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LOWENSTEIN SANDLER, LLP, Plaintiff, -against- HARMONY FOUNDATION OF NEW JERSEY, INC., SECAUCUS INVESTORS, LLC, TRIF & MODUGNO, LLC, and LOUIS A. MODUGNO, ESQ., Defendants.	SUPERIOR COURT OF NEW JERSEY ESSEX COUNTY - LAW DIVISION DOCKET NO.: ESX-L-7647-24; consolidated with BER-L-681-25 Civil Action CBLP Action **ORDER**
HARMONY FOUNDATION OF NEW JERSEY, INC., by and through Allen Wilen, Court Appointed Receiver, Plaintiff, -against- LOWENSTEIN SANDLER, LLP, PETER SLOCUM, ESQ., CHRISTOPHER PORRINO, ESQ., CYRULNIK FATTARUSO, LLP; JASON CYRULNIK, ESQ., JESHAYAHU BRODCHANDEL, YEHUDA MEER, and MARINA KARAVAS, Defendants.	

THIS MATTER having been opened to the Court by Trif & Modugno LLC, attorneys for Defendants, Trif & Modugno, LLC and Louis A. Modugno, Esq. (collectively "Attorney Defendants"), by way of Notice of Motion for an Order, pursuant to Rule 4:6-2(e) and N.J.S.A. 2A:53A-26 et seq., to dismiss Counts Three and Four of the Complaint filed by Plaintiff,

Lowenstein Sandler LLP ("Lowenstein") as against the Attorney Defendants ("Motion"); and the Court having reviewed the papers submitted in connection with the Motion and any arguments by the parties; and for good cause having been shown;

IT IS on this 30th day of October, 2025;

ORDERED that Attorney Defendants' Motion to Dismiss the Amended Complaint pursuant to Rule 4:6-2(e) and N.J.S.A. 2A:53A-26 et seq. as against the Attorney Defendants, is hereby **DENDIED**; and it is further

ORDERED that the Plaintiff Lowenstein must tender an Affidavit of Merit within 60 days (or 120 days, upon leave granted) of the date of filing of the Attorney Defendants' Answer to the Amended Complaint; and it is further

ORDERED that a copy of this Order shall be served upon all counsel of record within seven (7) days from the date hereof.

HON. KEITH E. LYNOTT, J.S.C.

[X] OPPOSED

Statement of Reasons

In this action by a law firm seeking to recover unpaid legal fees incurred in connection with the representation of a client, the Defendants Trif & Modugno, LLC and Louis A. Modugno, Esq. (collectively, "T&M") move to dismiss the Amended Complaint of the Plaintiff Lowenstein Sandler, LLP ("Lowenstein") on the basis of a claimed failure by Lowenstein to serve an Affidavit of Merit ("AOM") in accordance with the Affidavit of Merit statute, N.J.S.A. 2A:53A-26 to -29 (the "AOM Statute"). For the reasons set forth in this Statement of Reasons, the Court denies the motion. Although the Court agrees that Lowenstein is required to obtain and serve an AOM in order for Lowenstein to pursue its claims against T&M, it finds the obligation to serve such an AOM has not yet matured.

I

In order to assess T&M's contention that the claims lodged by Lowenstein against T&M are subject to the AOM Statute, thereby requiring service of an AOM, it is necessary to examine the nature of such claims as alleged in Lowenstein's Amended Complaint filed on June 18, 2025. The Court previously detailed the claims asserted by Lowenstein against all named Defendants, including T&M, in a previous Statement of Reasons, which it incorporates herein. It now rehearses the facts and claims alleged by Lowenstein against T&M only, as well as relevant procedural history, as follows:

Lowenstein is a major New Jersey-based law firm. It undertook to represent Harmony Foundation of New Jersey, Inc. ("Harmony"), an entity engaged in the distribution of cannabis-related products. Lowenstein represented Harmony in connection with various regulatory matters, including Harmony's efforts to convert from not-for-profit to for-profit status once such conversion was legally authorized. Such representation also encompassed certain arbitration proceedings and

litigation involving the Defendant Secaucus Investors, LLC ("Secaucus"), which at all relevant times was represented by T&M.

