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<p><i>JOHN G. PINTO and DANIELLE PINTO,</i></p> <p>Plaintiff,</p> <p>v.</p> <p><i>LUCIANA PAULA PINHEIRO, NISSAN INFINITI LT., SIMON L. PURYEAR,</i> ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY, <i>et als.</i></p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION</p> <p>DOCKET NO.: A-661-24</p> <p>On Appeal from the Superior Court of New Jersey, Ocean County</p> <p>Sat Below: Hon. Valter H. Must, J.S.C.</p>
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PLAINTIFF/APPELANTS' BRIEF

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PRELIMINARY STATEMENT

Plaintiffs filed two motions *in limine* with regard to the subject matter of this appeal. One was granted by the trial court and one was not ruled upon prior to trial.

The motion that was granted excluded any reference to plaintiff's lower back condition and an alleged "full spine MRI" from long in the past. The injured plaintiff testified in accordance with this ruling and did not mention anything about his lower back. The plaintiffs' and defendant's experts' testimony were redacted in accordance with this ruling. During the cross examination of plaintiff's spouse, after plaintiff and both medical experts testified in accordance with the Court's ruling, mentioning nothing of the lower back, defendant sought to elicit testimony about plaintiff's lower back injury. Over objection, plaintiff's spouse was permitted to testify about medical evidence that even the expert witnesses were barred from providing.

This outcome (coupled with the admission of evidence of a prior motor vehicle accident that resulted in no injury) allowed defense counsel to portray the plaintiff as dishonest in his summation, which began with a dramatic anecdote about a radio segment called "The Rest of the Story," where he essentially accused plaintiff of concealing his lower back condition and motorcycle accident from the jury.

PROCEDURAL HISTORY¹

Plaintiff filed the complaint in this matter on October 2, 2020. (Pa1) Defendant Simon Puryear Filed an answer on November 3, 2020. (Pa7) On December 4, 2020 defendant Nissan-Infiniti LT was voluntarily dismissed with prejudice. (Pa32) Defendant Luciana Paula Pinheiro filed an answer on March 26, 2021. (Pa13) On August 2, 2021 defendant Simon Puryear was voluntarily dismissed with prejudice. (Pa33) On March 8, 2022 plaintiff filed an amended complaint naming Allstate New Jersey Property and Casualty Insurance Company. (Pa18) On March 23, 2022 On April 8, 2022, Allstate filed an answer to the amended complaint. (Pa25) Also on April 8, 2022, plaintiff settled with Defendant Luciano Pinheiro and dismissed claims against her with prejudice. (Pa35)

In anticipation of trial, plaintiffs filed two motions *in limine* in conjunction with their pretrial submissions. (Pa43) One of those applications related to admissibility of certain evidence, which is central to this appeal, was granted. (2T3:9-2T5:9) This matter was tried to conclusion against Allstate before a jury on September 23, 24 and 25, 2025 before the Honorable Valter H. Must, resulting in a defense verdict and order of dismissal of plaintiffs' remaining claims. (Pa42)

¹ List of Transcripts: 1T September 23, 2025; 2T September 24, 2025, 3T September 25, 2025.

STATEMENT OF FACTS

On November 18, 2018 plaintiff was driving Eastbound on Route 36 in Eatontown, New Jersey. At the same time, defendant Luciana Pinheiro was attempting to merge on to Route 36 Eastbound. During her merge, she tried to pass plaintiff on the right, striking his vehicle and pushing it into a third vehicle. Pinheiro's vehicle then went off the road and into the center median.

As a result of the accident, plaintiff suffered traumatically induced cervical facet syndrome at C2-3, C3-4 and C4-5. He treated with a neurosurgeon, physical therapist and pain management specialist for the spine injuries. Plaintiff has undergone several rounds of medial branch block injections and radiofrequency ablations in the cervical spine, most recently in May of 2024. The pain associated with the facet injuries has not resolved, and according to plaintiff's experts, it will not resolve. Plaintiff will also require continuing treatment in the form of radiofrequency ablations for the rest of his life.

During the trial of this matter it was conclusively established, through medical and lay testimony, that plaintiff had never sought treatment for neck pain and never had neck pain of any kind prior to the November 2018 accident. (2T36:15-2T37:1; 2T89:16-20; 2T112:11-2T113:2; 2T176:1-2T177:6) Further, plaintiff did not claim injury or aggravation to his

lower back. (2T120:3-15) Because they were not relevant in any way to plaintiff's November 2018 neck injury, he moved *in limine* to exclude evidence related to alleged old MRI studies as well as reference to plaintiff's lower back condition and prior accidents. (Pa42) Though the proposed order submitted with the motions (Pa59) was not signed, the doctors' testimony was redacted in accordance therewith by pausing and fast forwarding the video during the trial, as the motions were decided just before opening statements began. (2T94:6; 2T97:23; 2T168:16)

As a result of these redactions, the jury did not hear any evidence from plaintiff or his doctors about any lower back condition. Likewise, the jury did not hear any evidence from plaintiffs' medical experts or his wife about a prior motorcycle injury. Because these motions were granted, plaintiff was not asked on direct about either his lower back condition or his prior accidents.²

Unfortunately, defendant spent a significant amount of plaintiff's cross examination over plaintiff's objection asking about a ten-year-old motorcycle accident, in which plaintiff was not injured and for which there are no medical records. (2T48:6-2T56:5; 2T59:9-21) In addition, despite none

² Had the motions been denied at the outset, which still would have been reversible error, plaintiff would have at least had the opportunity to "draw the sting" so that it did not appear to the jury that these items were concealed from them.

of the three doctors or the plaintiff discussing it in their testimony, defendant was permitted to spend nearly his entire cross examination of plaintiff's wife inquiring about plaintiff's lower back condition. (2T140:6-2T143:17) It bears repeating that plaintiff made no claim of injury or aggravation to his lower back in this case and that prior to Mrs. Pinto's testimony, it was not mentioned by either plaintiff or his medical experts.³

Of course defendant took full advantage of this situation, dramatically making reference to an old radio segment-"The Rest of the Story"-while insinuating that plaintiff concealed the lower back condition and the motorcycle accident from them. (3T4:13-3T7:5) As set forth below, questions about plaintiff's prior accidents nor the lower back condition should have been permitted. They were, and the issues became central to the defense case, substantially affecting the outcome of the trial.

