COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1181CV03593

DANIEL WILSON, individually and as parent and next friend[1]

vs.

TERESA BROOKS BENOIT, ESQ. & others[2]

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

The plaintiff, Daniel Wilson ("Wilson"), filed this action on behalf of himself and his three children against the above-named defendants, seeking damages in connection with a workers' compensation settlement agreement he entered into on October 8, 2008. Wilson is also seeking damages he sustained after subsequently being reported for and convicted of workers' compensation fraud. The matter is presently before the court on Southworth-Milton, Inc. ("SMI") and Camille Kantorski's ("Kantorski") (collectively, "SMI defendants") motion for summary judgment and Sentry Insurance A Mutual Company ("Sentry"), Jodie Driscoll ("Driscoll"), Thomas E. Bradley, Esq. ("Bradley"), and Mullen & McGourty, P.C.'s ("Mullen & McGourty") (collectively, "Sentry defendants") motion for summary judgment.[3] For the following reasons, the motions for summary judgment are **ALLOWED**.

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[1] Of Nathan Daniel Wilson, Nichole Danielle Wilson, and Maya Brook Newcombe-Wilson.
[2] Sentry Insurance A Mutual Company; Jodie Driscoll; Thomas G. Bradley, Esq.; Mullen & McGourty, P.C.; Southworth-Milton, Inc.; and Camille Kantorski.
[3] Defendant Teresa Brooks Benoit, Esq. also filed a motion for summary judgment; however, prior to the motion hearing, the parties filed a stipulation of dismissal as to all claims against her.

BACKGROUND

The following undisputed facts are taken from the summary judgment record, with certain additional facts reserved for later discussion.

SMI primarily sells and repairs heavy construction vehicles manufactured and distributed by Caterpillar, Inc. At all relevant times, Kantorski was employed by SMI as its Safety Supervisor. She also was responsible for administering SMI's workers' compensation claims.

On August 15, 2006, while employed by SMI as a heavy equipment mechanic, Wilson suffered a work-related right shoulder injury, for which he received medical treatment. SMI reported Wilson's injury to its workers' compensation insurance carrier, Sentry, which paid for Wilson's medical treatment. However, because SMI's insurance policy had a $350,000 per claim deductible and the amounts paid to Wilson were under that limit, Sentry, through its senior claims representative, Driscoll, acted only as a claims administrator on SMI's behalf.

On October 16, 2006, SMI terminated Wilson for reasons unrelated to his injury.

On April 12, 2007, Wilson underwent rotator cuff surgery on his right shoulder. From April 12, 2007 to September 2007, SMI paid Wilson workers' compensation benefits pursuant to G. L. c. 152, § 34, which provides benefits to employees that are totally incapacitated from a work-related injury ("Section 34 benefits").

In May 2007, Wilson began working part-time as a mobile equipment mechanic for his own business, DJ Wilson Mobile Heavy Equipment & Truck Repair ("DJ Wilson"), pursuant to a subcontract with Scott Construction. Wilson did not report his earnings to SMI or Sentry even though he continued collecting workers' compensation benefits.

On August 2, 2007, Wilson underwent an independent medical examination ("IME") by a physician that Sentry commissioned. During the examination, Wilson represented that he was not working.

Thereafter, Sentry sent Wilson a blank Employee's Earnings Report for him to complete. See G. L. c. 152, § 11D(1). In the cover letter that accompanied the form, Sentry advised Wilson:

> "As an employee entitled to receive weekly compensation, you have an affirmative duty to report to the insurer all earnings, including wages or salary from self-employment. If you fail to report any earnings whether paid cash or otherwise, you may be subject to civil or criminal penalties. If you fail to return this form within 30 days of this request, the insurer may suspend your weekly benefits under M.G.L. Chapter 152 section 11D(1)."

On August 20, 2007, Wilson completed the form under the pains and penalties of perjury, reporting that he had not earned any income. He checked a box stating: "I have not received earnings for any period in which I was entitled to receive Workers' Compensation Benefits."

On September 4, 2007, Wilson underwent another IME by a physician retained by his attorney, Teresa Brooks Benoit, Esq. ("Benoit"). During the examination, Wilson again stated that he was not working.

