

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Bridgette Trice, as trustee for the heirs  
and next of kin of Devyn Bolton, deceased,

Plaintiffs,

Civil No.: \_\_\_\_\_

vs.

COMPLAINT

Napoli Shkolnik PLLC, Hunter J. Shkolnik,

JURY TRIAL DEMANDED

Defendants.

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Plaintiff Bridgette Trice, as trustee for the heirs and next of kin of Devyn Bolton, deceased, for her complaint in this matter against Napoli Shkolnik, PLLC (“Napoli Shkolnik”) and Hunter Shkolnik (“Defendants”) states and alleges as follows:

**INTRODUCTION**

1. In July 2012, Plaintiff hired Hunter Shkolnik and his predecessor firm, Napoli Bern Ripka Shkolnik (“NBRS”), to act as lead litigation counsel in a case brought by Plaintiff against Toyota. *Bridgette Trice, as trustee for the heirs and next of kin of Devyn Bolton, deceased v. Toyota Motor Corporation et al.*, Civ. No. 10-2804, United States District Court for the District of Minnesota (“Toyota Case”). Plaintiff terminated Defendants in April 2014 for making an unauthorized settlement demand on Toyota. Defendants never discussed the demand with either Plaintiff or local counsel, let alone sought Plaintiff’s approval. In fact, Plaintiff only learned about the unauthorized demand two months after it had been made when Toyota’s counsel communicated to Plaintiff’s local counsel that the demand that had been improperly relayed was “too high to lead to productive negotiations.”

2. Plaintiff subsequently discovered that, in addition to this ethical breach, Defendants had failed to fulfill their responsibilities as lead trial counsel. Specific to this action, Defendants failed to disclose to Toyota during the discovery period the full amount of medical expenses incurred by Devyn Bolton as a result of the injuries alleged to have resulted from Toyota's actions. This failure caused harm to Plaintiff, reducing stipulated medical expenses that were awarded from approximately \$1.5 million to \$1 million. Given that prejudgment interest was also awarded on the stipulated expenses, this failure cost Plaintiff approximately \$750,000.

### **PARTIES AND JURISDICTION**

3. Plaintiff is Bridgette Trice, as trustee for the heirs and next of kin of Devyn Bolton, deceased. Plaintiff is also the mother of Devyn Bolton. Plaintiff is a citizen of Mississippi. The remaining heirs and next of kin of Devyn Bolton, deceased, are domiciled as follows: Carolyn Trice, grandmother (Minnesota), Arion DeMar Durand, brother (Minnesota), Breana Diane Durand, sister (Minnesota), Cameron DeVon Durand, brother (Minnesota), and Robert Bolton, father (Mississippi).

4. Napoli Shkolnik, PLLC ("Napoli Shkolnik") is a professional limited liability company with its principal office located at 360 Lexington Avenue, 11<sup>th</sup> Floor, New York, NY. Napoli Shkolnik has offices in California, Delaware, Florida, Illinois, Kansas, New Jersey, Ohio, Pennsylvania, Texas, and Michigan. Napoli Shkolnik is the successor in interest to NBRS. Napoli Shkolnik has asserted a right to fees in the Toyota Case based upon Plaintiffs' engagement of NBRS, and Napoli Shkolnik has assumed responsibility for any liabilities arising from that engagement.

5. The two members of Napoli Shkolnik are Hunter Shkolnik and Marie Napoli. Hunter Shkolnik is a partner with Napoli Shkolnik. Mr. Shkolnik is a citizen of New York and is

licensed to practice law in New York and New Jersey. Mr Shkolnik is based out of Napoli Shkolnik's New York office. Mr. Shkolnik was the original contact and signatory on the retention by Plaintiff. Marie Napoli is a partner with Napoli Shkolnik. Ms. Napoli is a citizen of New York and is licensed to practice law in New York. Ms. Napoli is based out of Napoli Shkolnik's New York office.

6. This Court has personal jurisdiction over the Defendants based upon their legal representation of Plaintiff in the Toyota Case, which was litigated in the United States District Court for the District of Minnesota.

7. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000. Because the parties are citizens of different states, diversity jurisdiction is proper under 28 U.S.C. § 1332.

8. Venue is proper under 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to the claims occurred in Minnesota.

### **FACTS**

9. Plaintiff's case against Toyota in the Toyota Case involved an allegation that a Toyota Camry driven by Koua Fong Lee had suddenly accelerated because of a defect in the car, ramming into a stopped car carrying six-year-old Devyn Bolton. Koua Fong Lee participated in the underlying Toyota Case as a co-plaintiff. In February 2015, a jury found that defect in the Camry was the direct cause of the 2006 car accident that rendered Devyn Bolton a quadriplegic until she died from her injuries in 2007.

