

DISCUSSION:

At the time of oral argument on Defendants' four (4) motions in limine, the Court undertook to determine whether the conclusions set forth in the expert reports of Craig A. Battles and Samuel L. Sharpless could be the subject of a mutually acceptable stipulation. The Court was not successful in obtaining the proposed stipulation.

Plaintiffs proposes to introduce the testimony of Craig A. Battles and Samuel L. Sharpless, to the effect that "Upstate Networks, Inc. (UNI) did not provide a complete functional car wash timer control system with credit card acceptance capabilities." The Court infers that Plaintiffs offer that testimony of support of their contention that they had a valid cause of action against UNI, which cause of action was lost due to Defendants' negligence.

Our Supreme Court has articulated the elements of a claim of legal malpractice as follows:

In order to establish a claim of legal malpractice, a plaintiff/aggrieved client must demonstrate three basic elements:

- 1) employment of the attorney or other basis for a duty;
- 2) the failure of the attorney to exercise ordinary skill and knowledge; and
- 3) that such negligence was the proximate cause of damage to the plaintiff.

Rizzo v. Haines, 520 Pa. 484, 499, 555 A.2d 58, 65 (1989). An essential element to this cause of action is proof of actual loss rather than a breach of a professional duty causing only nominal damages, speculative harm or the threat of future harm. *Id.* at 504–05, 555 A.2d at 68. Damages are considered remote or speculative only if there is uncertainty concerning the identification of the existence of damages rather than the ability to precisely calculate the amount or value of damages. *Id.* In essence, a legal malpractice action in Pennsylvania requires the plaintiff to prove that he had a viable cause of action against the party he wished to sue in the underlying case and that the attorney he hired was negligent in prosecuting or defending that underlying case (often referred to as proving a "case within a case").

Kituskie v. Corbman, 552 Pa. 275, 281, 714 A.2d 1027, 1029-1030 (Pa. 1998).

It is not yet clear to the Court whether Defendants intend to defend against Plaintiffs' claims by asserting at trial that Plaintiffs' claim against UNI would have been unsuccessful, or that the UNI claim was meritorious but was not lost as a result of any act or omission by Defendants, or both. If Defendants elect to stipulate at trial that Plaintiffs had a meritorious claim against UNI, the proposed testimony of Craig A. Battles and Samuel L. Sharpless is likely to be rendered irrelevant. If Defendants elect to dispute whether Plaintiffs' claim against UNI was meritorious, Plaintiffs will be required to introduce the expert testimony of Craig A. Battles and Samuel L. Sharpless, as an element of their claim against the Defendants.

ORDER

And now, this ___ day of June, 2026, for the reasons more fully set forth above, Defendants' Motion in Limine No. 2, is denied. Plaintiffs will be permitted to introduce at trial the testimony of Craig A. Battles and Samuel L. Sharpless, unless that testimony become irrelevant as a result of a future stipulation of all parties in interest.

BY THE COURT,

William P. Carlucci, Judge

cc: Court Administrator
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