Shortly thereafter, on September 12, 2007, Sentry terminated Wilson's Section 34 benefits and began paying him benefits pursuant to G. L. c. 152, § 35, which provides benefits based on an employee's partial disability. Throughout this entire period until his workers' compensation hearing at the Department of Industrial Accidents ("DIA") on October 8, 2008, Wilson continued collecting workers' compensation benefits while also receiving income from his personal business. However, he did not report his personal business income to Sentry.

Well before the hearing, Sentry and SMI had reason to believe that Wilson was working while collecting benefits. Sentry had hired Trace America, a surveillance company, to investigate Wilson. On July 25, 2007, Driscoll received Trace America's investigation report, and on July 30, 2007, Driscoll emailed Kantorski stating, "It is confirmed that [Wilson] has a business on his own. We will discuss further . . . and have more surveillance completed. . . . I will not divulge this information until the conference." Several months later, Kantorski received a phone call from a woman, who reported that Wilson was working and not paying his child support obligations. Subsequently, on January 9, 2008, Kantorski emailed Driscoll stating, "We know he was doing work somewhere."

Based on this information, Bradley, who was Sentry's attorney and an attorney with the firm Mullen & McGourty, issued a subpoena to Scott Construction. In return, on October 7, 2008, the day before the DIA hearing, Bradley received a copy of thirty-one invoices that DJ Wilson had issued to Scott Construction. Upon learning that Wilson had been working while collecting workers' compensation benefits, Kantorski decided that Wilson was not eligible for additional workers' compensation payments, and she advised Bradley that she wanted to pursue fraud charges. However, after discussing it further, Kantorski and Bradley instead agreed to offer Wilson a compromise in which Wilson agree to a lump sum settlement of one dollar.

In addition, on October 7, 2008, Wilson and Benoit had a telephone conversation to prepare for the DIA hearing the following day. During their conversation, Wilson told Benoit that his girlfriend had notified SMI that he had been working.[4] The next morning, on October 8, 2008, prior to the DIA hearing, Benoit and Wilson spoke again, and Wilson told Benoit that although he had been working, it was sporadic and that he had helpers. At that point, Benoit was

[4] Benoit testified at her deposition that this was when she first became aware that Wilson had been working while also receiving workers' compensation benefits.

aware that Bradley knew Wilson had been working, but she did not know that Bradley had issued a subpoena to and received a copy of DJ Wilson's invoices from Scott Construction. However, Wilson knew prior to the DIA hearing that Bradley had the invoices.[5]

Immediately after their conversation, Bradley and Benoit met to discuss settlement, and Bradley requested that Wilson complete an updated Earnings Report to determine to what extent there had been an overpayment of workers' compensation benefits. Benoit returned to a conference room to discuss the matter with Wilson and had him complete an updated Earnings Report. Wilson estimated his earnings were approximately $20,000 less expenses. When Benoit provided Wilson's Earnings Report to Bradley, Bradley presented the invoices he had obtained from Scott Construction, which demonstrated that Wilson had earned substantially more than the amount he had reported. Kantorski believed Wilson should be reported for having committed fraud. Notwithstanding Kantorski's initial reaction, settlement discussions commenced. Wilson, through Benoit,[6] negotiated and accepted a lump sum payment to settle his workers' compensation claim for $2,500, which was applied towards his then outstanding child support payments ("settlement agreement").[7,8] Sentry also waived its right to recoup any overpayment from Wilson. It is alleged, and agreed by the parties, that as part of the settlement agreement, though not a term contained in their integrated written settlement agreement, the parties ***orally*** agreed that neither Sentry nor SMI would report Wilson to the Massachusetts Insurance Fraud

[5] Wilson testified during his deposition that prior to the DIA hearing Ryan Scott from Scott Construction told him that DJ Wilson's records had been subpoenaed. Although disputed, Wilson also testified that he informed Benoit of this prior to the hearing.
[6] Wilson did not speak directly to Bradley; rather, all settlement negotiations took place through Benoit.
[7] Benoit received $5,000 for what the defendants characterize as a "hearing fee." However, it is unclear whether Sentry or SMI paid Benoit this fee, and Wilson claims that he was unaware that the defendants had agreed to pay Benoit.
[8] The settlement agreement is incorrectly dated August 18, 2006.

