
NOAH TENENBAUM,
Plaintiff/Respondent,

vs.

**ALLSTATE INSURANCE
COMPANY,**
Defendant/Appellant.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000742-25**

Civil Action

SUBMITTED ON: December 1, 2025

**ON APPEAL FROM:
Superior Court of New Jersey
Law Division: Middlesex County
Docket No. MID-L-2505-25**

**SAT BELOW:
Hon. Patrick J. Bradshaw, J.S.C.**

**BRIEF ON BEHALF OF DEFENDANT/APPELLANT,
ALLSTATE INSURANCE COMPANY**

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PRELIMINARY STATEMENT

Defendant, Allstate Insurance Company (“Allstate”) sought Leave to Appeal as there is a crucial legal issue which required Appellate intervention. The first, and immediate concern was the irreparable harm which would have been visited upon Allstate should the Trial Court’s decision stand. The second, and more global concern, is the guidance needed for Trial Courts across the State as they deal with hundreds of Complaints which seek relief under the New Jersey Insurance Fair Conduct Act (IFCA), N.J.S.A. 17:29BB-3.

This litigation arises out of a Complaint filed by plaintiff which asserts two Counts. The First Count asserts a common law bad faith claim. The Second Count is a claim under IFCA. The plaintiff’s Complaint does not include a claim for damages pursuant to the Underinsured Motorist (UIM) benefits coverage afforded by the Allstate policy that was issued to the plaintiff. The UIM claim remained unresolved at the time Plaintiff filed his Complaint.

Defendant filed a Motion to Dismiss the plaintiff’s Complaint without prejudice. Typically, an insurer would move to sever and stay the common law and/or statutory bad faith claims. However, since the plaintiff’s Complaint only asserted bad faith claims and did so prior to resolution of the UIM claim,

Allstate argued that a dismissal, rather than an Order severing and staying those bad faith claims was appropriate since an Order severing and staying the bad faith claims would leave the case in an awkward procedural position.

The Trial Court denied defendant's Motion on September 26, 2025. In denying the Motion, the Trial Court reasoned that IFCA created a separate and distinct cause of action, which will require proofs which are different from the proofs needed to resolve the underlying UIM claim. The Court noted that there was nothing in the statute which called for severance or delay of the IFCA component, pending the outcome of the UIM claim. Thus, the Court indicated that it would not limit the plaintiff's pursuit of its IFCA claims, prior to the resolution of the UIM claim.

Allstate contends that the Trial Court's decision contradicts well-established precedent from the Appellate Division which consistently called for the bad faith claim to be held in abeyance until the underlying UM/UIM claim was resolved. Those prior Appellate Division decisions were based on solid rationale. First, the parties would not have to engage in expensive and time-consuming discovery on a bad faith issue which would never become ripe, if the insured did not prevail on their UM/UIM claim. Second, staying the bad faith claim would avoid prejudice and irreparable harm to the insurer by avoiding discovery regarding claims handling, strategy decisions and

disclosure of confidential and privileged portions of a claim file while the UIM claim was still pending.

After this Court granted Leave to Appeal, the UIM portion of the case resolved. However, the Appeal is not moot. There still is a critical issue which requires Appellate review.

This Appeal presents the Appellate Division with an opportunity to provide the Trial Courts and litigants throughout the State with clear guidance as to the order that UM/UIM cases and related IFCA allegations should proceed in the Courts. This Court provided similar guidance as to the severance of common law bad faith claims in Procopio v. Gov't Emps. Ins. Co., 433 N.J. Super. 377 (App. Div. 2013) and Wacker-Ciocco v. Gov't Emps. Ins. Co., 439 N.J. Super. 603 (App. Div. 2015). As both of those cases were decided well before IFCA was passed on January 18, 2022, a similar review by the Appellate Division regarding bad faith litigation filed pursuant to IFCA will provide the Courts and litigants with guidance as to the timing and sequence of bad faith discovery.

For the foregoing reasons, and for the reasons that follow, we respectfully request that this Court decide this Appeal and provide insured persons and insurers throughout the state with guidance as to whether an IFCA claim should be stayed until after resolution of the underlying UM/UIM claim.

