

Case No. 2007-739

IN THE SUPREME COURT OF OHIO

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ENVIRONMENTAL NETWORK CORP., *et al.*,

*Plaintiffs-Appellees,*

vs.

GOODMAN WEISS & MILLER L.L.P., *et al.*,

*Defendants-Appellants.*

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On Appeal From The  
Court of Appeals Eighth Judicial District  
Cuyahoga County, Ohio  
Court of Appeals Case No. CA 06 87782

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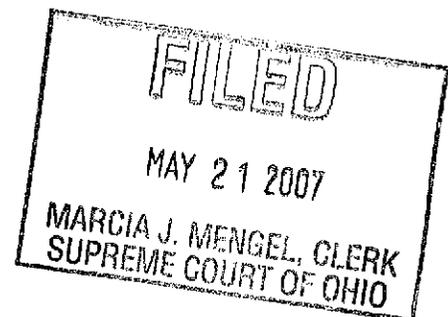
**MEMORANDUM IN RESPONSE TO JURISDICTION**

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**I. THIS CASE PRESENTS NO ISSUES OF EITHER GREAT PUBLIC INTEREST OR OF SUBSTANTIAL CONSTITUTIONAL IMPORTANCE.**

This appeal involves no more than a disgruntled, negligent law firm, unhappy over losing a substantial jury verdict, seeking to avoid a jury's findings of six separate grounds of negligence. The claim that garden variety professional neglect is a matter of great public interest, or poses any constitutional question for the State of Ohio is, simply put, nonsense.

This case presents a picture of multiple, varied, continuing and egregious malpractice by Goodman Weiss & Miller L.L.P. ("GWM"), the Appellant law firm. GWM represented the Appellees, Environmental Network Corporation, Environmental Network and Management Corp. and their president, John J. Wetterich (collectively "ENC"), in a related set of contract, tort and attachment claims pending before the Cuyahoga County Court of Common Pleas. The jury found inadequate preparation, supervision, staffing and poor courtroom performance and finally found that GWM threw in the towel and coerced a bad settlement. Contrary to the supporting briefs for GWM, specific findings by the jury indicate six, not one, independent breaches. The jury found:

- (2) State in the manner the standard(s) of care was (were) breached: (1) No engagement letter. (2) Overall lack of preparedness. (3) Case should have been continued, to allow Mr. Steve Miller to participate. (4) Plaintiff was coerced into signing settlement. (5) Judge not recused. (6) GWM council [sic] alienated the court.

The coerced settlement, the only breach mentioned by the various briefs supporting jurisdiction, was *prima facie* outrageous, is unchallenged on appeal and is sufficient grounds to support any verdict of misfeasance. It stands as but one of six violations of duty.<sup>1</sup>

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<sup>1</sup>The jury, parsing the evidence, accepted many, but not all, of the various wrongs described by ENC's expert as breaches.

GWM has launched a broad-based attack on *Vahila*. GWM complains, through inter-related, often-merged and never entirely clear grounds that either *Vahila* goes too far, that *Vahila* needs explanation as to its real grounds or that *Vahila* needs a stronger proximate cause requirement. These separate grounds all lead to one proposition: namely, a plaintiff needs to prove the case-within-the-case in every legal malpractice action and, if there was such a requirement, it has not been met here.

The attack is not only unwarranted and weak, there is no sound reason, given the facts of this case, to review, let alone fine-tune, amend or reverse *Vahila*. As the factual basis – that is, that ENC did not prove the case-within-the-case – is completely erroneous, this Court ought to refuse jurisdiction on that ground alone. The jury found that proximate cause was met. Further, the case-within-the-case, while not required to be proven by *Vahila*, was in fact proven in this case. The jury answered the question thereby:

- (3) Did a breach by Defendant of the applicable standard of care proximately cause any damage to Plaintiff? Yes.

