Patalano affirms that: **Use of Property.** "After due inquiry and investigation, Borrower and Guarantor have no knowledge, or reason to believe, that there had been any use, generation, manufacture, storage, treatment, refinement, transportation, disposal, release, or threatened release of any hazardous substance by any person on, under, or about the Property." Lysiak000157. "After due inquiry and investigation, Borrower and Guarantor have no knowledge, or reason to believe, that the Property, whenever and whether owned by previous Occupants, has ever contained asbestos, PCB or other Hazardous Substances, whether used in construction or stored on the Property." Lysiak000157. Patalano in this certification personally agreed to indemnify and hold harmless the Bank from all damage as a result of environmental contamination.

Mr. Lysiak was required to sign a letter to the Bank's counsel stating that he had reviewed with Patalano the mortgage documents, specifically the Hazardous Substance Certificate and Indemnity. This shows the importance the Bank placed on the issue of contamination in a commercial closing.

An additional warning was raised by the surveyor of the property. He added a disclaimer to the survey stating the following: "Subsurface &environmental conditions were not examined or considered as part of this survey. No statement is made concerning the existence of underground or overhead containers or facilities that may affect the use or development of this tract."

Despite all of these warnings, Mr. Lysiak took no action to determine if there was a possibility of an abandoned underground tank on the premises. The standard of practice required him to take some action to advise the client concerning this risk. This would have been relatively simple and inexpensive to accomplish. Lysiak could have requested his title company to search further back through the chain of title. Even a search of 25 years prior to closing would have disclosed suspect prior owners. This would have disclosed, as we now know, that the property was once used as a gas station and automobile dealership.

He also should have at the very least instructed his client to have a tank sweep done of the property. This would involve using a metal detector to determine that there were no metallic objects underground, and would have disclosed the problem prior to closing. Were any of these steps taken, the tanks would have been discovered, and Patalano would not have incurred the hundreds of thousands of dollars in damages he suffered as a result of discovering these tanks after the closing.

As previously stated, Mr. Lysiak did add a sentence to his original letter requiring a clearance letter from the Department of Environmental Protection stating that the premises was not subject to the Industrial Site Recovery Act. However, that letter goes on to state that the letter does not mean that there are no environmental contaminants. The letter only shows that the DEP had no record of contamination at the site. Furthermore, the application submitted to obtain the clearance letter states only that the site had been used as a pizza parlor, and did not go back further in the title chain, which would have raised questions.

Malpractice in furnishing legal advice is a function of the specific situation and the known predilections of the client. An attorney in a counselling situation must advise a client of the risks of the transaction in terms sufficiently clear to enable the client to assess the client's risks. The care must be commensurate with the risks of the undertaking and tailored to the needs and sophistication of the client. Conklin v. Hannoch Weisman, 145 N.J. 395, 413 (1996). Lysiak acknowledged at his deposition that he was unsure what his obligation was in terms of determining Patalano's sophistication. He confessed that he did not know if Patalano had any experience in purchasing commercial real estate. Lysiak, 38:11-41:5. Lysiak had a duty to ascertain Patalano's sophistication and to advise him that he was exposing himself to risks in the purchase of the property without the appropriate inspections or an inquiry regarding the property's history. He did neither.

The facts in this case show that there was ample warning of the problems resulting from abandoned underground tanks. Not only did the original contract of sale mention tanks specifically in Paragraph 38, the bank raised this issue in the mortgage documents and specifically sought assurances from the buyer that he knew of no environmental hazards. The surveyor likewise included language on the survey disclaiming any responsibility for underground environmental conditions. The survey itself showed a concrete slab that greatly resembled the site of gasoline pumps.

Mr. Patalano was in the pizza business, and there was no indication he had sufficient knowledge or sophistication to investigate the possibility of contamination. He had the right to rely on his attorney in this regard.