STATEMENT OF FACTS

Plaintiff was involved in an automobile accident on August 30, 2023 with an underinsured motorist, Ahbryanna V. Liggins. (Da1 – Plaintiff’s Complaint, Paragraph 3) Allstate provided Underinsured Motorist (“UIM”) coverage to the plaintiff, Noah Tenenbaum on August 30, 2023. (See Da1, Paragraph 5) The plaintiff’s claim for UIM benefits had not yet been resolved when Plaintiff filed a Complaint against Allstate. (See Da1, Paragraph 20) Plaintiff filed that suit on April 25, 2025. The Plaintiff’s Complaint includes two counts. The First Count asserts a claim for common law bad faith. The Second Count asserts a claim for statutory bad faith under Insurance Fair Conduct Act (“IFCA”). (See Da1) The plaintiff’s Complaint did not include a claim for UIM benefits.

The underlying UIM claim was settled between the Plaintiff and Allstate during the week of November 17, 2025, after this Court granted Allstate’s Motion for Leave to Appeal.

PROCEDURAL HISTORY

Plaintiff filed his Complaint against Allstate on April 25, 2025. Allstate filed an Answer on May 23, 2025. Allstate filed a Motion to Change Venue on

June 17, 2025. The Motion to Change Venue was denied by the Hon. Bruce J. Kaplan, P.J. Civ. On July 7, 2025.

Allstate filed a Motion to Dismiss the Plaintiff's Complaint on August 27, 2025. Allstate's Motion sought a dismissal without prejudice as the Plaintiff's Complaint only alleged bad faith claims. The underlying UIM claim had not been resolved and was not the subject of the Complaint. Thus, rather than sever and stay the bad faith counts, which would leave no remaining viable claims, Allstate sought the dismissal without prejudice, pending resolution of the UIM claim. Plaintiff opposed the Motion on September 9, 2025. A Reply was submitted on September 18, 2025. The Hon. Patrick Bradshaw, J.S.C. denied the Motion on September 26, 2025.

Allstate filed a Motion for Leave to Appeal on October 14, 2025. Judge Bradshaw issued an Amended Order on October 17, 2025 which clarified that the common law bad faith count was dismissed without prejudice. This Court granted the Motion for Leave to Appeal on October 30, 2025.

Plaintiff and Allstate resolved the underlying UIM claim during the week of November 17, 2025. The UIM claim was not the subject of the Complaint filed by Plaintiff. Allstate submitted correspondence to this Court on November 21, 2025 to inform this Court of the settlement of the UIM claim and noted that the Appeal was not moot as a result of the settlement.

LEGAL ARGUMENT

1. THE TRIAL COURT'S REFUSAL TO FOLLOW NEW JERSEY PRECEDENT REQUIRING THE SEVERANCE AND STAYING OF PLAINTIFF'S BAD FAITH CLAIM, WILL CAUSE IRREPARABLE HARM TO DEFENDANT, ALLSTATE.

(Raised below: Da26)

The Trial Court's decision not to dismiss or sever and stay the claims asserted pursuant to the New Jersey Insurance Fair Conduct Act (IFCA) and to permit discovery is entirely contrary to well established precedent requiring a stay of bad faith claims until after the Plaintiff resolves the underlying Uninsured and Underinsured Motorist (UM/UIM) claim. The error of this decision was magnified by the fact that Plaintiff had not included his claim for UIM benefits in the Complaint. Thus, not only did the Trial Court permit the bad faith claim to proceed while the UIM claim remained unresolved, but this case would have presented the absurd scenario where the bad faith claim would have moved forward prior to the litigation of the UIM claim.

Although the UIM claim has since settled, it is crucial that an Appellate Court render a decision on this issue to provide guidance to the Trial Courts and bar. This argument will be addressed further in Point 3.

New Jersey Courts have recognized a cause of action for bad faith related to UM/UIM claims for almost two decades. Contemporaneous with the

judicial recognition of those bad faith claims, our Courts also acknowledged that any bad faith claim would need to be severed from the underlying UM/UIM claim.