³ Dr. David Lopez, the defense doctor, was also barred from referring to "full spine MRIs" that plaintiff allegedly obtained long in the past related to back pain. (Pa44, Pa57, Lines 10-12) Dr. Lopez made no mention in his testimony of any lower back condition of the plaintiff.

LEGAL ARGUMENT

I. EVIDENCE OF PLAINTIFF'S LOWER BACK TREATMENT AND PRIOR ACCIDENT SHOULD HAVE BEEN EXCLUDED. (Pa42; 2T50:9-18; 2T141:10)

Relevant evidence is evidence that has a tendency to prove or disprove a fact of consequence. N.J.R.E. 401. Such evidence is generally inadmissible if its potential prejudicial effect outweighs its probative value. N.J.R.E. 403(a).

Further, "a party seeking to present evidence of a prior injury or condition relating to an issue of medical causation must show that the evidence has some "logical relationship to the issue in the case."" Allendorf v. Kaiserman Enterprises, 266 N.J. Super. 662, 672-3 quoting Paxton v. Misiuk, 34 N.J. 453, 460 (1961). Moreover, this logical relationship generally must be established by appropriate expert medical opinion. See Ratner v. General Motors Corp., 241 N.J. Super. 197, 203-06 (App.Div.1990).

In this case, plaintiff moved *in limine* to exclude evidence about prior spinal MRIs and a prior motor vehicle accident. The reasons for this application were numerous:

1. The prior MRI in question may not have even existed—the only reference to such a study was contained in a single note from one of plaintiff's treating providers and that note itself indicated that the

films were unavailable. (Pa44)

2. The prior MRI was noted to be a "full spine" MRI which would indicate to the jury that plaintiff had a prior neck injury. There is no evidence that plaintiff had ever had a neck injury or even complained of neck pain prior to the accident that resulted in this suit. Indeed, the prior alleged MRI was done for "back pain." (Pa44)

3. No medical expert (plaintiff or defense) testified that plaintiff's alleged prior accident caused any injury or that any condition plaintiff had in his lower back caused or was related in any way to the neck injuries claimed in this action.

Unfortunately, the trial judge did not formally rule on the issue of plaintiff's prior motor vehicle accidents before commencement of the trial. As such, defendant questioned plaintiff about a prior motorcycle accident during cross-examination, which ruling is addressed below. The trial judge did, however, correctly grant plaintiff's application with regard to the lower back and prior MRIs, explicitly ruling that evidence of the plaintiff's lower back conditions were out of the case:

MR. WRIGHT: Judge, I just want to make clear. It's part of my application in conjunction with that (indiscernible) he's talking about the full spine.

THE COURT: Right.

MR. WRIGHT: And mention of a lower back injury is not in this case. And that part's obviously also out as well, am I correct?

THE COURT: Yes, I would agree.

MR. WRIGHT: Thank you, Judge.

(2T5:2-9)

This ruling, the Trial Judge reasoned, was necessary because there is a strong likelihood that the jury would misapply information about prior alleged spine MRIs. (2T45:9) In view of the ruling, all three medical experts' *de bene esse* deposition transcripts were redacted to remove reference to the prior MRIs, prior accident, back pain and chiropractic care. (Pa59) In other words, the jury heard no medical testimony whatsoever about (1) plaintiff's lower back condition or (2) plaintiff's prior accident.

The plaintiff, in accordance with the Court's ruling, was not asked about his lower back condition by either plaintiff or defense counsel. It was not until defense counsel cross examined plaintiff's wife when the jury finally heard testimony about plaintiff's lower back condition.

It was at this point in the trial, after plaintiff and both plaintiff's medical experts had already testified without

mentioning the lower back, when defense counsel began inquiring as to Dr. Cocarro's treatment of plaintiff for "different reasons," that plaintiff objected. (2T140:10) The objection was based on the prior ruling that the low back was not in the case, (2T5:2-9) and that testimony about a lower back injury that was not claimed to have been caused or aggravated by the November 2018 accident would be irrelevant and likely confuse the jury.

Further (though the record is imperfect due to overtalking during counsel's discussion at sidebar), the substantive portion of the objection begins on 2T141:4: "There's no claim for low back, no doctor...". After "no doctor," the record was apparently too unintelligible for the court reporter to transcribe, but the argument is that which is outlined above: Because there is no evidence that the plaintiff's lower back condition had anything to do with the November 2018 accident, evidence related thereto is not relevant. N.J.R.E. 401.

Further, even if it was relevant, there was no medical evidence introduced at trial that would support its connection to the November 2018 accident. No doctor testified that the preexisting lower back condition had any logical connection to plaintiff's neck injury, as required under Paxton, *supra*. Indeed, all experts were barred from discussing the lower back and plaintiff did not testify about the lower back on direct.

With respect to plaintiff's testimony about his decade-old motorcycle accident, the basis for admission is even more tenuous. No medical expert reviewed any medical records related to this accident. As a result, no medical expert made any opinion about the accident's relationship to the November 2018 impact. Further, there was no evidence of any kind that plaintiff was even diagnosed with an injury from that accident-only that he had a CT scan of his head in the emergency room. In addition, there was no evidence of any kind, from either medical experts or lay witnesses, that plaintiff injured his neck in the prior motorcycle accident.

In light of the foregoing, it is respectfully requested that the matter be reversed and remanded for a new trial without reference to plaintiff's lower back conditions or prior accidents.

II. ADMISSION OF TESTIMONY ABOUT PLAINTIFF'S DECADE-OLD MOTORCYCLE ACCIDENT AND UNRELATED LOWER BACK INJURY HAD A SUBSTANTIAL INFLUENCE ON THE OUTCOME OF THE TRIAL WHICH REQUIRES REVERSAL AND REMAND. (Pa42; 2T50:9-18; 2T141:10)

Generally speaking, a trial court is entitled to considerable latitude in evidentiary rulings, but those rulings can be reversed where the lower court abuses its discretion. State v. Feaster, 156 N.J. 1, 82 (1998). "Although the ordinary 'abuse of discretion' standard defies

precise definition, it arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Co. Prosecutor, 171 N.J. 561, 571 (2002) quoting Achacoso-Sanchez v. Immigration & Naturalization Service, 779 F.2d 1260, 1265 (7th Cir.1985). An abuse of discretion also arises when "the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment." Masone v. Levine, 382 N.J. Super. 181, 193 (App.Div.2005).