Moreover, the jury charge made proximate cause a requirement of preponderance:

Further, plaintiffs must establish by a preponderance of the evidence that there is a causal connection between the conduct complained of and the resulting damages or loss.

In fact, the judge, earlier in the charge, gave GWM then what it claims to need now:

Plaintiffs would have achieved a better result if the trial of all the claims in the underlining [sic] case had been completed and the judgment rendered by the trial Judge.

The jury was instructed on causation, the instruction exceeded that required by *Vahila*, and there was a special interrogatory as to proximate cause. Thus, GWM suffered no injury; it just did not like the result, one driven by the facts and found by the jury.

Regardless of any decision on GWM's sole proposition of law, there are simply no

grounds for reversal. ENC introduced overwhelming proof of the underlying case and the jury recognized that fact. Thus, even if this Court jettisons years of precedent and imposes the onerous requirement of proving the case-within-the-case on those harmed by negligent lawyers, the outcome here would not change. The jury, properly instructed, found through an unnecessary (but telling) interrogatory that the case-within-the-case was proven. Surely, this Honorable Court has more pressing business than to issue an advisory or academic opinion on otherwise clear and unambiguous case law when it would not change the result of this case.

In fact, the arguments strewn throughout GWM's brief and the two amicus briefs (both directly from insurance carriers and the industry's in-house arm, the Defense Research Institute), conflate their reasons for following the *Vahila* standard with reasons to overrule it.

- GWM and its insurance industry supporters argue that the "some evidence standard is unique in tort law." It is not even unique in professional liability in Ohio, as it is akin to the medical malpractice standard of "loss of chance of recovery." That is, if a radiologist fails to detect a tumor, and the chance of recovery drops from 49% to 1%, with a resulting death, there is no "but for" requirement that the person would have survived (been 50.01% likely) in order to recover.
- GWM and its supporters argue that this appeal is solely about proving the case-within-the-case. It is not. Once GWM was found negligent, the amount of damages from such negligence was neither difficult to prove nor difficult for the jury to find. Indeed, as explained by the Court of Appeals, it is quite apparent from the jury's damage award that it only awarded ENC its out-of-pocket losses. There was no issue of whether the defendant parties in the underlying case, including a multi-billion dollar public company, Waste Management, could have actually paid the losses to ENC if GWM had not acted

negligently. Rather, under even an unwarranted, more stringent standard of proximate causation exceeding *Vahila*, the damage award here is obvious and certain and within the province of a reasonable jury. Indeed, the jury's damage award tracked GWM's out-of-pocket damage calculations compiled for ENC in the underlying case. This is not a case where the *Vahila* standard is reasonably at issue or where a different outcome would accrue if this Court were to revisit, weaken or even strengthen *Vahila*. Thus, even if this court were inclined to broadly reconsider *Vahila*, this is not the case to do it.

- GWM and its supporters argue that the decision of the four judges below (the trial judge denying the JNOV and the unanimous 8<sup>th</sup> District panel), “makes lawyers guarantors of their clients’ cases” and “impairs the strong public policy favoring settlement.” That is nonsense. The jury found six separate breaches of duty, each sufficient to sustain a jury verdict. The standard here is not that of a guarantor regardless of fault, but an erring lawyer required to compensate for multiple breaches of duty. Duty matters. Further, nothing here prevents a truly voluntary settlement. At the close of a nearly three-week trial, the jury, after listening to Mr. Wetterich, GWM lawyers’ own testimony and two independent witnesses testifying as to GWM’s coercion, found that GWM abandoned the case, refused to return to court and told Mr. Wetterich that they had given up. His lawyers’ misconduct forced a settlement. Just like any other professional, lawyers are responsible for the damage they cause.