In Taddei v. State Farm Indemnity Co., 401 N.J. Super. 449 (App. Div. 2008), the court recognized a cause of action for bad faith in the first-party UM/UIM context. This cause of action was derived from remedies afforded in similar contexts by Rova Farms Resort, Inc. v. Investors Insurance Co. of America, 65 N.J. 474 (1974) (providing the insured with a bad faith claim against the insurer for failing to settle a third-party claim within the policy limits, resulting in a judgment in excess of the policy coverage) and Pickett v. Lloyd's, 131 N.J. 457 (1993) (allowing for bad faith claims against insurers in the first-party property damage cases). Taddei, 401 N.J. Super. at 459-62. In so holding, the Court noted that, in first-party cases, the insurer “is in the litigation from the outset,” so bad faith claims could be brought in the same litigation. Id. at 465. However, the Court also noted that:

[in order to] respect the rights of all parties, **the underlying claim could be severed from the bad faith claim, with the latter being held in abeyance until conclusion of the former.** The severed bad faith claim would then be activated, triggering the possibility for the right to discovery, motions, and, if necessary, a separate trial. In this way, the plaintiff’s ability to pursue a potential bad faith claim would be preserved, **but the insurer would not be required to produce its claim file prematurely, otherwise,**

privileged material may be disclosed which would jeopardize the insurance company's defense.

Id. at 465-66 (emphasis added).

The Appellate Division went further in Procopio v. Gov't Emps. Ins. Co., 433 NJ. Super. 377 (App. Div. 2013), holding that a policyholder must first show that he is entitled to recover on a contract claim before he can attempt to prove the insurer acted in bad faith. Id. at 382. In Procopio, the Trial Court severed the plaintiff's UIM coverage claim from his bad faith claim for trial pursuant to R. 4:38-2, but directed discovery to proceed simultaneously on both claims. See Id. at 378-79. The UIM insurer filed a motion for leave to appeal the Trial Court's interlocutory order and argued that the Trial Court abused its discretion by compelling discovery on the bad faith claim to proceed before Plaintiff's UIM claim was resolved. See Id. at 379. Granting interlocutory review, the Appellate Division held that:

The approach outlined in Taddei promotes judicial economy and efficiency by holding in abeyance expensive, time-consuming, and potentially wasteful discovery on a bad faith claim that may be rendered moot by a favorable ruling for the insurer in the UM or UIM litigation. Id.

The Appellate Court echoed the discovery concerns mentioned in Taddei, specifically stating that severance "best accommodates the varying interests involved" and that "whatever....benefits of simultaneous discovery,

they are **substantially outweighed** by the burdens exacted both institutionally and individually.” Id. at 383-84 (emphasis added).

A third Appellate Division decision that requires trial courts to sever and stay UM/UIM bad faith claims is Wacker-Ciocco v. Gov’t Emps. Ins. Co., 439 N.J. Super. 603 (App. Div. 2015). In Wacker-Ciocco, a plaintiff asserted a claim for UIM benefits and a bad faith claim against his carrier. The Court bifurcated the two claims for trial, but denied the UIM carrier’s motion to sever and stay discovery on the bad faith because the UIM carrier had produced documents in discovery that were potentially relevant to the bad faith claim and “the cat [was] therefore out of the bag.” Id. at 608.

As it did in Procopio, the Appellate Division granted the UIM carrier’s motion for leave to appeal the Trial Court’s interlocutory order allowing the bad faith discovery to proceed and reversed. Relying on Pickett, the Appellate Division once again confirmed that an insured who alleges bad faith must first establish the merits of his or her claim for benefits. See Wacker-Ciocco, 439 N.J. Super. at 611. The Appellate Division held that it did not matter that the UIM carrier may have produced some documents potentially relevant to the bad faith claim, finding that “proof an insured is entitled to coverage as a matter of law is a necessary prerequisite to pursuing discovery regarding a bad

faith claim...[t]his principle does not become inapplicable because some discovery relevant to the bad faith claim was produced.” Id. at 614.

Accordingly, bad faith claims asserted in a first-party UM/UIM context are appropriately bifurcated from the other claims in the Complaint. Such procedure is well within the realm of R. 4:38-2, which permits the Court to sever any claims or issues for the convenience of the parties or to avoid prejudice. Indeed, the New Jersey Supreme Court addressed the issue in Wadeer v. New Jersey Mfrs. Ins. Co., 220 N.J. 591, 610 (2015), holding that “viewing bad faith claims as separate and distinct actions promotes judicial efficiency and economy.” The Supreme Court therein requested that the New Jersey Court Rule addressing the Entire Controversy Doctrine be specifically amended to exempt bad faith claims. The rule was so amended in September 2016. R. 4:30A.