Of course, "the burden is placed upon the appellant of establishing that the error below probably had a substantial influence on the judgment." Farber v. Margolin, 46 N.J. Super. 557, 564 (App.Div. 1957). Further, where no individual error rises to the level of reversible error, the cumulative effect of multiple errors "can cast sufficient doubt on a verdict to require reversal." State v. Jenewicz, 193 N.J. 440, 473-4 (2008).

In this case, the two errors complained of relating to the admission of irrelevant, unsupported and confusing evidence were "made without a rational explanation" and "inexplicably departed from established policies." First, the trial judge initially barred testimony related to prior MRIs (related to prior motor vehicle accidents) and also barred any

reference to a lower back injury. (2T5:2-9) Despite acknowledging that this evidence could result in a "strong likelihood that the jury would misapply it," which resulted in the redaction of three medical experts' testimony, he later permitted a lay witness to discuss this very same, purely medical evidence. On cross examination, over counsel's objection (due to the prior ruling on the offending evidence), the judge allowed plaintiff's wife to testify about his unrelated lower back injury. This was the only evidence in the entire trial elicited about plaintiff's lower back condition.

As set forth above, this ruling "inexplicably departed" from this State's more than sixty (60) year history of requiring medical evidence to make a logical connection between an alleged preexisting condition and the injury currently complained of. See Paxton, 34 N.J. at 460. Further, there is no rational explanation for the admission of medical evidence through a lay witness, when the trial court has already ruled admission of said medical evidence *through medical experts* would likely result in the jury misapplying that evidence. (2T45:9)

Secondly, the trial court once again "inexplicably departed" from established policies in permitting another lay witness-this time the plaintiff himself-to introduce medical evidence that was unsupported by any medical record or medical

testimony. During cross examination of the plaintiff, defendant sought to elicit testimony about a prior motorcycle accident. As set forth above, no one reviewed any medical record related to that accident, it happened ten years before the November 2018 accident, and plaintiff testified that he suffered no injury in that accident. According to plaintiff, he had a negative CT of his head at the emergency room and had no neck pain, no neck injury and no treatment for anything related to that motorcycle accident. The court's stated reasoning for permitting this testimony follows:

THE COURT: I'm going to allow it. He can ask the question. So you're telling me, you were in a motorcycle accident and you went to a hospital. You're telling this jury you weren't injured? Yes. I think you can ask that question.

MR. WRIGHT: But what's the relevance? How is that relevant to the neck injury?

THE COURT: Because the jury may use their common sense to say that he was in a motorcycle incident. It goes to his credibility also as to --

I understand your objection, I'm going to overrule it.

(2T50:9-20)

Essentially, the court ruled that the jury could infer that plaintiff injured his neck in the motorcycle accident from the fact that he went to the emergency room and got a CT

scan of his head. Because plaintiff's answers to interrogatories said that he never injured his neck before, the jury could appropriately use the aforementioned information to determine plaintiff is not credible. The problem, of course, is that there is no evidence of any kind, from any source, that plaintiff ever injured his neck. It would be wildly inappropriate in the absence of any medical or lay testimony that plaintiff had a prior neck injury, to allow a jury to speculate that plaintiff injured his neck because he had a CT scan of his head one time ten years ago. Neither the plaintiff, his experts or even the defense expert made any opinion that plaintiff had ever had a neck injury because there is no support in any of plaintiff's medical records for that position.

These two errors resulted in a dramatic beginning to the defense attorney's summation, allowing him to essentially tell the jury that the plaintiff concealed the lower back injury and the motorcycle accident from the jury. Ultimately, these errors substantially affected the outcome of the trial. As such, it is respectfully requested that the matter be reversed and remanded for a new trial without reference to plaintiff's lower back conditions or prior accidents.

III. CONCLUSION

For the foregoing reasons, it is respectfully requested the Court's March 19, 2024 order be reversed and the matter be remanded for a new trial without reference to plaintiff's lower back conditions or prior accidents.

Respectfully,

A handwritten signature in blue ink, appearing to be 'W.D. Wright', is written above the typed name.

William D. Wright

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-661-24

JOHN G. PINTO and DANIELLE
PINTO,

Civil Action

Plaintiffs,

On Appeal From:

Vs.

Superior Court of New Jersey
Ocean County

LUCIANA PAULA PINHEIRO,
NISSAN INFINITI LT., SIMON L.
PURYEAR, ALLSTATE NEW
JERSEY PROPERTY AND
CASUALTY INSURANCE COMPANY,

Sat Below:

Hon. Valter H. Must, J.S.C.

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PROCEDURAL HISTORY

Defendant, Allstate hereby adopts the Procedural History contained in the Brief submitted by Plaintiff.

PRELIMINARY STATEMENT

This litigation arises out of a motor vehicle accident occurring on November 10, 2018 in Eatontown, New Jersey. On that date plaintiff was involved in a collision. Following the accident he contacted his wife to advise her of the accident. He also advised her that he was ok. He was able to arrange for a rental car and went from the scene of the accident to the rental agency and then on to work.

Plaintiff subsequently instituted suit wherein he was subject to the Limitation on Lawsuit Statute. Plaintiff settled his claim with Tortfeasor Luciana Pinheiro and then proceeded to file an Underinsured Motorist Claim against the Allstate Insurance Company.

The plaintiff conducted *de bene esse* depositions of two medical experts, including the pain management physician, Dr. Coccarro. In Dr. Coccarro's direct testimony he referenced the plaintiff then being under his care just before trial for low back complaints for which he was receiving pain management injection therapy. He did not relate his low back conditions to the motor vehicle accident involving defendant. Plaintiff objected to cross examination of plaintiff Danielle Pinto regarding this treatment that was on going at time of trial.