When environmental contamination is found, the liability falls on the party responsible for the contamination. However, if the responsible party cannot be located, as was the case here, or has insufficient assets to remediate the contamination, the current owner becomes responsible. Therefore it is extremely important that the prospective purchaser conduct "environmental due diligence" The buyer must understand the operating condition and compliance history of the business to be acquired prior to the completing of the transaction. (New Jersey Practice Series Section 48.8). Even if the transaction is not subject to ISRA, the buyer should conduct environmental due diligence. (New Jersey Practice Series, Section 48.9)

Based on the Federal and State statutes concerning underground oil tanks in effect at the time of this closing, and the ramifications of the failure to locate and identify and environmental hazard, Mr. Lysiak had an affirmative obligation to advise his client to take necessary steps to make sure that the property he was purchasing was free from environmental contaminants. It was incumbent on the buyer and his attorney to be certain that an investigation was done to determine if an abandoned oil tank existed on the property. This could have been done by research into the history of the site to see if any prior usage could have led to hazardous substances being placed in the ground. Once the tanks were discovered, Lysiak quickly obtained a title history which indicated a prior ownership by Mullane Ford. This determination also could be accomplished by doing a tank sweep, which involves the use of a metal detector to examine

the ground for buried metallic objects. This is true today, and was also the standard of care in the late 1990's, when this closing occurred.

It is also not standard practice for an attorney, such as Mr. Lysiak, to be unaware of whether or not his client has conducted an inspection. Usually when an inspection is obtained by a client in connection with a real estate purchase, it is forwarded to the attorney and the attorney inquires of the client to determine whether the inspection was done. Thus, while Lysiak indicates he has no recollection of a discussion regarding the inspection, it is unexplained why he did not note in his file one way or another why there had not been an inspection. Patalano explains because of his discussion with Lysiak it was decided that there was no need to inspect the property because he was going to "gut" same. Here, given the presence of a concrete pad on the survey, it was important that Lysiak give his client advice regarding conducting an inspection and indicate that the failure to do so was exposing himself to a risk. From the deposition testimony in this matter it appears that Lysiak did not give any counseling to Patalano regarding the survey which revealed the unexplained concrete pad which one would not expect to find on a property operating as a pizza parlor. Lysiak's deposition testimony indicates that there was no counseling regarding the contents of the survey. Patalano does not indicate that he was given any such counseling.

Here, as a result of not discovering the tanks, Patalano incurred attorney's fees and cleanup costs which shall be detailed in the forthcoming report of Kristin Kucsma. Patalano spent hundreds of thousands of dollars pursuing the prior owners for the cleanup costs; for cleanup costs and associated costs of remediation; and to obtain the state's grant for contribution to cleanup costs. Given the speculative nature of recovery noted by Judith Reilly against the prior owners and the fact that as Patalano testified that he had limited financial resources, it was absolutely reasonable for Patalano to abandon his efforts to mitigate his damages.

The doctrine of mitigation of damages proceeds on the theory that a plaintiff who has suffered an injury as the proximate result of a tort cannot recover for any portion of the harm if, by the exercise of ordinary care, the injury could have been avoided. *Ostrowski v. Azzara,* 111 *N.J.* 429, 437 (1988); *Restatement, Torts* 2d, § 918(1) at 500 (1979). The doctrine applies only to the diminution of damages and not to the existence of a cause of action. *Restatement, supra,* § 918, comment *a.* at 500. *Accord, Associated Metals, etc., Corp. v. Dixon Chemical, etc.,* 82 *N.J.Super.* 281, 306 (App.Div.1964), certif. den. 42 *N.J.* 501 (1964); *Covino v. Peck,* 233 N.J. Super. 612, 616–17 (App. Div. 1989). It is also noteworthy that Defendant Lysiak did not counsel Patalano about rescission in 1989.

In my opinion, to a reasonable degree of certainty, Mr. Lysiak erred in not instructing his client to do a tank sweep to determine the presence of an underground storage tank, and he also erred in not doing a supplemental title search to identify prior owners, who may have used hazardous substances in the course of their ownership. He also deviated from the standard of care in failing to counsel Patalano about the risks in not performing an appropriate inspection and counseling him regarding the concrete pad on the survey. This failure to do these inspections and render this advice prior to closing was the proximate cause of the damages suffered by Mr. Patalano.

DAMAGES

As a result of the malpractice of the attorney in this case, Mr. Patalano has been involved in the environmental cleanup of the subject property for many years. He has incurred substantial costs to remediate the contamination and remove the tanks. He is therefore entitled to recover against the attorney defendant in this case for any losses he have suffered and will suffer, including all fees and costs incurred in or arising from this litigation (including but not limited to fees and costs incurred in pursuing the legal malpractice claims pursuant to Saffer v. Willoughby, 143 N.J. 256 (1996)) .

I will be pleased to supplement this report upon request.

Very truly yours,

BARRY E. LEVINE

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