Lowenstein contends in its Amended Complaint that, in connection with its services to Harmony, it is owed $766,276.13 in unpaid legal fees. Its claims against Harmony and its court-appointed Receiver sound in breach of contract and unjust enrichment.[1]

When its factual averments as to Secaucus and T&M are distilled to their essentials, Lowenstein claims that Secaucus, assisted by T&M, used its position as a lender to Harmony to orchestrate a takeover of Harmony from its incumbent management. Lowenstein alleges that Secaucus, aided by T&M, ultimately secured a judicial appointment of a Receiver and a judicially sanctioned sale of Harmony's assets in a manner that benefited Secaucus at the expense of Harmony's other creditors, including Lowenstein.

In Counts Three and Four of its Amended Complaint, Lowenstein has interposed claims against Secaucus and T&M alleging tortious interference with Lowenstein's attorney/client contract with Harmony. In essence, Lowenstein claims that Secaucus and T&M maliciously undertook certain specified actions with an intention of ensuring that Harmony did not – and could not – pay the balance of legal fees owed by Harmony to Lowenstein. Secaucus and T&M deny such claims and contend that Lowenstein, along with Harmony's incumbent management, were responsible for the financial demise of Harmony as a result of legal malpractice and breach of fiduciary duty.

[1] The Court initially dismissed Lowenstein's claims against Harmony without prejudice as it determined that Lowenstein had not provided the required Pre-Action Notice to Harmony advising the latter of its right to seek fee arbitration. After the dismissal and Lowenstein's tender of the required notice, Harmony elected fee arbitration. However, the Fee Arbitration Committee abjured jurisdiction. This Court subsequently granted leave to Lowenstein to reinstate its claims against Harmony.

In Count Three of the Amended Complaint, Lowenstein alleges that T&M, on behalf of Secaucus, transmitted to Harmony a Notice of Seizure, Demand for Inventory of Collateral and Marshaling of Assets (and subsequently an Amended Notice) (collectively, the "Notice") directing Harmony to marshal all cash, funds and deposits, which action prevented Harmony from paying any of its other creditors, including Lowenstein. The latter alleges this conduct was unauthorized as Secaucus improperly sought to exercise the rights of a creditor, when it had in fact become a holder of an equity interest in Harmony through an award it sought and obtained via arbitration proceedings. Lowenstein alleges that Secaucus, aided by T&M, thereafter undertook steps to ensure that Harmony did not use a credit card to pay Lowenstein's outstanding invoices for its legal services.

In Count Four of the Amended Complaint, Lowenstein claims that T&M, "acting at the behest and direction, and with the knowledge and involvement", of Secaucus and the Receiver effectuated the transfer of the assets of Harmony to a third party "to prevent Harmony from paying Lowenstein legal fees for its services" to Harmony. This Count asseverates that T&M and Secaucus "acted wrongfully, with malice, and with the intent to harm Lowenstein."

The Amended Complaint alleges that, in a transaction approved by the Superior Court of New Jersey, Chancery Division, Bergen County – which Court had, at the prompting of Secaucus, appointed a Receiver and then oversaw the subsequent receivership proceedings – the membership interest in Harmony was transferred to a third party, Illicit Cannabis New Jersey LLC. The Amended Complaint asserts that this transaction proceeded in violation of the applicable statute governing Harmony's operations – the Jake Honig Act – as an adequate reserve was required for the satisfaction of all of Harmony's debts and financial obligations, including its debt to Lowenstein, but no such reserve was established. The pleading alleges that Harmony's Receiver

and Secaucus, acting through T&M, assured the Court and the New Jersey Cannabis Regulatory Commission, the regulatory body with authority to oversee Harmony's operations, that arrangements for an adequate reserve were in place when they knew such assurance was false.