Plaintiff’s Complaint makes these types of bad faith allegations, and these are precisely the type of allegations anticipated by Wadeer, and why it is more efficient to resolve the merits of an underlying UM/UIM claim before the merits of any alleged bad faith.

In ordering that the Plaintiff’s claim under IFCA could proceed prior to resolution of the UIM claim, the Trial Court focused on the notion that an IFCA claim is a separate cause of action from a bad faith claim without any

apparent consideration for the well-reasoned holdings of Taddei, Procopio and Wacker-Ciocco regarding the prejudicial effects of requiring an insurer to engage in bad faith discovery prior to the resolution of the underlying claim. Despite referring to delay of an IFCA claim as “nonsensical and counterintuitive” the Trial Court recognized that the proofs required to prove the IFCA claim are different than the proofs needed to resolve the underlying claim.

Those “different” proofs are the precise reason that past Appellate panels created the principle that a bad faith claim needs to be severed and stayed. The discovery typically exchanged for the UIM case focuses on the Plaintiff’s injuries and liability. That discovery would focus on the police report, witness statements and medical records. The discovery in the bad faith claim centers around the actions and mental state of the insurer. The bad faith discovery would require disclosure of internal documents and testimony of the representatives that handled the claim. In that sense, the discovery varies tremendously.

The bad faith discovery would require Allstate to disclose privileged information such as the claim file and reveal strategy decisions. This information would give the Plaintiff a significant competitive advantage in the UM litigation. It could be analogized to a batter in a baseball game knowing

whether the opposing pitcher was planning to throw a fastball, change-up or curveball prior to the pitch. His odds of getting a hit would increase dramatically.

In addition to the significant prejudice to the insurer in discovery, the actual combined trial as to both claims would be unworkable. Arguably, the same jury considering the Plaintiff's injury claims would hear testimony as to the adjuster's mental impressions of the Plaintiff's case. The trial would get bogged down with evidence of insurance practices and procedures that have nothing to do the liability and injury case. Asking a jury to consider both claims simultaneously would intertwine complex medical expert testimony with evidence as to the insurer's state of mind. Such a presentation would greatly lengthen the trial, but more importantly, would likely result in prejudice and confusion among the jurors.

The Trial Court gave essentially no consideration to the prior holdings of the Appellate Division regarding the prejudicial nature of the bad faith discovery while the UIM claim is still active. Regardless of whether the bad faith claim is based on the common law or statute, the principle remains the same. The UIM claim needs to be resolved first, then if the bad faith claim is still viable, it can proceed. To order bad faith discovery to proceed

simultaneously, or even more egregiously, before the UIM discovery would irreparably harm a carrier's ability to defend a case.

The second principle that the Trial Court seemingly overlooked is the potentially waste of resources litigating a bad faith claim prematurely. As noted by the Procopio court, holding the bad faith claim in abeyance avoids expensive, time-consuming discovery which may well be rendered moot by a decision favorable to the insurer on the underlying claim. Although the Trial Court paid lip service to that notion, recognizing that the result of the UIM claim might "answer the question as to whether the Insurance Company's preceding actions created an unreasonable delay or unreasonable denial", the Court still directed the bad faith litigation to proceed.

The Trial Court decision contradicts the holdings of Taddei, Procopio and Wacker-Ciocco which apply directly here. The Court did not cite any contrary authority to support the decision to allow the IFCA claim to proceed.

In the present matter, the plaintiff only included a claim for common law bad faith and statutory bad faith in the two Counts of the Complaint. However, at the time Plaintiff filed that bad faith complaint, plaintiff had not proven that he was entitled to recover under the contract. It is well-settled that bad faith claims made against insurers should be severed and stayed until the

breach of contract claim is resolved. Accordingly, we ask this Court to reverse the Trial Court's decision to permit the IFCA claim to proceed.

2. THE TRIAL COURT DREW AN UNREASONABLE DISTINCTION BETWEEN A COMMON LAW BAD FAITH CLAIM AND A STATUTORY CLAIM UNDER IFCA FOR PURPOSES OF REQUIRING A STAY OF THE BAD FAITH CLAIM.