10. Plaintiff initially retained the Minnesota firm Padden Law Firm LLC ("Padden") to represent her. Padden then sought additional counsel, securing the assistance of Minnesota attorney Kenneth R White, P.C. ("White"). In February 2011, with the Plaintiff's consent, Padden

and White retained the firm of Waite, Schneider, Bayless and Chesley Co., L.P.A. (“Chesley”) from Ohio, a well-known firm that was involved in the Toyota sudden acceleration MDL, as primary litigation counsel. Padden and White’s role was that of local counsel.

11. In July 2012, due to difficulties at Chesley, Plaintiff retained Defendants to replace Chesley as primary litigation counsel for Plaintiff in the Toyota Case. Chesley recommended Defendants based on their experience with Toyota in the multi-district litigation cases involving sudden acceleration and the fact that they had the personnel and financial resources to handle the case. Defendants began working on the matter in 2012 and entered their appearance in April 2013. An agreement dated July 25, 2012 reflects Defendants’ retention, which includes Defendants’ agreement to advance all expenses of the litigation.

12. In April 2014, Plaintiff’s local counsel, Padden and White, learned that Defendants had made an unauthorized settlement demand to Toyota in February 2014. Defendants never sought or obtained the authorization of Plaintiff or local counsel to make this settlement demand. Defendants never advised Plaintiff or local counsel that Toyota had broken off settlement negotiations in light of the Defendants’ unauthorized demand. Plaintiff only learned about the unauthorized demand two months after it had been made when Toyota’s counsel communicated to Plaintiff’s local counsel that the demand that had been improperly relayed on their behalf was “too high to lead to productive negotiations.” Toyota’s response to the unauthorized demand was to discontinue all efforts at resolution.

13. On April 22, 2014, Plaintiff sent a letter to Defendants terminating them from the representation for cause, specifically for making “a settlement demand to Toyota’s lawyers on [Plaintiff’s] behalf without [her] consent for that demand.”

14. Plaintiff retained new lead litigation counsel, Markovits, Stock & DeMarco, LLC, (“MSD”) who prosecuted the Toyota Case on Plaintiff’s behalf to conclusion.

15. The operative scheduling order that was in place prior to MSD taking over the case required expert disclosures to be served in November 2012 and discovery to be completed by May 31, 2013. Prior to MSD taking over the case, on January 21, 2013, local counsel White had received a letter from Toyota’s counsel stating in part that discovery responses were overdue and that no expert disclosures had been made. White conveyed the letter to Defendants and stated in part: “I trust that you will get these issues corrected immediately to the extent the letter is accurate.” Defendants responded by saying “We responded to this already, they were looking for medicals on Devyn Bolton.”

16. In truth, Defendants had not only failed to disclose any liability or damages experts but also had failed to timely disclose the full extent of the medical expenses incurred as a result of Devyn Bolton’s injuries and prior to her death.

17. When MSD took over as lead litigation counsel in April 2014, discovery had been closed for nearly a year. Starting in July of 2014, citing the need to first obtain payment for expenses from the Plaintiff, Defendants refused to forward Plaintiff’s case file to MSD so that they could prepare for trial. Defendants persisted in their refusal to provide the case files until Plaintiff’s attorneys advised Defendants that the Minnesota Rules of Professional Conduct prohibit a lawyer from conditioning the return of client files upon payment of fees or costs.

18. Upon receiving the files from Defendants and preparing for trial, MSD first learned that the Defendants had not produced all medical expenses to Toyota in discovery. Defendants had disclosed to Toyota approximately \$1 million in medical expenses, while the full extent of medical expenses was approximately \$1.5 million.

19. After discovering Defendants' failure to disclose the full extent of medical expenses within the time provided for discovery, MSD provided the additional medical expense information to Toyota. MSD attempted to obtain a stipulation for trial that the medical expenses were \$1.5 million. Toyota was willing to stipulate to expenses that had been disclosed during discovery but was not willing to stipulate to expenses that had not been so disclosed.

20. At trial, the Court ruled that the failure to fully disclose the total of the medical expenses before the close of discovery foreclosed Plaintiff from asserting a claim for more medical expenses than had been disclosed. The Court limited the medical expenses to the stipulated amount of \$1 million. Other than the failure to timely disclose the full amount of the medical expenses, Toyota did not dispute the reasonableness of the expenses or their relationship to Devyn Bolton's injuries.