Specifically, according to the Amended Complaint, the purchaser of the membership interest in Harmony provided a promissory note in the amount of $10 million. But such note was expressly conditioned upon Harmony securing approval for the operation of a dispensary in the City of Hoboken. The Amended Complaint avers that the Receiver, along with Secaucus and T&M, knew that such contingency would never be satisfied as the City of Hoboken had denied Harmony's application for such facility. As a result, according to the Amended Complaint, the note was worthless. The court subsequently rejected efforts by the Receiver to require the City of Hoboken to authorize the dispensary.

Although T&M contends that there is no allegation in the Amended Complaint that T&M itself, in connection with its representation of Secaucus, engaged in any conduct involving misrepresentation to a court or a regulatory body, this is not so. Paragraph 68 of the Amended Complaint avers that, "[i]n coordination with [T&M], Harmony sought court approval of the [transaction with the purchaser] despite knowing that the Note remained worthless" and caused the court to approve the transfer "based on representations that the Jake Honig Act – specifically, the reserve requirements – had been satisfied." Paragraphs 72 and 73 allege that "[In addition to their representations to the court, [T&M] represented to the N.J. Cannabis Regulatory Commission" that Harmony would comply with legal requirements for the for-profit transfer, but "[t]hat representation was false" as "[T&M] and Secaucus ensured that Harmony would not pay its debts or establish the required reserve fund."

In Counts Three and Four, Lowenstein claims entitlement to damages resulting from the alleged tortious interference in the amount of $766,276.13, the amount of legal fees that Lowenstein claims that Harmony failed to pay. It also seeks an award of attorneys' fees, interest and costs.

II

On this motion, T&M contends the Amended Complaint as against T&M fails as a matter of law due to Lowenstein's failure to secure and tender an AOM within the time prescribed by the AOM Statute. T&M asserts that, given the nature of the claim Lowenstein has asserted against it, the Plaintiff was required to secure and serve such an AOM. It argues that, as it filed an Answer on February 25, 2025, Lowenstein was obligated to serve an AOM by no later than June 25, 2025, the 120th day following service of such Answer. The movant asserts that the failure by Lowenstein to do so is fatal to its claims against T&M.

T&M contends that Louis A. Modugno, Esq., is a "licensed person" under the AOM Statute. It contends the action asserted by Lowenstein as to T&M seeks "property damages" even though the Plaintiff claims entitlement to a fixed sum of money.

T&M posits that the claim lodged against it sounds in professional negligence and alleges the deviation by Mr. Modugno and the firm of a standard or standards of care applicable to attorneys. It contends this is so regardless of the specific tort – tortious interference with contract – that Lowenstein has lodged in its Amended Complaint. In the circumstances, so T&M contends, the Plaintiff was required to secure and serve an AOM from an attorney attesting to the alleged failure by T&M to adhere to an applicable standard or standards of care.

T&M rejects any contention that its Answer filed in February 2025 was a legal nullity on the basis that the Plaintiff had not yet filed and served the Amended Complaint for which it had

been granted leave. It points out that Lowenstein responded to the demand for documents included in such Answer and then filed a second motion for leave to amend which (T&M claims) Lowenstein would not have needed to obtain if no valid responsive pleading were on file as Lowenstein now contends.

Finally, although T&M's Answer did not specifically raise the AOM Statute or AOM requirement in its February 2025 Answer, T&M contends the failure to secure an AOM is not an affirmative defense, but instead renders the Plaintiff's pleading legally insufficient as to T&M. It observes that it set forth a defense of failure to state a claim in its Answer, even if it did not specifically identify failure to comply with the AOM Statute in its delineation of defenses.

Lowenstein rejoins that it was not – and is not now – obligated to secure and tender an AOM in order to proceed with its claims against T&M. It posits that its Amended Complaint does not allege or seek "property damages", but it instead claims entitlement to a liquidated sum that is owed by reason of an attorney/client contract.