(Raised below: Da26)

The New Jersey Insurance Fair Conduct Act became law on January 18, 2022. The statute, N.J.S.A. 17:29BB-3 provides:

a. In addition to the enforcement authority provided to the Commissioner of Banking and Insurance pursuant to the provisions of P.L.1947, c.379 (C. 17:29B-1 et seq.) or any other law, a claimant, who is unreasonably denied a claim for coverage or payment of benefits, or who experiences an unreasonable delay for coverage or payment of benefits, under an uninsured or underinsured motorist policy by an insurer may, regardless of any action by the commissioner, file a civil action in a court of competent jurisdiction against its automobile insurer for:

(1) an unreasonable delay or unreasonable denial of a claim for payment of benefits under an insurance policy; or

(2) any violation of the provisions of section 4 of P.L.1947, c.379 (C.17:29B-4).

Like a common law bad faith claim under Pickett, the IFCA is an extra-contractual claim for liability in addition to the coverage and benefits provided under the insurance policy. The IFCA provides for a cause of action for “an unreasonable delay or unreasonable denial of a claim for benefits under an insurance policy” or for a violation of the Unfair Claims Settlement Practices Act, N.J.S.A 17:29B-4. The insured must establish that he is entitled to UIM benefits as a “necessary prerequisite” to an IFCA claim because a denial or delay in payment of UM/UIM benefits cannot be unreasonable if no insurance coverage was owed.

Whether a bad faith claim is made under the common law precedent initially established pursuant to Taddei or via the IFCA statute, the principle requiring courts to sever and stay those claims until the underlying UM/UIM claim is resolved is identical. Accordingly, the statutory bad faith claims under the IFCA must be severed and stayed pending the resolution of the underlying UM claim just like common law bad faith claims under Taddei. Any contrary decision would undermine judicial economy and efficiency by wasting time and resources on a claim that is not ripe. Producing documents protected from discovery by the attorney-client and work product privileges relevant to a common law bad faith claim or an IFCA claim would also

jeopardize Allstate's defenses of the Plaintiffs' claim for UIM benefits, which is improper under Taddei, Procopio and Wacker-Ciocco.

The Trial Court placed undue weight on the its' opinion that IFCA creates a wholly distinct cause of action. While IFCA codified the ability for a plaintiff to pursue a UM/UIM bad faith claim, at the end of the day, it is still a bad faith claim and thus, not unlike a common law bad faith claim. Thus, the reasoning set forth in the Appellate precedent over the past twenty years is still binding.

IFCA is silent as to the issue of staying the bad faith claim until the UM/UIM claim is resolved. The legislature was aware of the legal precedent requiring the stay of the bad faith claim and did not include any language in the statute to counter or alter that precedent. The Legislature is deemed to be aware of existing legal precedent, and by failing to address same in drafting a statute, it is presumed that the Legislature did not intend to change that precedent. Monaghan v. Holy Trinity Church, 275 N.J. Super. 594, 602-03 (App. Div. 1994) (“[t]he Legislature is assumed to be thoroughly familiar with its own enactments and with statutory interpretations provided by the courts” and “legislative silence . . . is evidence that the Legislature has approved the judicial construction, especially when the Legislature has amended the statute without expressing disapproval of the court's action”); Klumb v. Bd. of Educ.

of Manalapan-Englishtown Reg'l High Sch. Dist., Monmouth Cnty., 199 N.J. 14, 24 (2009) (“the fact that the Legislature has not acted in response to an agency's interpretation or practice is granted great weight as evidence of its conformity with the legislative intent” and “where judicial interpretations of the statute are deeply ingrained in our jurisprudence, the Legislature's failure to modify a judicial determination, while not dispositive, is some evidence of legislative support for the judicial construction of a statute”) (citations omitted); State v. Scott, 429 N.J. Super. 1, 9 n. 6 (App. Div. 2012) (It is a well-established canon of statutory interpretation that the Legislature is presumed to know the judicial construction of its enactments”) (citation omitted).