21. On February 4, 2015, a jury returned a verdict in Plaintiff's favor in the Toyota Case. Subsequently, after post-trial motion practice and the entry of an Amended Judgment on June 25, 2015, Toyota appealed the Plaintiff's verdict. On June 9, 2017, the Eighth Circuit affirmed the District Court verdict on liability, issued a corrected decision on August 13, 2017, and then denied Toyota's petition for an *en banc* hearing.

22. The judgment for the Plaintiff by the trial court included the stipulated medical expenses of approximately \$1 million, along with prejudgment interest at a rate of 10%. These amounts were paid by Toyota after the judgment was affirmed on appeal on these claims.

23. If the additional \$500,000 in medical expenses had been disclosed, they would have been included in the judgment that Plaintiff ultimately recovered. The additional \$500,000 in expenses would also have entitled Plaintiff to recover roughly \$250,000 in prejudgment interest.

Defendants' failure to disclose complete medical expenses resulted in Plaintiff being awarded approximately \$750,000 less than she would have absent Defendants' negligence.

24. Defendants, despite their termination, sought a fee distribution on a *quantum meruit* basis from Plaintiff for the work they did in the Toyota Case. The trial court denied Defendants' motion, making detailed findings of fact after the parties agreed to submit the issue to the court on written submissions. The trial court found as facts that Defendants "... failures prevented Plaintiffs from introducing \$500,000 in medical expenses at trial and from calling their sole damages expert to testify. Plaintiffs were precluded from recovering the additional \$500,000 in medical expenses plus significant pre-judgment interest on this additional amount as a result of the Napoli Firm's failures." In response to an argument by Defendants that the harm was speculative, the trial court stated in part: "However, Toyota stipulated to the \$1 million in medical expenses timely disclosed in discovery, and the Napoli firm offers no argument or evidence for why Toyota would not have similarly stipulated to the additional \$500,000 in expenses had they been properly disclosed. Additionally, to the extent there is doubt that Toyota would have agreed to stipulate to the additional \$500,000 in medical expenses, the doubt is created by the Napoli Firm's shortcomings."

## **CLAIMS FOR RELIEF**

### **Count I (Negligence)**

25. Plaintiff realleges the allegations of paragraph 1 through 24.

26. Defendants were retained by Plaintiff to act as lead litigation counsel on Plaintiff's behalf against Toyota in the Toyota Case.

27. At all times herein, there was an attorney-client relationship between Plaintiff and Defendants.

28. Defendants owed a duty of care to Plaintiff to prosecute and litigate her case with reasonable care and professionalism.

29. Defendants negligently provided, or failed to provide, reasonable legal services to Plaintiff and negligently failed to use the degree of skill and care normally possessed and used by other reasonably careful attorneys under like circumstances during their tenure as lead litigation counsel in the Toyota Case. The negligence includes failing to disclose all medical expenses incurred relating to the care of Devyn Bolton that would have been compensable at trial.

30. Defendant Napoli Shkolnik is vicariously liable for the negligence of Shkolnik under the doctrine of respondeat superior.

31. Defendants' failure to exercise reasonable care was the proximate cause of damages suffered by Plaintiff. As a direct and foreseeable result of defendants' negligence Plaintiff lost a significant portion of her damage claim, plus interest, against Toyota in the Toyota Case.

32. Plaintiff is entitled to recover compensatory damages from Defendants in an amount to be proven at trial.

### **Count II (Breach of Fiduciary Duty)**

33. Plaintiff realleges the allegations of paragraph 1 through 32.

34. Defendants were retained by Plaintiff to act as lead litigation counsel on Plaintiff's behalf against Toyota in the Toyota Case.

35. As Plaintiff's attorneys Defendants owed Plaintiff a fiduciary duty.

36. The fiduciary duty that Defendants owed to Plaintiff included the duty to provide competent legal services. Defendants also had a duty to disclose to Plaintiff all material matters affecting Plaintiff's interest.

37. Defendants failed to provide competent legal services to Plaintiff and that failure was the proximate cause of damages suffered by Plaintiff.

38. Plaintiff is entitled to recovery compensatory damages from Defendants in an amount to proven at trial.

**WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

1. Compensatory damages in the amount of the medical expenses that were not properly disclosed in discovery and were not recovered at trial, and prejudgment interest that would have been included in the judgment against Toyota for those medical expenses;
2. Prejudgment interest;
3. Costs and disbursements herein; and
4. Such other relief as the Court may deem just and equitable.

**A JURY TRIAL IS DEMANDED.**

DATED: November 29, 2018

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