Bureau ("IFB") for having committed workers' compensation fraud.[9] Subsequently, on October 17, 2008, Judge Bean at the DIA approved the written settlement agreement.

On October 8 or 9, 2008, before the written settlement agreement was approved by Judge Bean, Kantorski consulted with Attorney Leonard Nason ("Nason"), a part-time private consultant for SMI, concerning the settlement agreement and the fact that SMI agreed not to report Wilson to the IFB. Nason advised Kantorski that SMI could not agree to forego reporting Wilson for workers' compensation fraud because it would be illegal to do so.[10] The following day or two, Kantorski notified SMI's management, and management instructed her to report Wilson to the IFB. It is undisputed that Kantorski did not alert Benoit or seek to unwind the settlement when she made the IFB report.

On May 6, 2009, Kantorski contacted the IFB and reported that Wilson had engaged in workers' compensation fraud. Wilson's ex-girlfriend also reported to the IFB that Wilson had committed workers' compensation fraud. Thereafter, Wilson was criminally investigated, and in July 2011, he was tried and convicted of workers' compensation fraud. Wilson's criminal conviction was upheld on appeal.

DISCUSSION

Wilson asserts claims against the SMI defendants for breach of contract, intentional infliction of emotional distress, and loss of consortium.[11] He also asserts claims against the Sentry defendants for intentional infliction of emotional distress and against Sentry, Bradley and

[9] Wilson claims that his principal motivation for settling his workers' compensation claim was to avoid being reported for criminal fraud.

[10] Kantorski and Nason also discussed a potential recoupment of overpayment from Wilson; however, there is no evidence in the record that SMI attempted to recoup any money from him.

[11] Wilson also asserted a claim against SMI for violating G. L. c. 93A and claims against the SMI defendants for negligent infliction of emotional distress; however, the court (Wall, J.) previously dismissed these claims.

Mullen & McGourty for loss of consortium and violation of G. L. c. 93A.[12] Although the SMI defendants and the Sentry defendants have separately moved for summary judgment on all claims, for the sake of brevity, the court will analyze each claim, as opposed to each motion, separately.

A. Standard of Review

Summary judgment shall be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 714 (1991). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue. *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989). The moving party may satisfy this burden by submitting affirmative evidence negating an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. *Flesner v. Technical Commc'ns Corp.*, 410 Mass. 805, 809 (1991); *Kourouvacilis*, 410 Mass. at 716. Once the moving party establishes the absence of a triable issue, the party opposing the motion must respond with evidence of specific facts establishing the existence of a genuine dispute. *Pederson*, 404 Mass. at 17. The opposing party cannot rest on its pleadings and mere assertions of disputed facts to defeat the motion for summary judgment. *LaLonde v. Eissner*, 405 Mass. 207, 209 (1989).

When deciding a motion for summary judgment, the court considers pleadings, deposition transcripts, answers to interrogatories, admissions on file, and affidavits. Mass. R. Civ. P. 56(c). The court reviews the evidence in the light most favorable to the nonmoving party

[12] Wilson's intentional infliction of emotional distress and G. L. c. 93A claims against Mullen & McGourty are asserted under the theory of vicarious liability.

but does not weigh evidence, assess credibility, or find facts. *Attorney Gen. v. Bailey*, 386 Mass. 367, 370 (1982).

B. Intentional Infliction of Emotional Distress Claims

Counts 1, 2, 4, 5, 17 and 20 of the Seconded Amended Complaint allege that the Sentry defendants and the SMI defendants intentionally inflicted emotional distress on Wilson during the settlement negotiations and in the events leading up to and surrounding the settlement agreement. To prevail on such a claim, Wilson must prove that: (1) the defendants intended to cause, or should have known that their conduct would cause, emotional distress; (2) the defendants' conduct was extreme and outrageous; (3) the defendants' conduct caused Wilson's distress; and (4) Wilson's distress was severe. *Tetrault v. Mahoney, Hawkes & Goldings*, 425 Mass. 456, 466 (1997).