- GWM and its supporters argue that this Court wrote an improperly reasoned opinion in *Vahila* because that opinion was rooted “primarily upon *Vahila*’s liberal quotation from an out-dated law review note penned by a student from Cornell Law School.” Aside from the *ad hominem* remark, the unanimous opinion in *Vahila* merely

stated that the underlying reasoning, not the authority, in the Cornell Law Review note was compelling. It was and still is.<sup>2</sup>

- GWM and its supporters argue that because of this decision, “more cases will be forced to trial and court dockets will become more congested.” Again, unless we are worried that more cases will go to trial because clients will reject abusive and coerced settlements, then this Court ought not to worry about such cases. On the contrary, such cases ought to be heard by a trier of fact. Under both the U. S. and Ohio Constitutions, parties have a right to a trial.

- GWM and its supporters argue “Claims for legal malpractice will likely soar – along with premiums for malpractice insurance.” While there is no showing in any of the briefs that the cost of malpractice insurance will soar, if lawyers are committing malpractice (such as by coercing settlement or abandoning their clients), then why should any court be concerned about the costs of insurance *per se*? By this tortured logic, nearly all automobile cases would be shut out of court if the law required a showing of recklessness before such claims could be heard. Such a new law would drastically reduce motor vehicle cases and insurance rates. Yet, should that be the law? The purpose of our legal system is to achieve compensatory or corrective justice when wrongs are committed, not to protect negligent, coercing law firms from increased malpractice insurance premiums.

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<sup>2</sup>It often is an insurmountable burden for clients to reconstruct later from the ashes of their lawyer’s incineration of the case every pertinent piece of evidence. That said, the Cornell article was not penned by some student with a brief moment in the sun and a rapid demise into obscurity. Instead, it was authored by Erik Jensen, the David L. Brennen Professor of Law at CWRU School of Law.

In short, there is no reason – factual, precedential, equitable or public policy – for this Honorable Court to review the multi-tiered negligence of GWM. There is no crises of great public or constitutional moment. This is a fact-driven case, not a law-driven case, and the jury found all of the pertinent facts against GWM.

## II. STATEMENT OF FACTS AND CASE.

### A. The Underlying Case.

This legal malpractice matter arises from GWM's substandard representation of ENC in the underlying commercial litigation captioned *Environmental Network Corporation v. TNT Rubbish Disposal, Inc., et al.* The relevant parties in the underlying case were ENC, Waste Management of Ohio ("Waste Management"), TNT Rubbish Disposal, Inc. ("TNT") and various judgment creditors. TNT, Waste Management and ENC were in the waste hauling and disposal business and executed various inter-locking agreements.

The underlying case arose from the operation of the San-Lan Landfill, a permitted sanitary landfill ENC operated in Fostoria. In September 1996, ENC entered into a contract with TNT, an independent waste hauler. Per that agreement, ENC financed the costs of TNT's waste hauling and dumping. In exchange, ENC received an option to buy TNT. When TNT breached the option, ENC filed an account action against TNT for the amounts due from ENC's financing of its dumping for over a year. ENC president, Mr. Wetterich, testified that the amount owed to ENC, after deducting monies owed for different services, exceeded \$1.3 Million. From that sum, he subtracted \$550,000 for a note owing from TNT that ENC signed over to Waste Management. Thus, after deductions and adjustments, TNT owed ENC \$803,056.71.

The contract claims between ENC and Waste Management arose after they executed the Waste Disposal and Airspace Reservation Agreement (the "San-Lan Agreement") in 1996. The

San-Lan Agreement called for 608,000 bank yards (or 456,000 cubic yards) to be reserved for Waste Management over four years at 152,000 bank yards per year. Per the agreement, ENC was to receive \$800,000 for continued landfill development after it had built and permitted 1,100,000 cubic yards of airspace. ENC performed under the contract, building out the required landfill airspace and, further, it accepted over 180,000 tons of Waste Management refuse. Waste Management breached the San-Lan Agreement by not advancing \$800,000 for landfill development.