In discovery plaintiff also acknowledged a prior motorcycle accident. He fell from his motorcycle, striking his head on the ground causing him to become

unconscious. He was transported from the scene of that accident to Jersey Shore University Medical Center. While he claims he was uninjured, he admitted that he had CT scan of his head and maybe his neck as well. Despite being knocked unconscious, plaintiff and his counsel contend that he was not "injured" and thus any cross-examination regarding this issue should have been prohibited.

STATEMENT OF FACTS

Following the motor vehicle accident of November 10, 2018, the plaintiff promptly called his wife. He informed her not to worry and that he was ok but that he had been involved in a motor vehicle accident. He subsequently proceeded to arrange for a rental car from the scene of the accident so he could go to work. He was employed as the manager of a storage facility. After contacting the car rental agency, he arranged to have the tow truck driver take him to the rental location where he obtained a car and then proceeded to work. He did not have any complaints of pain, that he contends are now life-long, immediately following the accident out of which this suit arises.

It was almost seven years after this accident that the case went to trial.

Plaintiff contended at time of trial and on appeal that he never had any prior neck pain or injuries before the motor vehicle accident of November 10, 2018. Plaintiff did not allege any lost wages as a result of the motor vehicle accident. He did not allege any out of pocket medical expenses as a result of the accident. He did not claim any economic loss as a result of the motor vehicle accident. He does, however, contend that because he had no prior neck injuries, the jury was obligated to accept his testimony and his medical expert's testimony as true and find in his

favor on the issue of whether or not he had sustained a permanent injury, in keeping with **N.J.S.A. 39:6a-8a**. This despite the fact that his own medical experts could not even agree on a diagnosis for the plaintiff relative to the November 10, 2018 accident for which treatment was recommended and received.

Furthermore, plaintiff still contends that he did not sustain an injury ten years prior when he fell off a motorcycle traveling at 30 mph and hit his head on the ground and lost consciousness as a result of that motorcycle accident. (2T52:8-2T53:8) He also acknowledged in his trial testimony that when he was seen at the emergency room at Jersey Shore University Medical Center they did a CT scan of his head as well as maybe his neck. (2T53:16-24) The plaintiff admitted on cross examination that he provided answers to interrogatories in this litigation on September 2, 2020, and denied any injuries to his neck or head. (2T51:10-22) The plaintiff went on to acknowledge that ten months later in October, 2021, he provided, through his attorney, a supplement to answers to interrogatories, where he then acknowledged for the first time the injury information related to the motorcycle accident. (2T51:23-2T52:2) Plaintiff's contention with respect to the motorcycle accident was that he did not sustain any injuries and therefore, he did not include that information initially when he answered discovery responses in December of 2020. (2T54:7-25)

At time of trial and in this appeal, plaintiff contends that information regarding this prior motorcycle accident was not relevant and should have been barred from admission into evidence on cross-examination. The basis for plaintiff's argument is that he did not consider being knocked unconscious after falling off a motorcycle to be an injury and as such it wasn't relevant even though he initially failed to disclose it in his discovery responses.

Plaintiff's first medical expert to testify on his behalf relative to his claim of permanent injuries to his neck as a result of the motor vehicle accident was John A. Coccaro, M.D. Dr. Coccaro testified that he had an interventional pain management practice in Toms River, New Jersey. During the course of *voir dire*, Dr. Coccaro testified that his license to practice medicine in New Jersey was the subject of a suspension by the State Board of Medical Examiners during the time frame he treated the plaintiff following the accident of November 10, 2018. (2T67:9-21) He further acknowledged that as a result of New Jersey's taking action against him, the State of New York did as well and he voluntarily surrendered his New York license to practice medicine. (2T67:22-2T68:1) He acknowledged that the basis for his suspension was, at least in part, relating to his prescribing medication. (2T70:5-6)

During the course of Dr. Coccaro's direct testimony as elicited by plaintiff's attorney, which was conducted just prior to the September, 2024 trial. Plaintiff's

counsel elicited from him the fact that Dr. Coccaro was still providing treatment to the plaintiff, John Pinto, just a week prior to his *de bene esse* deposition. (2T72:15-16) Dr. Coccaro in his direct testimony acknowledged that he had looked at the MRIs and that there was nothing to see there. He looked at the EMG, which was also negative. (2T78:23-2T79:1) As such, the objective studies reviewed by Dr. Coccaro failed to reveal any objective evidence of an injury to the cervical spine related to the motor vehicle of November 10, 2018. Dr. Coccaro testified on direct examination that his diagnosis for the plaintiff, as it related to injuries he claimed the plaintiff suffered in the crash, were "traumatic spondylosis or whiplash associated disorder." (2T78:14-20)

Dr. Coccaro acknowledged that Dr. Sabo's findings over a course of three months prior to his seeing the plaintiff were remarkably different. Dr. Sabo found only mild loss of range of motion whereas, Dr. Coccaro described severe limitation of motion in the plaintiff's neck. (2T92:10-23) Dr. Coccaro did acknowledge that range of motion studies which he relied upon were not objective but a subjective test. (2T93:14-18) Dr. Coccaro acknowledged that every Spurlings test done on the plaintiff following this accident was normal. (2T93:19-2T94:5) Dr. Coccaro did acknowledge that the plaintiff had a subsequent cervical spine MRI and that, like the

first one, was also negative for any bulges or herniations that he thought might have come from the car accident. (2T98:2-18)

Plaintiff next produced as an expert witness, Justin Kubeck, M.D., who was offered as an orthopedic surgeon who only treats the spine. The very first question answered by Dr. Kubeck on cross-examination, revealed that he did not agree with Dr. Coccaro that plaintiff's diagnosis related to the motor vehicle accident of November 10, 2018 was spondylosis. (2T151:20-24) Dr. Kubeck also acknowledged that the degeneration is the leading cause of cervical facet pain and further acknowledged that spondylosis is a condition that occurs over time and doesn't result from an injury. (2T122:6-13) He admitted that spondylosis was an arthritic condition that evolved over time (2T122:14-16) He also agreed that the plaintiff would not have arthritic changes resulting from an automobile accident within three months and any such arthritis that may have been present would have had to pre-date the motor vehicle accident of November 10, 2018. (2T123:1-8) Like Dr. Coccaro, Dr. Kubeck also acknowledged that the MRI of plaintiff's cervical spine did not show any objective evidence of a traumatic injury. (2T130:2-6)

