

<p>STATE OF SOUTH CAROLINA COUNTY OF HAMPTON</p> <p>MANUEL SANTIS-CRISTIANI,  Plaintiff,  v.  RICHARD ALEXANDER “Alex” MURDAUGH, RONNIE L. CROSBY, WILLIAM F. BARNES, III, RUSSELL LAFFITTE, PALMETTO STATE BANK, AND PETERS, MURDAUGH, PARKER, ELTZROTH &amp; DETRICK, P.A.,  Defendants.</p>	<p>IN THE COURT OF COMMON PLEAS</p> <p><b>Case No.: 2022-CP-25-00285</b></p> <p><b>MOTION TO DISMISS DEFENDANTS’ PETERS, MURDAUGH, PARKER, ELTZROTH &amp; DETRICK, P.A., RONNIE L. CROSBY, AND WILLIAM F. BARNES</b></p>
<p>Peters, Murdaugh, Parker, Eltzroth &amp; Detrick, P.A., Ronnie L. Crosby, and William F. Barnes,  Interpleader Plaintiffs,  v.  Manuel Santis-Cristiani, Richard Alexander “Alex” Murdaugh, Russell Laffitte, Palmetto State Bank, and Medical University Hospital Authority d/b/a Medical University of South Carolina,  Interpleader Defendants.</p>	

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants and Interpleader Plaintiffs, Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Ronnie L. Crosby, and William F. Barnes (“Movants”), by and through their undersigned counsel, hereby move this Court to dismiss Movants from this action. The grounds of this motion are as follows:

The Plaintiff’s claims do not incorporate an affidavit of an expert as required by

S.C. Code Ann. §15-36-100.

South Carolina Code section 15-36-100(B) provides, in relevant part:

[I]n an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) ..., the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

Here, the Plaintiff asserts that all claims against movants arise out of the attorney-client relationship. *See* Complaint ¶¶ 5-6 (“At all times relevant to this lawsuit, Defendants Crosby [and Barnes]... were acting within the scope of their employment for Defendant PMPED.”); *id.* ¶ 28 (“As attorneys ... Plaintiff reposed special confidence in [movants] so that in equity and good conscience, [they] were bound to act in good faith and with due regard to the Plaintiff’s interests ...”); *id.* ¶ 49 (“PMPED ... owed a duty of reasonable care ... to ensure its employees who performed fiduciary duties such as attorneys ... did in accordance with the laws of the State of South Carolina.”); *id.* ¶ 50 (“Defendants owed the Plaintiff the duty to exercise reasonable care in the retention, hiring, training, and supervision of all attorneys ... who represented the Plaintiff ....”). The Complaint does not allege that Defendant acted in any capacity other than as attorneys representing the plaintiff in a products liability lawsuit. In his second cause of action, Plaintiff alleges a “breach of fiduciary duty” arising out of the attorney-client relationship. *See* Complaint ¶ 28. Subsequent causes of action incorporate the same allegations of the second cause of action “by reference as if fully set out herein,” adding no additional facts or bases for claims. *See* Complaint ¶¶ 36, 41, 48.

“Professional negligence” as used in §15-36-100, is a breach of a duty owed to Plaintiff which proximately causes damage to Plaintiff. Because of the nature of the attorney-client

relationship, this duty is usually a fiduciary duty. Under South Carolina authority, claims based on an attorney-client relationship merge into a claim for professional negligence. *See, e.g., RFT Mgmt. Co. LLC v. Tinsley & Adams, LLP*, 732 S.E.2d 166, 173-74 (S.C. 2012); *David v. Savage*, No. 2:19-cv-3139-SAL, 2020 U.S. Dist. LEXIS 260344, at \*10 (D.S.C. July 6, 2020). The Court of Appeals clarified this issue again in the case of *H&H of Johnston, LLC v. Old Republic Nat'l Title Ins. Co.*, 405 S.C. 469 (Ct. App. 2013). In that case, the plaintiff sued a title insurance agent for breach of his duties in failing to explain exceptions in the title insurance policy. The circuit court held that “insofar as the complaint attempts to assert any claim against [defendant] in his capacity as an attorney, the same is dismissed for failure to state a claim pursuant to section 15-36-100.” *H&H of Johnston, LLC v. Old Republic Nat'l Title Ins. Co.*, 405 S.C. 469, 472 (Ct. App. 2013).

Here, Plaintiff was required to file an expert affidavit with the Complaint because all claims alleged against movants PMPED, Crosby, and Barnes arose solely out of their legal representation of the Plaintiff in a products liability action, and in no other capacity other than as an attorney.

The Plaintiff has failed to file an expert affidavit as required by the statute. In a letter from the undersigned dated October 12, 2022, counsel for the Plaintiffs were specifically asked to supplement their complaint with an expert affidavit as required by S.C. Code Section 15-36-100. (*See Exhibit A*). Forty-five (45) days from the filing of the Complaint elapsed on November 21, 2022, and the Plaintiff has still failed to file such an affidavit.

Movants also refer to and incorporate by reference herein their pending Motion To Interplead Disputed Funds with the Court, To Be Dismissed from this Action with Prejudice, and To Assess Sanctions Against Plaintiff’s Counsel.

WHEREFORE, for the reasons set forth herein, Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Ronnie L. Crosby, and William F. Barnes respectfully request that the Court dismiss Plaintiff's Complaint against Movants in its entirety with prejudice, and for such other and further relief as the Court considers appropriate.

Respectfully submitted

WYCHE, P.A.

s/Wallace K. Lightsey

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BARNES***

November 29, 2022

Greenville, South Carolina