More fundamentally, Lowenstein argues that its claims asserted against T&M do not allege professional negligence and do not implicate a standard or standards of care applicable to an attorney. Instead, according to Lowenstein, the Plaintiff alleges that T&M (and Secaucus) engaged in a fraud on the court and on the regulatory agency by misrepresenting that the transaction by which Harmony's assets were conveyed to a purchaser complied with the applicable law and that an adequate reserve fund was or would be established. Lowenstein asserts that such alleged conduct by T&M does not impinge upon a professional standard of care such that an AOM is required. Put differently, Lowenstein argues that it neither requires nor needs an AOM confirming that T&M engaged in fraud and misrepresentation on the court and on the regulatory agency when acting for Secaucus in order to proceed with such a claim.

Lowenstein contends, in the alternative, that if the Court were to determine that an AOM is required, the time for service of such instrument has not yet even commenced, let alone has it expired. This is so, according to Lowenstein, as T&M has not yet filed a valid Answer to Lowenstein's Amended Complaint, the submission of which is required to trigger the running of the time for service of an AOM.

Lowenstein posits that T&M submitted a putative Answer to the Plaintiff's Amended Complaint in February 2025, long prior to the filing of such Amended Complaint by Lowenstein in June 2025. It asserts that, accordingly, the Answer filed by T&M was a nullity.

Lowenstein points out that T&M actually asked Lowenstein for additional time to file its Answer to the Amended Complaint after Lowenstein filed the pleading in June 2025, thereby acknowledging (Lowenstein claims) that its prior filing was not effective. T&M then proceeded to submit the instant motion to dismiss. In the circumstances, Lowenstein asserts, the time to secure and serve an AOM, if required, has not yet even commenced and will not begin to run until T&M files a valid Answer.

III

The AOM Statute, N.J.S.A. 2A:53A-27, provides as follows:

> In any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall, within 60 days following the date of filing of the answer to the complaint by the defendant, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. The court may grant no more than one additional period, not to exceed 60 days, to file the affidavit pursuant to this section, upon a finding of good cause.

With certain limited exceptions, failure to provide an AOM, when required, results in dismissal of the complaint. As stated by the Supreme Court, the "overall purpose of the statute is 'to require

plaintiffs in malpractice cases to make a threshold showing that their claim is meritorious, in order that meritless lawsuits readily could be identified at an early stage of litigation.'" Cornblatt v. Barow, 153 N.J. 218, 242 (1998) (quoting In re Petition of Hall, 147 N.J. 379, 391 (1997)).

Both sides have cited to Couri v. Gardner, 173 N.J. 328 (2002), and agree that this case establishes the applicable standard this Court should employ to determine if the claims asserted by Lowenstein against T & M are within the purview of the AOM Statute such that service of an AOM was and is required in order for Lowenstein to proceed with such claims. The parties divaricate as to whether the standard evinced in Couri requires an AOM in the circumstances presented here.

In Couri, the plaintiff engaged the defendant, a licensed psychiatrist, to serve as an expert witness in connection with divorce litigation, and specifically as to the issue of visitation. The defendant prepared a report for the plaintiff, but then transmitted it, without the plaintiff's consent, to the plaintiff's spouse. The plaintiff sought the return of the fee paid to the defendant for the preparation of the report. The Supreme Court reversed the judgment of the Appellate Division, which had affirmed the trial court's dismissal of the action of the basis of a failure to serve an Affidavit of Merit.

In so holding, the Supreme Court identified the three elements to consider when analyzing whether the statute applies to a particular claim as follows:

> (1) whether the action is for "damages for personal injuries, wrongful death or property damage" (nature of injury); (2) whether the action is for "malpractice or negligence" (cause of action); and (3) whether the "care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint [] fell outside acceptable professional or occupational standards or treatment practices" (standard of care).
>
> [Id. at 334.]

The court held that "because the damages that plaintiff is seeking are neither 'damages for personal injuries, wrongful death or property damage,' plaintiff's claim does not fall within the first

element of the statute." Id. at 335 (quoting the AOM Statute). It determined that the defendant "conceded at oral argument that if the only damages that plaintiff is seeking are the $12,000 for the report and related costs, the statute does not apply to plaintiff's claim." Ibid.