Further, Waste Management failed to pay timely, if at all, governmental dumping fees. The San-Lan Agreement permitted Waste Management to deposit its waste at the San-Lan Landfill at a severely discounted rate of \$5.00 per ton. This \$5 per ton fee was to be a prepaid disposal fee, advanced to ENC for the primary purpose of landfill development. However, the \$5 per ton prepaid disposal fee was for dumping fees only, not governmental fees. Governmental fees were monies required each month and were not included in the prepaid disposal amount. Waste Management was to have paid fees in advance to have landfill space reserved for its dumping; however, it was consistently late in paying the fees in 1996 and 1997. By December 1997, Waste Management was in arrears by almost \$300,000. ENC paid Waste Management's fees, as the penalties for arrearage were draconian: one-half the monthly amount one was behind in paying the governmental fees. Ultimately, the failure of Waste Management timely to pay the governmental fees owing to ENC caused ENC significant cash flow problems, including problems with the landfill owner, which caused ENC to lose the landfill.

At trial in the legal malpractice action, Mr. Wetterich testified in detail regarding the parties' duties under the San-Lan Agreement, the terms of the agreement, ENC's performance and the myriad breaches of Waste Management and TNT. He testified at great length as to

volume calculations, engineer/ topographical maps and Ohio EPA letters regarding total landfill airspace, confirming that 1,100,000 cubic yards of airspace was developed and permitted. Further, Mr. Wetterich described specific dollar amounts lost as a consequence of Waste Management's failure to pay the \$800,000. The numbers he used for the calculations were taken from the EPA Engineering reports detailing annually the airspace filled.

Mr. Wetterich calculated the profit losses for unused landfill space, testifying that, when adding that sum to the previously established losses due and owing from TNT, ENC's total losses exceeded \$8 Million. From that gross loss, he offset from the monies owed by ENC to Waste Management. Moreover, Mr. Wetterich, in determining lost profits, subtracted those monies owed (but extinguished as a consequence of the putative settlement in this case) to the parties holding creditor judgments, specifically \$750,000. The resulting damages were \$5,386,616.81. GWM did not call a single witness from TNT, Waste Management or the Ohio EPA to dispute Mr. Wetterich's facts or calculations.

**B. GWM's Breaches of Duty.**

Before trial in the underlying case, Mr. Miller expressly told Mr. Wetterich that he would try the case; he did not. When Mr. Miller decided not to attend trial, he failed to seek a continuance. Rather, he turned the case over to Mr. Wertheim in late October 2001, six weeks before trial.

Significant problems existed with the documentary evidence. These problems arose in late November (mere weeks before trial) when Mr. Wetterich brought to GWM copies of documents he had previously produced to GWM. He had used the copies to produce summaries of large compilations of documents. Mr. Wertheim, however, without reviewing the documents or discussing them with Mr. Miller, produced them to opposing counsel. At trial, Waste

Management and TNT made a significant issue about the alleged late production, when, in fact, the documents were duplicative of previously produced documents. Mr. Wertheim, being new to the case and the documents, could not respond to this accusation.

When trial continued that afternoon, the trial judge, upon yet another dispute, threw an exhibit across his desk, ordered a recess and demanded to see all counsel in chambers. When ENC's counsel reemerged, they refused to return to the courtroom, despite Mr. Wetterich's insistence. They told Mr. Wetterich *ad nauseam* that he would lose the case, that the judge was mad at him and did not like him, and that the disputed documents were inadmissible. However, GWM never apprised Mr. Wetterich why the exhibits could not be admitted. Mr. Wetterich wanted to have the judge "thrown off" since it was represented that the judge disliked him. GWM refused to seek recusal. Mr. Wetterich then demanded that his attorneys return to Court:

I told them at least 30, 40 times that afternoon. In fact, when we were in the little room, I told Jim Wertheim. I said, you know, Jim, I'm an ex-Marine and we believe when [sic] go past a certain point that we call the line of demarcation, you don't turn back, and we're past that point.