Dr. Kubeck, as of the time of his testimony in September of 2024, had been a practicing orthopedic spine surgeon for 16 years. He also acknowledged that he does the same injections that were performed by Dr. Coccaro. He did testify on plaintiff's

behalf that he would need injections going forward to treat his pain symptoms for the rest of his life. Despite offering that opinion, Dr. Kubeck acknowledged that he himself had never treated a patient for his 16 years of practice with facet injections continuously. (2T131:18-2T132:2)

Plaintiff, John Pinto testified that as of the time of trial, he could only lift light weights without bringing on severe pain. Plaintiff Danielle Pinto testified her husband did not lift weights anymore with her. (2T138:8-15) At this juncture the issue of plaintiff's continuing treatment with Dr. Coccaro became relevant incidental to the activities both plaintiffs claim that he was unable to do. Initially, the question to Danielle Pinto on cross-examination, was whether or not she had heard the testimony of Dr. Coccaro wherein he acknowledged that her husband was currently under his care. After being permitted by the Court to pursue the area of inquiry regarding how that ongoing treatment might affect the things Mr. Pinto could or could not do, the plaintiff, Danielle Pinto initially denied any low back issues for her husband. (2T141:12-19) When given a second chance to acknowledge the on going treatment of Dr. Coccaro, plaintiff Danielle Pinto then did admit, after initially denying same, that her husband had had epidural shots for his low back. (2t141:12-2T142:4) When Danielle Pinto was asked if her husband's inability to do things, such as lifting weights, could be related to his low back pains, Ms. Pinto said she

didn't know. (2T142:5-10) Plaintiff Danielle Pinto testified initially saying she didn't know anything about the current treatment with Dr. Coccaro in 2024. She subsequently admitted

that she knew her husband was getting low back injections from Dr. Coccaro but claims she didn't know how he injured his low back, nor when he first started getting low back complaints. (2T142:11-21) She then went on to acknowledge that she in fact drove her husband to and from his lumbar epidurals on at least two occasions. (2T143:1-6)

Orthopedic surgeon, David Lopez testified on behalf of the defense in this trial. Dr. Lopez noted his physical exam findings were normal. (2T164:11-2T165:4) Following cross-examination Dr. Lopez on re-direct examination testified that the basis for providing the plaintiff with facet injections was for treating a degenerative condition and not a sprain condition that could be related to the motor vehicle accident of November 10, 2018. (2T189:13-21)

LEGAL ARGUMENT

POINT ONE

THE CROSS-EXAMINATION OF PLAINTIFF DANIELLE PINTO REGARDING HER HUSBAND JOHN PINTO'S LOW BACK TREATMENT WAS PROPER

Initially, plaintiff's treating medical expert, Dr. Coccaro, brought out on his direct testimony in his *de bene esse* deposition that he was currently providing pain management treatment to plaintiff John Pinto which was not related to the subject November 10, 2018 motor vehicle accident. Plaintiff brought this evidence forward and now claims it is irrelevant when it was his own expert who brought it out. Plaintiff's counsel elicited testimony from his own medical expert and then objected to the defense utilizing that testimony to cross-examine one of the plaintiffs. Since Dr. Coccaro did indicate that his current treatment of the plaintiff at time of trial was not related to his neck, it was fair to say it was instead related to his low back, which made relevant the question of whether or not plaintiff's inability to carry out regular activities, such as weight lifting, was related to the subject motor vehicle accident or this new condition. Plaintiff had already acknowledged that he missed no time from work as a result of the injuries he claimed arose out of the motor vehicle accident. He instead claimed that his activities at home and with his family had been negatively impacted solely as a result of injuries to his neck. Whether it was intended

or not, Dr. Coccaro put the issue of ongoing medical treatment unrelated to the accident in the case, which made it clearly an area of relevant inquiry at the time of trial.

The issue of plaintiff's prior low back, which was the subject of the pre-trial motion, related to the medical history in the treatment records of Dr. Sabo, who saw the plaintiff initially following the motor vehicle accident. They related that the plaintiff did have such a prior history and had had MRIs. That testimony was stricken by the Court and is not the subject of the low back issue currently pending. It was the plaintiff, through his medical treating physician and expert, Dr. Coccaro, opened the door to the issue of subsequent low back pain. Pursuant to **NJRE 611**, same essentially expands the rule of relevancy because the plaintiff himself brought it into the case. **State v. James**, 144 NJ 538, 554 (1996) Generally to be relevant evidence must have a tendency and reason to prove or disprove a fact. **State v. Burr**, 195 NJ 119, 127 (2008) The probative value of evidence is the tendency of evidence "to establish the proposition that it was offered to prove". **State v. Higgs**, 253 NJ 333, 358 (2023) **Rodriguez v. Walmart Stores**, 237 NJ 36, 58 (2019) In determining the probative value, the inquiry should focus on the logical connection between the proffered evidence and a fact in issue. **Furst v. Einstein Moomjay Inc.**, 182 NJ 1, 15 (2004) The test for relevance is broad and favors admissibility.

NJRE 401 defines relevant evidence as evidence that has a tendency to prove or disprove a fact of consequence in determining the action. Generally, relevant evidence is admissible but a Court may exclude it if its probative value is substantially outweighed by the risk of undue prejudice, confusion of issues, misleading of the jury or undue delay, waste of time or needless presentation of cumulative evidence, per rule **NJRE 403**. Relevant evidence is otherwise generally admissible. It is the Court's obligation, pursuant to the Court Rule, to balance the probative value of the evidence against a potential for harm or delay. When a plaintiff brings a personal injury claim to court any prior or subsequent injuries that a plaintiff may have sustained are generally relevant to the issue under review by the jury. If plaintiff claims a singular injury resulted in a permanent injury as in this particular case, the jury has a right to know whether or not the plaintiff has had any prior or subsequent accidents or injuries which may provide a defense to a defendant who can establish that there may be unrelated injuries impacting the plaintiff's everyday activities.