Although such finding resolved the issue before it, the Supreme Court determined to address an apparent split of authority within the Appellate Division concerning whether "the statute ever should apply to a breach of contract claim." Ibid. In addressing this issue, the court stated that the "statutory language at issue is 'an alleged act of malpractice or negligence'" and that the "plain meaning of this language clearly is that only causes of action based on 'malpractice or negligence' are covered by the statute." Id. at 339 (emphasis in original).

The court then observed that "we also have stressed that when a "literal interpretation of individual statutory terms or provisions would lead to results inconsistent with the overall purpose of the statute, that interpretation should be rejected." Ibid. (internal quotation marks omitted). It declared that "the overarching purpose of the statute is to require plaintiffs in malpractice cases to make a threshold showing that their claim is meritorious, in order that meritless lawsuits readily could be identified at an early stage of litigation" and to "weed out frivolous lawsuits early in the litigation while, at the same time, ensuring that plaintiffs with meritorious claims will have their day in court." Id. at 339-40 (internal quotation marks omitted). It stated that the statute accomplishes this purpose by requiring a litigant to provide an AOM stating that the care, skill or knowledge exhibited in the work that is the subject of the complaint fell outside the applicable professional standard of care.

The Court reasoned that "[i]t is not the label placed on the action that is pivotal but the nature of the legal inquiry." Id. at 340. It stated that "when presented with a tort or contract claim asserted against a professional specified in the statute, rather than focusing on whether the claim

is denominated as tort or contract, attorneys and courts should determine if the claim's underlying factual allegations require proof of a deviation from the professional standard of care applicable to that specific profession." Ibid. The court declared that "[i]f such proof is required, an affidavit of merit is required for that claim, unless some exception applies." Ibid.

The court determined that such inquiry "will ensure that tort claims brought against licensed professionals that allege ordinary negligence, but not malpractice, will not be subject to the statute." Id. at 340-341. It concluded that "by asking whether a claim's underlying factual allegations require proof of a deviation from a professional standard of care, courts can assure that claims against licensed professionals acting in a professional capacity that require proof of ordinary negligence but not of a deviation from professional standards are not encompassed by the statute." Id. at 341 (emphasis in original). It noted that "while the former standard would include allegations that a psychiatrist failed to diagnose a patient properly or provide proper treatment, it would exclude allegations that a psychiatrist negligently tripped a patient when the patient entered the doctor's office, which clearly would be outside the scope of the statute." Ibid.

When considering the specific case before it, the court determined that the "plaintiff is not claiming that defendant erred in respect of the conclusions that he drew concerning psychiatric/medical matters or that defendant acted improperly from a psychiatric/medical standpoint in interviewing plaintiff's child." Id. at 342. It found that "[i]nstead, the crux of plaintiff's complaint is that defendant acted improperly as an expert witness by disseminating the report to others without the knowledge or consent of plaintiff." Ibid. In such circumstances, the court concluded that "[a]lthough defendant's unauthorized dissemination of the report also might implicate a deviation from prevailing professional standards of practice, proof of that deviation is not essential to the establishment of plaintiff's right to recover based on breach of contract." Ibid.

Applying the principles derived from Couri to the circumstances here, the Court concludes that the claims lodged by the Plaintiff against T&M do sound in professional negligence and implicate a standard or standards care applicable to attorneys in the circumstances alleged. Accordingly, it finds that the AOM Statute applies to the present claims against T&M and that an AOM is required. The Plaintiff has not established the claims it has interposed are subject to the limited common knowledge exception.

Couri makes abundantly clear that the Court's assessment of whether an AOM is required in a given case is not predicated on the label assigned to the claim by the Plaintiff but instead is predicated on the nature of the "legal inquiry" to which the action gives rise. Couri, 173 N.J. at 340. When one examines the Amended Complaint, it is apparent that the action against T&M hinges upon alleged breach of a standard or standards of care by an attorney.