I said we're not turning back. We're going in. I'm entitled to my day in court. Despite these demands, GWM refused to return to court.

Mr. Wetterich even requested that Mr. Miller come to the courthouse, but he was elsewhere.

Late in the afternoon, Mr. Wetterich requested his attorneys secure from the trial judge an extra day to decide what course of action he should take. GWM refused, forcing ENC to settle. The attorney's failures, among other things, to seek recusal of the judge and to prepare, staff, finish and try the case as demanded by the client constituted several of the grounds from which the jury found GWM liable for malpractice.

Based on this evidence, and the lawful instructions given by the trial judge, the jury

returned a \$2,419,616.81 verdict, which was less than ENC's total losses.<sup>3</sup> GWM lost a JNOV motion and then appealed to the 8<sup>th</sup> District. Persuasive and unanimous opinions by the two courts rejected all objections.<sup>4</sup>

### III. PROPOSITION OF LAW.

#### A. **This Court Should Deny Jurisdiction, as ENC Met the Proximate Cause Requirements Set Forth in *Vahila v. Hall* (1997), 77 Ohio St. 3d 421.**

The proposition of law GWM has proposed -- vague, advisory and wrong -- is hardly a change from the trial court's full-blooded instructions on causation and damages. The trial court instructed the jury to return a verdict in favor of ENC only if it proved, by a preponderance of the evidence, that (a) ENC's claims in the underlying litigation had merit; (b) GWM breached the standard of care; and (c) ENC sustained damages in the underlying litigation as a proximate result of GWM's breach. Further, as part of the trial court's instruction, the jury was to award damages only if ENC "would have achieved a better result if the trial of all the claims in the underlining [sic] case had been completed and the judgment rendered by the trial judge." Thus, GWM did, in fact, receive the jury charge it now requests from this Court.

Ignoring for the moment that the jury charge contained the "but for" language, *Vahila* does not mandate that a legal malpractice plaintiff make such a remarkable showing. This Court held that to establish causation in a legal malpractice case, a plaintiff must show a causal connection between the negligent conduct and the resultant loss, stating:

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<sup>3</sup>The evidence, as presented through a lost opportunity regression analysis by Prof. John Burke, amounted to \$40,778,739.00 in past losses and capitalized future losses.

<sup>4</sup>Not placed in this Court's record was the thoughtful, cogent and thorough 25-page Opinion of then trial court (now appellate court) judge, Mary Jane Boyle, denying the Motions for JNOV and New Trial.

We are aware that the requirement of causation often dictates that the merits of the malpractice action depend upon the merits of the underlying case. Naturally, a plaintiff . . . may be required, depending on the situation, to provide some evidence of the merits of the underlying claim.

*Vahila* at 427-28 (citations omitted). *Vahila* is clear: depending upon the circumstances, this Court may require some evidence of the merits of the underlying claim. GWM, however, would have this Court ignore its own mandate and require proof of success in the underlying matter. Yet, *Vahila* previously rejected any such finding. Through detailed rationale and policy reasons, this Court was at pains to ensure that a legal malpractice plaintiff was never saddled with the undue burden of proving the case-within-the-case:

A standard of proof that requires a plaintiff to prove to a virtual certainty that, but for that defendant's negligence, the plaintiff would have prevailed in the underlying action, in effect immunizes most negligent attorneys from liability.

*Vahila*, 77 Ohio St.3d at 426.

Moreover, GWM finds spurious support by misconstruing both the "some evidence of the merits" standard and the trial court's jury instructions. *Vahila* does not stand for the proposition that by showing "some evidence" of the merits causation is automatically established. Only by proffering this misreading can GWM allege error. Although a plaintiff is required to show some evidence of the merits of the underlying case, a plaintiff must also "causally connect" the attorney's misfeasance to the damages. Without that nexus, there is no legal malpractice. *Vahila* requires that connection, as it should, and ENC does not dispute this requirement. Here, the trial court correctly instructed the jury on that connection, requiring not only a showing of the merits of the underlying case, but also whether GWM's breaches facilitated the failure to achieve the result. ENC provided evidence of the myriad breaches that precluded the merits of the underlying case from being determined, along with evidence on the merits of the case and the

losses sustained. The jury agreed that a breach occurred and that it damaged ENC.