To be considered "extreme and outrageous," the defendants' conduct must be "beyond all bounds of decency . . . [and] utterly intolerable in a civilized community." *Sena v. Commonwealth*, 417 Mass. 250, 264 (1994). Here, Wilson contends that the defendants' conduct was extreme and outrageous because they "sprung a trap" on him during the settlement negotiations by threatening to report him for workers' compensation fraud even though they knew or had reason to know months earlier that he had been working and failed to report his earnings.[13] He also contends that the defendants' negotiation tactics constitute extortion. Contrary to Wilson's position, however, it is well settled that "[l]iability cannot be predicated on 'mere insults, indignities, *threats*, annoyance, petty oppressions or other trivialities' nor even is it enough 'that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by

[13] The parties dispute whether Bradley threatened Wilson. That fact is not material to the court's decision on summary judgment.

malice . . . ." (emphasis added). *Tetrault*, 425 Mass. at 466, quoting *Foley v. Polaroid Corp.*, 400 Mass. 82, 99 (1987). Additionally, even if the defendants' conduct can be construed as having "sprung a trap" on Wilson, their conduct cannot be regarded as "utterly intolerable in a civilized community" because Wilson set the trap in motion by unlawfully failing to report his income while receiving workers' compensation benefits. Furthermore, when Wilson fraudulently signed the final Earnings Report, which he authored, he knew that the defendants were in possession of DJ Wilson's invoices. *Sena*, 417 Mass. at 264. Therefore, "[e]ven putting as harsh a face on the [defendants'] actions . . . as the facts alleged would reasonably allow," no reasonable jury could conclude that the defendants' conduct was extreme and outrageous. *Id.* See *Butcher v. University of Mass.*, 94 Mass. App. Ct. 33, 42 (2018) ("A plaintiff faces a high burden in making a claim of intentional infliction of emotional distress . . . ."). Accordingly, the SMI defendants' and the Sentry defendants' motions for summary judgment on Wilson's intentional infliction of emotional distress claims are **ALLOWED**.

C. Violation of G. L. c. 93A

Counts 3, 6, and 7 of the Seconded Amended Complaint assert claims against Sentry, Bradley, and Mullen & McGourty for violation of G. L. c. 93A.

As for Bradley and Mullen & McGourty, Massachusetts recognizes two possible theories upon which the courts can impose liability on an attorney or a law firm under G. L. c. 93A. The first permits a plaintiff to bring a claim for unfair or deceptive acts or practices in the representation of the plaintiff. *Robertson v. Gaston Snow & Ely Bartlett*, 404 Mass. 515, 527 (1989). However, this theory requires proof of an attorney-client relationship, and because it is undisputed that there was no attorney-client relationship between Bradley and Wilson, this theory does not apply. *Id.*

Under the second theory, for situations outside of the attorney-client relationship, the attorney must be shown to have acted in a business context. *First Enters., Ltd. v. Cooper*, 425 Mass. 344, 347 (1997). For example, the attorney may incur liability to a nonclient "if it joins its client in the marketplace communications to the adversary rather than merely relays its client's positions; and if those marketplace communications knowingly or carelessly turn out to be false, misleading, and harmful." *Coogins v. Mooney*, 1998 Mass. Super. LEXIS 320 at *13 (Mass. Super. 1998), affirmed sub nom. *Miller v. Mooney*, 431 Mass. 57 (2000).

Here, Wilson contends that Bradley acted in a business context because he actively participated in a conspiracy with his client, Sentry, involving the use of intimidation and threats of criminal prosecution in order to further his client's objectives. However, even assuming that Bradley, through plaintiff's counsel, threatened to report Wilson for workers' compensation fraud, Wilson's conduct was unlawful, indeed it was found to be criminal; therefore, the threat of criminal prosecution cannot be construed as false or misleading.[14] Additionally, Bradley was merely conveying his client's position, which was not to settle Wilson's claim but rather to continue the hearing and report Wilson to the IFB. Therefore, Wilson knew or reasonably should have known that Bradley did not owe him a duty to provide him legal advice. Wilson had his own counsel to advocate for him and represent his interests. Furthermore, the alleged threat was not harmful because Wilson was represented by his own attorney. Therefore, Wilson could not have relied on any of Bradley's statements to his detriment. See *First Enters., Ltd.*, 425 Mass. at 348. Accordingly, there is no evidence in the record suggesting that Bradley acted in a business context, such that he could incur liability to a nonclient under G. L. c. 93A.