As an initial matter, the claim of Lowenstein as to T&M and Secaucus does seek damages for "property damage." Although the amount claimed is a fixed sum of money – and the claim as to Harmony sounds in breach of contract for that fixed amount – the claim against T&M is manifestly a tort claim. It alleges that T&M tortiously interfered with Lowenstein's contract with Harmony and thus caused resulting injury or harm to Lowenstein's business relationship with the latter – which claim is irrefragably a claim alleging "property damage." That the claimed amount of damages is a fixed sum does not alter the fundamental nature of the claim against asserted against T&M or the character of the injury for which Lowenstein seeks compensation from T&M.

The Court's examination of the Plaintiff's Amended Complaint against T&M reveals that it alleges conduct by the latter that results entirely from its representation of Secaucus in arbitration, litigation, regulatory and related proceedings. The Plaintiff anchors its claim for tortious interference in actions taken by T&M in its professional capacity as counsel for Secaucus.

More specifically, the Plaintiff avers that T&M issued the Notice to Harmony, on behalf of Secaucus, allegedly preventing Harmony from paying its other creditors. Lowenstein contends that Secaucus and thus T&M had no legal right to issue such instruction, and knew that to be so, as Secaucus had ceased to be a creditor of Harmony and had become an equity holder because of the arbitration award Secaucus

The Amended Complaint further alleges the T&M represented Secaucus in connection with proceedings before the Superior Court of New Jersey, Chancery Division that resulted in the appointment by the court of a Receiver for Harmony. Thereafter, during these proceedings, the Receiver, supported by Secaucus, via T&M, its counsel, applied to the Court – successfully – for approval of a transaction involving the conveyance of the membership interest in Harmony to a third-party purchaser.

Lowenstein contends that, contrary to applicable law, the parties to this transaction did not establish a reserve fund that was sufficient to pay the debts and obligations of Harmony incurred when operating as a not-for-profit entity, including its debt to Lowenstein. The Amended Complaint alleges that Secaucus, acting through T&M, knowingly misrepresented to the court that an adequate reserve had been or would be established. It posits that Secaucus and T&M knew a contingent note executed by the purchaser was worthless as the condition – authorization to open and operate a dispensary in Hoboken – would never be satisfied.

As this summary of the Plaintiff's averments establishes, the Amended Complaint as to T&M relies on conduct undertaken by T&M in a professional capacity, as attorneys for a client, and indeed includes alleged conduct of such attorneys before a tribunal. In order for the Plaintiff to establish a malicious interference by T&M with the contractual relationship between Lowenstein and Harmony to the detriment of Lowenstein – a non-client – the Plaintiff would

perforce have to show that the actions T&M allegedly undertook on behalf of Secaucus were not consistent with the duties and obligations of an attorney representing a client in such proceedings. Lowenstein could not establish the requisites of interference and malice without doing so.

Put differently, there is simply no basis in law or logic to contend the conduct of T&M on which the Plaintiff relies to establish its claim for tortious interference falls outside the ambit of professional practice and does not implicate a professional standard or standards of care owed by an attorney, in the circumstances presented, to a client, a non-client and/or the court. Even though the claims lodged by Lowenstein assert tortious interference with contract, the "legal inquiry" – as to T&M – is whether the attorneys breached such standard or standards of care in connection with their representation of Secaucus. Couri, 173 N.J. at 340.

The Plaintiff appears to contend that, at minimum, its averments as to T&M establish conduct so plainly egregious as to come within the purview of the common knowledge exception. It argues that the claim that T&M lied to the court as to the existence or sufficiency of the reserve fund does not require analysis by an expert through the AOM process.

But the conduct at issue is not equivalent to missing a statute of limitations or a court-imposed deadline or failing to procure or serve an expert report – matters clearly within the ken of a lay jury to assess without an expert. The underlying matter in this case involves complex commercial relationships and transactions. The assessment in such circumstances as to whether T&M violated a professional standard or standards of care and connection with its representations to the court on behalf of a client is a matter that a jury is not capable of understanding without the guidance of an expert. That an expert may have little difficulty providing an AOM – as Lowenstein contends – does not mean that an AOM is not required.