The litany of cases in *Vahila*'s wake confirm that where proof of the underlying case is necessary, a legal malpractice plaintiff must provide some evidence of the merits of the underlying claim. GWM cites *Lewis v. Keller* (8<sup>th</sup> Dist. 2004), 2004-Ohio-5866, for the proposition that in some situations a legal malpractice plaintiff is required to prove the entirety of the underlying case. To the contrary, the *Lewis* Court quotes the very same "some evidence" passage directly from *Vahila*. *Id.* at 9. *Lewis* is consistent with *Vahila*, as the plaintiff was required to produce some evidence of the merits of his claim. He could not and summary judgment was properly entered.

Next, GWM cites *Cunningham v. Hildebrand* (8<sup>th</sup> Dist. 2001), 142 Ohio App.3d 219, for the same maligned proposition. Remarkably, GWM fails to apprise this Court that the instructions in *Cunningham* stated, "In a legal malpractice case, plaintiffs need not prove that they would have won the underlying case. . ." *Cunningham*, at 225. In conformity with *Vahila*, "the [trial] court required [the plaintiff] to provide some evidence of the merits of the underlying claim." *Id.* at 225. Similarly, GWM maintains that *Rubel v. Kaufman* (8<sup>th</sup> Dist.) 2003-Ohio-5575 required the plaintiff to show that he would have prevailed in the underlying medical malpractice case. This is false. The 8<sup>th</sup> District held that it was necessary for the plaintiff to prove his case had some merit for the attorneys' conduct to constitute malpractice. *Id.* at 39. He could not meet that burden and the court dismissed his case.

The proximate cause standard set forth in *Lewis*, *Cunningham* and *Ruble* is the same as *Vahila*; the facts are simply different. Every case GWM cites to support the proposition of the case-within-the-case approach actually stands for the opposite. Each reaffirms *Vahila*'s central proposition. Despite GWM's protests, the 8<sup>th</sup> District has steadfastly reaffirmed *Vahila*, as did

the trial and appellate courts in this case.

GWM further suggests that proximate cause must be proven by independent expert testimony. This is three times false: it is not Ohio law that experts are always required on causation (“he took my wallet with \$100, causing me harm”); Mr. Wetterich, as owner and president of ENC, is deemed an expert and testified accordingly; and the underlying contract matters did not require expert testimony (Williston is unnecessary and irrelevant to establish that you promised to buy my law books and then did not). See, *Montgomery v. Gooding, Huffman, Kelly & Becker* (N.D. Ohio 2001), 163 F.Supp.2d 831, 837 (“[A]lthough Ohio legal malpractice decisions require expert testimony to establish a breach of duty, expert testimony is not required to establish the issue of proximate cause.”)

Finally, the assertion that proving the case-within-the-case is universally accepted is false. It is not and, in fact, is widely criticized. It has been reviled by critics and rejected in a number of states, including Idaho, Louisiana, Massachusetts, Michigan and New Jersey. It provides protection to lawyers that no other defendant receives. As one authority noted: the “principles of law relating to the burden of proof in a ‘trial-within-a-trial’ have...skewed enormously in favor of the attorney against the client...The result is that the attorney derives a benefit from his or her wrongful conduct, and thus the system of justice places...an unconscionable burden on the client.” Joseph H. Koffler, “Legal Malpractice Damages in a Trial Within a Trial – A Critical Analysis of Unique Concepts,” *73 Marq. L. Rev.* 40, 75.