In this instance, the plaintiff testified to how his activities with his wife and children were impacted as a result of the injuries he claim arose from the November 10, 2018 accident including up until the time of trial. It was then clearly relevant that plaintiff's own medical expert testified that the plaintiff was then receiving pain

management treatments from him as of the time of trial. Neither the plaintiff nor his medical experts testified that plaintiff was currently receiving pain management injections for his neck as of the time of trial. The issue was then presented as one in which plaintiff's activities may have been impacted by a low back condition which was unrelated to the November 10, 2018 motor vehicle accident. Cross-examination related to that issue was clearly relevant and brought about for purposes of admissibility by the testimony of Dr. Coccaro and then also by the plaintiff and his wife. Neither the plaintiff or his wife voluntarily disclosed that plaintiff was getting pain management injections as of the time of trial for his low back which was, of course, was unrelated to the motor vehicle accident. The plaintiffs elected not to get out in front of the issue and explain its impact but instead tried to prevent the jury from hearing the truth about the plaintiff's current physical condition as of the time of trial. Plaintiff chose not to distinguish between his neck and low back conditions. Plaintiff could have requested the Court allow plaintiff to be recalled as a rebuttal witness but did not do so.

Plaintiff's independent medical evaluation conducted by Dr. Justin Kubeck made no reference to plaintiff's low back condition or his ongoing pain management treatment from Dr. Coccaro at the time he testified in September of 2024 just prior to the trial. Neither he nor Dr. Coccaro offered an opinion on how, if at all, plaintiff's

low back condition impacted his physical activities. NJRE 607 permits the introduction of extrinsic evidence impeach a witnesses credibility. The right to cross-examine a witness, such as the plaintiffs here, is the "greatest legal engine ever invented for the discovery of truth." **State v. Silva**, 131 NJ 434, 444 (1993) (quoting **California v. Green**, 399 US 149, 158 (1970) The defense's right to cross-examine the plaintiffs in this case is not circumscribed by the plaintiffs belief that the prior motorcycle accident was not an injury and the current medical condition had no impact on the plaintiff's activities. Those two issues were clearly relevant to plaintiff's claim that he sustained a permanent injury as a result of the motor vehicle accident and thus were fair grounds for admission into evidence.

POINT TWO

**THE ADMISSION OF TESTIMONY REGARDING
PLAINTIFF'S PRIOR MOTORCYCLE ACCIDENT
WAS BOTH RELEVANT AND PROPER UNDER THE
CIRCUMSTANCES OF THIS LITIGATION**

When plaintiff initially answered his interrogatories as approved by the New Jersey Court Rules, he failed to disclose that he had been involved in a prior motorcycle accident. At time of trial he admitted that he did not include it in his first set of answers to interrogatories. Instead, interrogatories were subsequently amended approximately ten months later at which time he then admitted to this prior motorcycle accident. Plaintiff felt that he did not sustain an injury and therefore did not have to disclose his prior accident. He did not dispute that he was in fact involved in a motorcycle accident and acknowledged that he had lost control of the motorcycle while traveling at 30 mph on Hooper Avenue in Toms River or Brick Township and fell off the motorcycle. He was wearing a helmet but nevertheless was knocked unconscious as a result of his head hitting the pavement. In his trial testimony the plaintiff further acknowledged that he was taken by ambulance from the scene of that accident in Ocean County to Jersey Shore University Medical Center located in Neptune Township, Monmouth County, New Jersey. He then went on to admit that while being evaluated in the emergency department at Jersey Shore,

he had CT scans of his head and maybe his neck as well. Because he did not feel he sustained an injury in this accident, he did not disclose it to his treating physician, Dr. Coccaro. He did not disclose it to Dr. Kubeck, his examining expert witness. He did not describe it to Dr. Lopez who examined him on behalf of the defense. While plaintiff argued to keep the jury from hearing about the motorcycle accident, same was clearly relevant to his past medical history and thus admissible on cross-examination. The plaintiff denies he was injured in any way as a result of falling off his motorcycle at 30 mph onto the roadway. At time of trial in the current case he claims he was permanently injured when he was involved in an accident while seated in a car and seat belted and thereafter reported no injury to the police. Plaintiff was testifying to the jury that he was permanently injured in the car accident and at the same time sustained no injury in the motorcycle accident. Clearly the issue of whether or not the plaintiff was credible on the issue of having sustained no injury in the motorcycle accident was relevant for the jury's consideration. Plaintiff contended that being knocked unconscious was not an injury because he had no follow up treatment. The jury had the right to consider that testimony and weigh it in exploring the issue of plaintiff's credibility. Clearly that testimony was not irrelevant and it was not unsupported as the plaintiff now claims on appeal. Plaintiff's only basis for keeping it from the jury was so that they could not evaluate

same in trying to determine whether or not he sustained a permanent injury as a result of the November 10, 2018 motor vehicle accident. Plaintiff's argument that admission into evidence of testimony regarding this motorcycle accident included the claim that the plaintiff only had a CT scan of his head. Plaintiff's testimony at trial was not limited to having just a CT of his head but maybe also included a CT of his neck. Plaintiff testified to the jury that he had no follow up treatment regarding that fall off the motorcycle and argued it was not an injury. The jury had the right to consider that information as well for purposes of their deliberative process.