Lowenstein's citation to Fendt v. Menas, 2025 N.J. Super. Unpub. Lexis 31 (App. Div. January 7, 2025), an unpublished decision, is unavailing. That case involved circumstances markedly different from those alleged here.

In Fendt, the attorney allegedly arranged for an undisclosed "flip" sale of a property to a client for his own and his family members' benefit. In such circumstances, the court concluded that the plaintiffs were not required to produce an AOM in respect of claims asserting tortious interference, fraud, conversion and conspiracy, stating:

> There were numerous allegations of improper conduct against [the attorneys], some related to their representation of plaintiffs and others to their intentional wrongful actions during the course of the business dealings. The fact that the allegations all arose out of one set of circumstances does not prohibit causes of action grounded in both negligence and tort. The difference in the claims became clearer as discovery ensued, revealing further alleged misrepresentations and wrongdoing by [the attorney].
>
> [Id. at *29-30].

Even so, the court held that the trial court correctly concluded that the plaintiffs were required to tender an AOM in respect of their claims for legal malpractice. It approved the trial court's finding that the common knowledge doctrine was not applicable – having noted the latter court's determination that questions concerning what information must be provided to a client and how and whether to provide it were beyond the common knowledge of a lay juror.

In this case, unlike Fendt, the plaintiff alleges conduct by T&M that occurred entirely in connection with its role as attorneys for Secaucus. There is no averment in the present pleading that T&M engaged in intentional wrongful actions "during the course of the business dealings." Fendt, at *29-30.

Cornerstone Staffing Solutions v. Weber, 842 F. App'x 732 (3d Cir. January 7, 2021), also non-precedential, is more closely aligned with the present case.[2] There, the plaintiff sued an accounting firm and one of its certified public accountants, alleging professional negligence, negligent misrepresentation and fraud. The accounting firm performed work for a client from which the plaintiff purchased an IT staffing business. The plaintiff alleged the accounting firm had aided and abetted a fraud by its client by concealing that the client maintained a separate set of books and that the client's actual financial statements showed losses.

When the defendant sought dismissal of the plaintiff's complaint asserting a failure to deliver an AOM, the plaintiff did not contest the dismissal of the claim sounding in professional negligence. But it asserted that it was not required to tender an AOM in relation to its claims for fraud, fraudulent inducement, negligent misrepresentation and conspiracy.

The Court of Appeals affirmed the District Court's determination that an AOM was required and that the common knowledge exception did not apply. The court agreed with the District Court's "explanation of the ways in which [the plaintiff's] claims required proof of [the accountants'] deviation from a standard of professional care." Id. at 736-737. The District Court, in turn, had concluded that to succeed on a claim that the accountant withheld material information – the "'real' financial books" – the fact finder must first understand what documents an accountant would provide to a non-client engaged in a purchase of assets. Id. at 736.

The Court of Appeals approved the District Court's finding that the failure to serve an AOM as to the claims at issue was not "excusable" under the common knowledge doctrine. Id. at 737. "The average juror's ordinary understanding and experience would be inadequate to evaluate the

[2] For the avoidance of doubt, this Court does not rely on Cornerstone for its decision on this application. It discusses this case and Fendt because the parties cited these cases. It does find the circumstances of Cornerstone to be more in accord with the facts of this case than the circumstances in Fendt and, therefore, that the Cornerstone court's discussion and reasoning are more persuasive.

propriety of [the accountants'] conduct, which implicates business and accounting concepts as varied as the relationship between a parent company and its subsidiaries, the accounting regulations and practices of 'publicly-traded' foreign 'société anonyme[s],' the proper calculation of EBITDAs, the proper preparation of AR roll forward reports, and the proper treatment of intercompany business operations, among many others…. Thus we agree with the District Court that the common knowledge exception does not apply." Ibid.