In determining the proximate cause standard in *Vahila*, this Court considered a host of policy concerns and real life practical impediments. The “but for” standard GWM urges (that *Vahila* explicitly rejected) provides safe harbor for coercing, negligent, ill-prepared attorneys. GWM’s standard requires reconstruction of the underlying case where remote and speculative

testimony, from experts or otherwise, is needed, for example, on trial outcomes and potential damage awards. The “but for” causation standard necessitates testimony from sources alien to the original proceeding, usually many years removed, of what would have transpired had the underlying case moved forward apace. A victim of malpractice, years removed from the original trial, needs to produce witnesses, documents and other evidence from sources difficult to find or altogether unavailable. It also requires the entire panoply of documents, witnesses and evidence to be jump-started at the new trial. As the *Vahila* Court noted, “[t]he cost and complexity of such a proceeding may well discourage the few plaintiffs otherwise willing to pursue the slim chance of success.” *Id.* at 427. These are not “imagined dangers” as quipped by GWM, but are real and substantive policy concerns that were evaluated and balanced by this Court, ultimately rejecting the case-within-the-case method urged again here. This Court struck a balance between proving the entire underlying case and the inequity of requiring such proof.

Moreover, it is precisely the negligence of the defendant-attorney that renders proving the case-within-the-case more onerous. After all, the defendant-attorney in the underlying case controlled discovery, determined litigation tactics, chose what depositions to take and what strategies to use. The greater the negligence, the more difficult the proof. “[The attorneys’] negligence deprives plaintiffs of access to information needed to prove the causation element of malpractice.” Lawrence W. Kessler, “Alternative Liability in Litigation Malpractice Actions: Eradicating the Last Resort of Scoundrels,” 37 *San Diego L. Rev.* 401, 410. The case-within-the-case approach rewards the most negligent attorneys.

A party can never truly replicate the original action to determine what the result would have been in that particular case. As the New Jersey Superior Court, Appellate Division observed: “It is often difficult for parties to present an accurate evidential reflection or semblance

of the original action” and “the passage of time can be a significant factor militating against the suit within the suit approach.” *Gautam v. DeLuca* (N.J. 1987), 521 A.2d 1344, 1347-49. What “would have been” requires a hypothetical reconstruction, including a demand on the jury to assess collateral factors such as the original judge and jury, how that judge would have ruled on specific legal questions and how that jury would have viewed the facts presented. Simply put, “the result that would have been achieved had the trial not been destroyed by malpractice cannot be duplicated.” Kessler, *supra*, at 497.

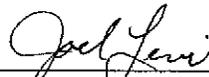
Further, the case-within-the-case provides unwarranted protections to lawyers. As Geoffrey Hazard has opined, there need to be fewer, not more, restrictions on pursuing attorneys for their breaches of duty. Geoffrey Hazard, “The Lawyer’s Duties and Liabilities To Third Parties,” *Symp. at the South Texas College Of Law* (Feb. 16, 1996).

In sum, mandating that causation in legal malpractice cases be proven only by the case-within-the-case method, requiring a demonstration of what the result “would have been,” creates a special, privileged class of defendants: attorneys prevail because their own negligence deprived their clients of the ability to meet the burden of proof. Negligence becomes its own reward.

## **V. CONCLUSION.**

Thus, for the foregoing reasons, this Court should refuse jurisdiction, let the jury verdict and two well-reasoned lower court decisions stand and deny further review. This Court need not engage in further arguments over facts found by a jury, even though GWM does not like the result, and even though the insurance industry has joined its cause. In this case, the jury’s findings about a negligent law firm should be final.

Respectfully submitted,



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SERVICE

A copy of the foregoing Memorandum in Response to Jurisdiction has been served by electronic mail and ordinary U. S. Mail on this 17<sup>th</sup> day of May, 2007, upon the following:

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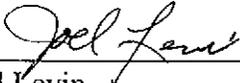
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