Post-trial verdict, the plaintiff failed to motion the Court for a new trial so as to present these arguments to the Trial Court for review. Having now presented his appeal, the plaintiff is obligated to prove that the Trial Court abused its discretion in admitting the evidence. The decision to admit or exclude evidence is one firmly entrusted to the Trial Court's discretion. **Estate of Hanges v. Metro Prop and Cas Insurance Co.**, 202 NJ 369,383-84 (2010) A trial court abuses its discretion only when it makes a clear error of judgment. **State v. Marrero**, 148 NJ 469,483-84 (1997) If an evidentiary ruling was erroneous, the Appellate Court will not reverse the judgment unless the error was "clearly capable of producing an unjust result". **Manata v. Pereira**, 436 NJ Super, 330,334-344 (App.Div 2014) (quoting **Green v. New Jersey Manufacturers Insurance Company**, 160 NJ 480,502 (1999) As

previously noted in our New Jersey Court Rules, all relevant evidence is admissible. **NJRE 402.** Relevant evidence means evidence having a tendency and reason to prove or disprove any fact of consequence to the determination of the action. **NJRE 401 and NJRE 403.** For relevant evidence to be excluded under Rule 403, its probative value must be substantially outweighed by the risk of undue prejudice, confusion of issues or misleading the jury. A Court in determining whether evidence is relevant should focus on the "logical connection between the proffered evidence and a fact in issue or the tendency of evidence to establish the proposition that it is offered to prove. **Wymbs v. Township of Wayne**, 163 NJ 523, 534 (2000)

As set forth previously, plaintiff's admission of ongoing pain management treatment by Dr. Coccaro in his direct examination by plaintiff's counsel was made relevant by virtue of the testimony of both the plaintiff and plaintiff's wife regarding his then, ongoing complaints of pain and disability six years after the motor vehicle accident. While the plaintiff testified he could only lift light weights, his wife testified he could not lift weights at all, even though she was present in Court for the trial. The plaintiff's wife heard both her husband's testimony and saw the *de bene esse* deposition of plaintiff's treating doctor, Dr. Coccaro. Although she initially denied it, she subsequently admitted that she was aware that her husband had a low back injury that he was treating with Dr. Coccaro for and that she personally had

driven to and from two separate appointments with Dr. Coccaro wherein he was given a pain management injection. While plaintiff and his wife tried to keep the jury from hearing about his ongoing medical treatment for a low back medical condition, it was not improper to allow the defense to explore that issue particularly as it pertained to the plaintiff's inability to perform routine physical activities. The plaintiff's wife brought her credibility into the case by initially testifying that she was unaware of the low back condition that her husband was treating for at the time of the trial. When she was reminded that Dr. Coccaro had testified to it in his direct testimony which both she and the jury had already seen, the plaintiff's wife then admitted to being aware of the condition and transporting her husband for treatment relative to it on two occasions. At the same time, she denied knowing the cause and duration of her husband's low back condition. She did not have any such problems describing her husband's neck complaints that he claimed emanated from the November 10, 2018 motor vehicle accident. Such evidence of the motorcycle accident and the recent low back pain management treatment was clearly relevant to the case and the Court's permission in allowing cross-examination on this issue was in keeping with our evidence rules.

CONCLUSION

Based upon the foregoing it is respectfully submitted that plaintiff's appeal for a new trial should be denied.

Respectfully submitted,

John C. Prindiville

JOHN C. PRINDIVILLE

Dated: May 14, 2025

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June 10, 2025

VIA E-COURTS ONLY

Clerk, Superior Court
Appellate Division
Richard J. Hughes Justice Complex PO Box 006
Trenton, NJ 08625

Re: John G. Pinto and Danielle Pinto v. Liciana Paula Pinheiro,
Nissan Infinity LT., Simon L. Puryear, Allstate New Jersey
Property and Casualty Insurance Company
On Appeal from a final order of the Superior Court
Law Division, Ocean County
Sat Below: Hon. Valter H. Must, J.S.C.
Plaintiff/Appellant's Reply Letter Brief
Appellate Division Docket No. A661-24

Dear Clerk:

Please accept this letter brief in lieu of a more formal
submission in reply to Respondent's brief.

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PROCEDURAL HISTORY

Plaintiff relies on the procedural history set forth in our initial briefing.

STATEMENT OF FACTS

Plaintiff relies on the statement of facts set forth in our initial briefing.

PRELIMINARY STATEMENT

Through 24 pages of extensive briefing, the defendant does not address the most critical issue on this appeal: there is no competent medical evidence that (1) plaintiff's lower back treatment or (2) plaintiff's prior motorcycle accident relate in any way to the neck injury he suffered in the November 10, 2018 accident. Three different medical experts testified at trial. They were all barred from testifying about the lower back treatment by the trial judge's *in limine* ruling (and their respective *de bene esse* depositions were redacted accordingly). (2T141:10) None of the medical experts testified in any way about a prior motorcycle accident. As set forth in Plaintiff's initial briefing, a prior injury is only relevant if its logical relationship to medical causation is established by appropriate *expert medical opinion*. Allendorf v. Kaiserman Enterprises, 266 N.J. Super. 662, 672 (App.Div. 1993.) Because there was no such testimony, nothing about the lower back or the motorcycle accident should have been admitted.

LEGAL ARGUMENT

I. PLAINTIFF DID NOT OPEN THE DOOR TO THE ADMISSION OF NONMEDICAL TESTIMONY ABOUT AN UNRELATED LOWER BACK INJURY. (Pa42; 2T141:10)

It defies logic to argue that a plaintiff who moved *in limine* to exclude evidence of an unrelated lower back injury, opened the door to admission of the evidence they successfully sought to exclude. The sole basis for defendant's argument for admission of evidence of a lower back injury *after it was barred in limine* is that Dr. Coccaro testified on direct examination that he was still treating plaintiff for "different things" unrelated to his neck injury. Dr. Coccaro never mentioned plaintiff's lower back treatment in any way. Neither did Dr. Kubeck or Dr. Lopez, or the plaintiff himself nor his wife, Danielle. It was only after Plaintiff, Dr. Coccaro, Dr. Kubeck and Danielle Pinto testified in plaintiff's case in chief that a question about plaintiff's lower back treatment was raised.

Plaintiff alleges only a neck injury in this case. Dr. Coccaro, on direct examination, testified extensively about plaintiff's neck injury and his treatment therefor. Dr. Coccaro also briefly testified he was still treating plaintiff for "different things." There was no medical evidence whatsoever introduced about a lower back injury. No medical witness testified about a diagnosis, prognosis, treatment, limitation, symptom or

doctor visit related to a lower back injury. The entirety of the evidence of plaintiff's lower back injury comes from plaintiff's wife on cross examination. The entire basis for defendant's argument that this evidence is relevant is that plaintiff's wife testified, when asked about plaintiff's weight lifting: "I don't know. Maybe the lower back would effect [sic] him for lifting weights above his head, I don't know that." 2T142:5-10.