[14] For purposes of this motion the court accepts as true the allegation that such a threat was made. The court makes no finding whether it was in fact made and, if made, whether threatening to report plaintiff's criminal conduct solely to gain leverage in a civil settlement would be a breach of the Professional Code of Conduct.

As for Sentry, Wilson alleges that its conduct during and leading up to the settlement negotiations also constitutes a violation of G. L. c 93A. Under G. L. c. 93A, § 9, Wilson must demonstrate that Sentry engaged in unfair or deceptive acts or practices. It is undisputed that it was SMI's position – not Sentry's – to proceed with the DIA hearing and report Wilson to the IFB for workers' compensation fraud rather than settle his claim. Moreover, there is no evidence in the record that the SMI defendants had apparent authority to bind Sentry to the statements they made during settlement negotiations, see generally *Theo & Sons, Inc. v. Mack Trucks, Inc.*, 431 Mass. 736 (2000), and to hold otherwise would be contrary to public policy. See *infra* Section D. Additionally, it is also of significant import that Sentry never reported Wilson to the IFB. Based on this undisputed evidence, Sentry's conduct does not constitute unfair or deceptive acts or practices under G. L. c. 93A, § 9.

Accordingly, the Sentry defendants' motion for summary judgment on Wilson's G. L. c. 93A claims is **ALLOWED**.

D. Breach of Contract Claims

Counts 14 and 18 of Wilson's Seconded Amended Complaint allege that SMI and Kantorski, respectively, breached the parties' oral agreement not to report Wilson for criminal fraud.[15] In support of their motion for summary judgment, the SMI defendants argue that under

[15] The Second Amended Complaint also alleges that the SMI defendants breached the settlement agreement by trying to recoup any overpayment that was made to Wilson; however, the summary judgment lacks any facts to support such a claim. Therefore, to the extent that Wilson is still pursing that claim, it fails, and the SMI defendants are entitled to summary judgment on that theory.

the doctrine of *in pari delicto*, the settlement agreement was illegal, and thus, unenforceable. See G. L. c. 152, § 14.[16] See also G. L. c. 266, § 111A.[17] The court agrees.

There are two public policy goals at stake here: enforcing private settlement agreements on the one hand and encouraging candor to disclose insurance fraud on the other. Wilson contends that all parties to the settlement entered into that agreement with eyes wide open, knowing that a material term was that Wilson would not be reported to IFB. Query what would have happened if the defendants balked, and the hearing went forward with the same information presented at the hearing. It is unclear whether Wilson had the leverage he presumes to have had in striking this oral agreement that the defendants would not report him for his criminal conduct. His alternatives were limited. If he did not accept the settlement, and he proceeded to a hearing, the defendants would reveal that he failed to truthfully report his outside earnings. However, assuming for the purposes of summary judgment that the agreement not to report Wilson was a material, bargained for term in their agreement, Wilson's claim to enforce that term comes up short against the countervailing public policy to eliminate insurance fraud.

The doctrine of *in pari delicto* is an equitable one, and it bars a plaintiff who has participated in wrongdoing from recovering damages resulting from that wrongdoing. *Merrimack Coll. v. KPMG LLP*, 480 Mass. 614, 621-622 (2018). Pursuant to the doctrine, courts generally will not enforce an illegal contract. See *Berman v. Coakley*, 243 Mass. 348, 350

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[16] Under G. L. c. 152, § 14, it is unlawful for "any person who knowingly makes any false or misleading statement . . . or knowingly assists, abets, solicits or conspires in the making of any false or misleading statement . . . or knowingly conceals or fails to disclose knowledge of the occurrence or any event affecting the payment, coverage or other benefits for the purpose of obtaining or denying any payment, coverage, or other benefit under [the workers' compensation] chapter . . . ."

[17] Under G. L. c. 266, § 111A, it is unlawful for anyone, "in connection with or in support of any claim under any policy of insurance . . . and with the intent to injure, defraud or deceive such company . . . or aids or abets in or procures the presentation to it of any notice, statement . . . or other written document . . . knowing that such notice, statement . . . or other written document contains any false or fraudulent statement or representation of any fact . . . material to such claim . . . ."

