

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

**Estate of ROBERT E. WONE, by
KATHERINE E. WONE,**

Plaintiff,

v.

**JOSEPH R. PRICE,
VICTOR ZABORSKY,
and
DYLAN WARD,**

Defendants.

CA No. 2008-ca-0008315 B

The Honorable Brook Hedge

**Next Event: February 14, 2011
Witness Lists Due**

**DEFENDANTS' JOINT MOTION TO DISMISS COUNTS
ONE, THREE, AND FOUR OF PLAINTIFF'S COMPLAINT,
or in the Alternative, FOR SUMMARY JUDGMENT AS TO
COUNTS ONE, THREE, AND FOUR OF PLAINTIFF'S COMPLAINT**

Defendants Joseph Price, Victor Zaborsky, and Dylan Ward, by their respective undersigned counsel, pursuant to D.C. Superior Court Rules 12(b)(6) and 56, respectfully hereby jointly move to Dismiss Counts One, Three, and Four of Plaintiff's Complaint/Amended Complaint or, in the alternative, for summary judgment as to those Counts, and in support state:

1. On November 25, 2008, Plaintiff Katherine Wone, as Personal Representative of the Estate of Robert Wone filed a four-count civil Complaint against the Defendants, alleging claims of Wrongful Death (Count One), Negligence-Failure to Aid (Count Two), Spoliation of Evidence (Count Three), and Conspiracy (Count Four).

2. On September 29, 2010, Plaintiff filed a consent Motion for Leave to File a First Amended Complaint, which was granted on September 30, 2010. For purposes of the present Motion, Plaintiff's original Complaint and Amended Complaint are not

materially different, as the Amended Complaint contains the same causes of action of Wrongful Death (Count One), Negligence-Failure to Aid (Count Two), Spoliation of Evidence (Count Three), and Conspiracy (Count Four), which arise from the August 2, 2006 death of Robert Wone at the former home of Defendants Price and Zaborsky, located at 1509 Swann Street, N.W., Washington, D.C.

3. Counts One, Three, and Four of the Plaintiff's Complaint/Amended Complaint fail to state a claim upon which relief can be granted.

4. Specifically, these Counts are barred by the applicable one-year statute of limitations, which required Plaintiff's Complaint to be filed no later than August 3, 2007. Plaintiff's Complaint/Amended Complaint was not filed until more than one year and four months after the expiration of the limitations period.

5. Plaintiff further lacks standing and actionable damages required to proceed with Counts Three and Four of the Complaint/Amended Complaint.

6. Further, Plaintiff's Conspiracy Claim (Count Four), which is derivative in nature, cannot be premised upon a claim of negligence such that it cannot be sustained as derivative of Plaintiff's Negligence Count.

7. Defendants have filed an accompanying Memorandum of Points and Authorities contemporaneously herewith, which it adopts and incorporates as if fully set forth herein.

8. Accordingly, Defendants are entitled to a dismissal of Counts One, Three, and Four of Plaintiff's Complaint/Amended Complaint or, in the alternative, for summary judgment on those Counts.

WHEREFORE, Defendants Joseph Price, Victor Zaborsky, and Dylan Ward, respectfully request that this Honorable Court dismiss Counts One, Three, and Four of Plaintiff's Complaint/Amended Complaint or, in the alternative, enter summary judgment in Defendants' favor on those Counts, and for such further and additional relief as is deemed appropriate.

/s/ Craig D. Roswell
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Counsel for Defendant Victor Zaborsky

RULE 12-I CERTIFICATE

I hereby certify that consent to this Motion was sought from Plaintiff's attorneys via e-mail on October 4, 2010. By responsive e-mail on October 4, 2010, Plaintiff's counsel advised that it does not consent.

/s/ Craig D. Roswell
CRAIG D. ROSWELL

¹ Admitted pro hac vice pursuant to Court's 2/26/10 Order.

² Admitted pro hac vice pursuant to Court's 8/2/10 Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2010, copies of the foregoing Motion, Memorandum of Points and Authorities, and proposed Order were served via e-filing to:

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A non-write protected copy of the proposed Order is also being e-mailed to judgehedgeeserve@dcsc.gov.

/s/ Craig D. Roswell
CRAIG D. ROSWELL

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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ORDER

UPON CONSIDERATION OF Defendants Joseph Price's, Victor Zaborsky's, and Dylan Ward's Joint Motion to Dismiss Counts One (Wrongful Death), Three (Spoliation of Evidence), and Four (Conspiracy) of Plaintiff's Complaint and Amended Complaint, or in the alternative For Summary Judgment as to those Counts, and any opposition thereto filed, it is on this ____ day of _____, 2010, by the Superior Court for the District of Columbia, hereby:

ORDERED, that Defendants Joint Motion be and is GRANTED, and it is further

ORDERED, that Summary Judgment be and is ENTERED in favor of Defendants Joseph Price, Victor Zaborsky, and Dylan Ward as to Count One (Wrongful Death), Count Three (Spoliation of Evidence), and Count Four (Conspiracy) of Plaintiff's Complaint/Amended Complaint.

The Honorable Brook Hedge,
Judge

CC: All counsel (via electronic service):

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Patrick M. Regan, Esquire
Counsel for Plaintiff

David Schertler, Esquire
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