In this case, as in Cornerstone, the proof of the Plaintiff's claims requires assessment of whether a deviation from a professional standard of care took place. This is so as to the issuance, on behalf of a putative creditor, of the Notice to Harmony, and its (alleged) concomitant effect upon Harmony's ability to pay its debts and obligations, or the claimed misrepresentation to the court as to the reserve fund. One would necessarily have to assess, given the duty of zealous advocacy for a client's interest, what legal basis to issue the Notice to Harmony did or did not exist and/or what information the attorney possessed concerning the debts and obligations of Harmony and what it should have conveyed to the court in the circumstances concerning the existence or adequacy of the reserve fund.

For these reasons, the Court concludes that the claims lodged by Lowenstein against T&M hinge on proof of a violation of a standard or standards of care applicable to an attorney. Although the claims of Lowenstein as to T&M sound in tortious interference, "the claim[s'] underlying factual allegations require proof of a deviation from the professional standard of care applicable to [the legal profession.]" Couri, 173 N.J. at 340. As a result, an AOM is required under the AOM Statute in order to proceed with such claim.

As the Court has determined that an AOM is required, it must now consider whether the time for service of an AOM has expired. It concludes the time has not yet elapsed.

The AOM Statute requires service of an AOM within 60 days of the filing by the licensed person of its answer to the complaint, with the possibility of an extension of 60 days. The court is not empowered to extend the time beyond 120 days (save that there are certain judicially crafted exceptions for substantial compliance and exceptional circumstances).

But the answer of the licensed professional must of course be a valid answer, and not a legal nullity. In this case, the Court, in connection with pre-answer motion practice initiated by Secaucus and T&M, granted Lowenstein leave to file an Amended Complaint. T&M filed its Answer to that Amended Complaint in February 2025, before Lowenstein filed the actual pleading in June 2025, rendering T&M's Answer a legal nullity. Indeed T&M elected to file this motion to dismiss and thus has still not filed a valid Answer to the Amended Complaint.

As noted above, T&M contends that Lowenstein recognized its Answer as a valid pleading because the latter responded to a demand for documents included in the pleading and thereafter sought leave a second time to amend its complaint – an action that T&M asserts would not be required if a responsive pleading had not been filed. But tendering documents to an opponent in response to a demand does not of itself validate a pleading that is null. And Lowenstein's request to the Court for leave to further amend occurred in the wake of (i) an initial motion to dismiss by T&M, itself possibly a responsive pleading under the applicable Rules of Court; and (ii) the Court's prior dismissal of the claims against Harmony and its holding that Lowenstein could seek reinstatement of such claims if the fee arbitration did not proceed.

In the circumstances, Lowenstein's determination to seek leave to move to amend to reinstate the previously dismissed claims and to file its Amended Complaint only after the adjudication of such application was and is understandable and, in all events, certainly does not represent an acknowledgement by Lowenstein that T&M's prior Answer was valid. Moreover, it is

noteworthy that T&M itself requested additional time (which Lowenstein granted) to file its answer or otherwise move as to the Amended Complaint.

Strict application of the procedures for pleading – including a determination that a putative answer is a nullity when the opposing party has not yet filed the pleading to which such answer responds – is particularly appropriate in the circumstances here, given the consequences of a determination to the contrary. The AOM requirement is intended to weed out at an early stage of the proceedings non-meritorious claims of professional dereliction against a licensed person. It is thus a shield against frivolous professional negligence claims, not a procedural sword to secure an unwarranted dismissal. The legislative purpose of the AOM Statute is best advanced by affording Lowenstein the ability to serve such an AOM within 60 (or 120) days after the filing by the licensed person's of its Answer to the actual, as-filed Amended Complaint. For these reasons, the Court concludes that (i) an AOM is required; and (ii) Lowenstein must tender the AOM within 60 days (or 120 days, upon leave granted) of the date of filing of the Answer that the Court presumes T&M will now file. Accordingly, the Court denies the present motion to dismiss.