(1923) ("[C]ourts will not aid in the enforcement, nor afford relief against the evil consequences, of an illegal or immoral contract."). This includes private agreements made in consideration of the suppression of a criminal prosecution, the reasoning being that "the course of justice cannot be defeated for the benefit of an individual." *Id.* Therefore, courts generally will leave parties to such a contract in the same position in which it found them. *Arcidi v. NAGE, Inc.*, 447 Mass. 616, 620 (2006).

There are two exceptions, however, to this general rule. As to the first exception, "where the parties are not in equal fault as to the illegal element of the contract, or, to use the phrase of the maxim, are not in pari delicto, and where there are elements of public policy more outraged by the conduct of one than the other, then relief in equity may be granted to the less guilty." *Id.* The second exception involves "cases where the public interest requires that the courts should, for the promotion of public policy, interpose, and the relief in such cases is given to the public through the party" (alterations and citation omitted). *Choquette v. Isacoff*, 65 Mass. App. Ct. 1, 4 (2005). Neither exception applies in this case.

First, the uncontroverted evidence in the summary judgment record shows that both sides were equally at fault for the illegal element of the oral agreement that proceeded the written settlement agreement. Essentially Wilson claims he was induced to enter the written settlement, which was silent as to reporting his conduct, with the oral agreement not to report him. The illegal element was the oral, side agreement not to report Wilson to the IFB. All parties, Wilson included, understood the legal risk or exposure arising from Wilson's wrongful conduct. Presumably, that is why they did not make the oral agreement an explicit term in their written agreement that they submitted to the IAB Judge for his approval. After the IAB approved the written agreement, and Kantorski learned she would not be permitted to agree to that term, she or

her counsel ought to have disclosed that change in circumstances to plaintiff and his counsel. They did not. On this record the court finds that the parties were *in pari delicto*.

Second, enforcement an agreement not to report insurance fraud is contrary to public policy. Workers compensation insurance fraud has far ranging impacts beyond those effecting these private parties. Falsely reporting earning undermines the integrity of the workers compensation system, threatens its solvency and increases costs to all participants in the system. To enforce this private agreement, as plaintiff now asks of this court, is to tacitly approve of Wilson's criminal conduct and act contrary to the rule of law. Neither justice nor the rule of law can countenance such a result. The reason that courts generally will not enforce a private agreement made in consideration of the suppression of a criminal prosecution is that it is in the public's interest "to encourage the disclosure of criminal activity. . . . Were the rule otherwise, a party bound by contract to silence, but suspecting that its silence would permit a crime to go undetected, would be forced to choose between breaching the contract and hoping an actual crime is eventually proven, or honoring the contract while a possible crime goes unnoticed" (citations, quotations, and alterations omitted). *Griffin v. Westfield*, 35 Mass. App. Ct. 324, 330-331 (1993). Here, the law forbids anyone in connection with workers' compensation payments from making a false statement or aiding and abetting in the making of a false statement. See G. L. c. 152, § 14; G. L. c. 266, § 111A. As a result, it is contrary to the integrity of the workers compensation scheme that private individuals could circumvent and undermine the integrity of these laws by way of a private contract essentially agreeing not to report illegal conduct. Notwithstanding, enforcement of the settlement agreement also would be against the public's interest because fraudulent workers' compensation claims inflate insurance premiums for all insurance buyers. See *Commonwealth v. Ellis*, 429 Mass. 362, 372 (1999).

Accordingly, neither exception to the *in pari delicto* doctrine applies, and the SMI defendants' motion for summary judgment on Wilson's breach of contract claims is **ALLOWED**.

E. Loss of Consortium

Counts 21, 22, 23, 24, 26, and 27 of the Second Amended Complaint assert claims on behalf of Wilson's three children against the SMI defendants and the Sentry defendants for loss of consortium. However, because the children's claims are dependent on the viability of Wilson's tort claims, for the same reasons discussed above, his children's claims also fail. See *Sena*, 417 Mass. at 264-265. See also *Corrigan v. General Elec. Co.*, 406 Mass. 478, 480-481 (1990). Accordingly, the SMI defendants' and the Sentry defendants' motions for summary judgment on the loss of consortium claims are **ALLOWED**.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the SMI defendants' and the Sentry defendants' motions for summary judgment are **ALLOWED**.

September 10, 2019

Rosemary Connolly
Justice of the Superior Court