Contrary to defendant's oversimplification of the "opening the door" doctrine, it does not expand the rule of relevancy "because the plaintiff himself brought it into the case." (Db12) While the doctrine is "essentially a rule of expanded relevancy," its application is more nuanced. State v. Prall, 231 N.J. 567, 582 (2018) *citing* 582 State v. James, 144 N.J. 538, 554 (1996). Specifically, it authorizes admitting otherwise inadmissible or irrelevant evidence in order to respond to one of two specific types of proffers: (1) admissible evidence that generates an issue or (2) inadmissible evidence admitted by the court over objection. Id. Its purpose, of course, is to allow "a party to elicit otherwise inadmissible evidence when the opposing party has made unfair prejudicial use of related evidence." Id. *citing* United States v. Lum, 466 F.Supp. 328 (D.Del.), *aff'd*, 605 F.2d 1198 (3d. Cir. 1979).

There are two other doctrines that are analogous to the "opening the door" doctrine. The first is the "doctrine of completeness," that involve a witness testifying on cross-examination to only part of a "conversation, statement, transaction or occurrence." Id. citing Virgin Islands v. Archibald, 987 F.2d 180 (3d.Cir. 1993). In that instance, the party calling the witness can, on redirect, elicit the whole statement "to the extent it relates to the same subject matter and concerns the specific matter opened up." Id. Another example is the doctrine of "curative admissibility," that permits a party to introduce otherwise inadmissible evidence to rebut inadmissible evidence that has been introduced by an opposing party. Id. citing United States v. Nardi, 633 F.2d 972, 977 (1st.Cir. 1980). The curative admissibility doctrine only applies "when inadmissible evidence has been allowed, when that evidence was prejudicial, and when the proffered testimony would counter that prejudice." Id.

None of the three doctrines apply in this case and cannot form the basis for the admission of the otherwise inadmissible evidence elicited by the defense related to plaintiff's lower back injury. The "opening the door" doctrine does not apply because Dr. Coccaro's statement that he was still treating plaintiff for "different things" does not generate an issue, nor was it inadmissible evidence admitted over objection. Further, and perhaps most importantly, the plaintiff did not (and indeed could

not) have made unfair prejudicial use of this statement. If anything, this testimony was helpful to the defendant, as it confirmed the plaintiff had not recently seen the doctor as it related to the November 2018 accident.

Similarly, the "doctrine of completeness" does not apply in this case. First of all, the testimony by Dr. Coccaro that supposedly opened the door was made on direct examination, not cross-examination. Secondly, it was not only one "part of a conversation, statement, transaction or occurrence." Finally, the doctrine of "curative admissibility" does not apply here because no inadmissible evidence was included in Dr. Coccaro's testimony: he merely stated that he was seeing plaintiff for things unrelated to the accident. Further, this doctrine only applies when inadmissible evidence was admitted, and that evidence was prejudicial and the proffered testimony would counter that prejudice. As set forth above, the testimony that defendant claims "opened the door" to wholesale admissibility of irrelevant evidence about an unrelated lower back injury was Dr. Coccaro's statement that he was treating plaintiff for "other things." This testimony, of course, was not prejudicial, as it indicated that plaintiff had not recently seen the doctor as it related to the accident at issue in this case.

Simply put, defendant has not laid out any legal or factual basis for the admission of inadmissible evidence about plaintiff's lower back treatment. As such, the testimony about same should have been barred. Because it was not, it-along with the testimony dealt with in section II, below-substantially affected the outcome and this matter should be remanded for a new trial.

II. SPECULATIVE EVIDENCE ABOUT PLAINTIFF'S ALLEGED INJURY DURING A DECADE OLD MOTORCYCLE ACCIDENT SHOULD HAVE BEEN BARRED. (Pa42; 2T50:9-18)

The defendant's questioning of plaintiff about his decade-old motorcycle accident was totally improper because "no facts concerning the event on which the question was based were in evidence and the questioner made no proffer indicating his ability to prove the occurrence." Manata v. Pereira, 436 N.J.Super. 330, 348 (App.Div. 2014) Just as with the unrelated and irrelevant lower back treatment, no medical witness provided any testimony about diagnosis, prognosis, treatment, limitation, symptom or doctor visit with respect to the alleged prior motorcycle accident. In fact, no medical record or expert report referencing this alleged injury has been located, despite plaintiff's extensive course of treatment, multiple expert witnesses, depositions¹ and IME's and

¹ Plaintiff sat for two depositions in this case nearly two years apart.

over 1,100 days of discovery. Perhaps most importantly, the plaintiff indicated *he was not injured* in the motorcycle accident. He had no diagnosis. He had no treatment. He went to the ER and was released. His testimony about the motorcycle accident was perfectly consistent with the admissible facts presented at trial: that he had no neck injury.

Unfortunately, because the irrelevant testimony about the motorcycle accident was admitted over objection, the defense attorney was able to make it look as though the plaintiff was hiding a prior neck injury from the jury. In fact, the very first substantive item of discussion in the defendant's summation referred to the motorcycle accident and insinuated that plaintiff had a prior neck injury: "I was taken to Jersey Shore University Medical Center, and I had CAT scans of some kind, at least my head, maybe my neck, I don't remember." 3T6:5-7.

The *admissible* evidence adduced at trial made clear that plaintiff was not concealing anything: there was no prior neck injury, no prior neck pain, no prior neck treatment, and no prior neck diagnosis, ever, prior to the November 2018 crash. Even so, the jury was permitted to speculate that plaintiff injured his neck in a motorcycle accident ten years prior, without any medical evidence whatsoever. Add to that the prejudicial effect this had to the plaintiff, who was made out to be a liar as set forth in

defense counsel's closing about "The Rest of the Story," and you have a recipe for the trial court's errors substantially affecting the outcome of trial.

In light of the foregoing, this matter should be remanded to the for a new trial.

III. CONCLUSION

Because the Trial Court improperly allowed the jury to hear inadmissible, prejudicial evidence and that substantially affected the outcome of the proceeding, this matter should be remanded for a new trial.

Respectfully Submitted,



William Wright
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