Thus, the Legislature’s silence as to whether an IFCA claim should be severed and stayed or proceed simultaneously with the UM/UIM claim is telling. Given the unanimous decisions of the Appellate Division on this issue, it seems clear that the Legislature did not intend to alter this common-sense procedure.

**3. THE INTERESTS OF JUSTICE REQUIRE
THE COURT TO MAKE A DETERMINATION
AS TO THE APPLICABILITY OF THE IFCA
TO CLAIMANTS IN PLAINTIFF’S
POSITION.**

(Not raised below)

The New Jersey Court Rules require a motion for leave to appeal an interlocutory order to meet an “interest of justice” standard. R. 2:2-4. Although interlocutory appellate review is exercised only sparingly, the Appellate Division enjoys considerable discretion in determining whether the “interest of justice” standard has been satisfied. Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008); State v. Reldan, 100 N.J. 187, 205 (1985).

The Leave to Appeal was warranted in this case for two distinct reasons. As stated above, the lower court clearly erred in permitting Plaintiff’s claim under the IFCA to survive a Motion to Dismiss. Permitting the IFCA litigation to proceed prior to resolution of the UIM claim would have resulted in irreparable harm and prejudice to Allstate. Allstate would have been required to engage in bad faith discovery while the Plaintiff’s UIM claim was still pending.

Second, and crucial as to the reason this Court should consider this matter despite the resolution of this Plaintiff’s UIM claim, is that trial courts require guidance on this issue. Since the passage of the IFCA, hundreds of claimants, similarly situated to Plaintiff, have filed new Complaints or sought to amend their existing Complaints, to assert violations of the IFCA. This has resulted in extensive motion practice to address if the statute, with a great number of those motions going to address the dismissal or severance and stay

of the IFCA counts. In our experience, Trial Court Judges have issued decisions agreeing that the IFCA claims should be dismissed without prejudice or severed and stayed.¹ Judge Bradshaw’s decision upended that notion and explicitly permitted the IFCA claim to proceed, despite the fact that the UIM claim was still pending. Recently, there has been increased incidents of opposition to Motions to Sever and Stay IFCA counts. As more Plaintiffs oppose applications to sever and stay, Trial Courts and litigants need direction from the Appellate Court as to the proper treatment of these claims.

The Federal Constitution bars federal courts from issuing such “advisory opinions.” Rather, their jurisdiction is limited to actual cases or controversies. U.S. Const. art. III, § 2, cl. 1; Nextel Partners Inc. v. Kingston Twp., 286 F.3d 687, 693 (3d Cir. 2002). New Jersey, on the other hand, contains no such limitation in its Constitution. N.J. Const. art. VI, § 1, ¶ 1. As stated by the Supreme Court, while New Jersey courts “will not render advisory opinions or exercise its jurisdiction in the abstract,” they “will entertain a case that has become moot when the issue is of

¹ By way of example, the Trial Court in LaMartino v Travelers, ESX-L-7293-19 (Da30) and DeCotiis v Allstate New Jersey Ins. Co., BER-L-436-25 (Da33) severed and stayed IFCA Counts until the UM/UIM Counts were resolved. These are only two cases we could locate with written decisions, although there have been others our office was involved in which resulted only in Orders severing and staying the IFCA Count. Based on our office’s involvement in DeCotiis, we can confirm that involved an IFCA Count. Pursuant to R. 1:36-3, we are not aware of any contrary unpublished Decisions.

significant public importance and is likely to recur.” State v. Gartland, 149 N.J. 456, 464 (1997) (emphases added).

In Gartland, the Court decided the case even though it was mooted when the defendant died during the pendency of the appeal. It reasoned that “[t]he problem of domestic violence is widespread,” in that case where the defendant was convicted of reckless manslaughter after she killed her husband after suffering domestic violence. Id. at 465. The Court acknowledged that it must use heightened caution in that particular case because “there is an intrinsic imbalance in the conduct of a criminal appeal on behalf of a deceased defendant.” Ibid. Specifically, in such a case, “[t]he State and victims of the crime cannot win” because the defendant cannot be retried, and therefore if the conviction is set aside then there will be no “opportunity to vindicate the public interest in enforcement of the law.” Id. at 466. Still, the Court found the interests of the defendant and society at large to be important enough to decide the moot appeal on its merits. Finding error in the trial court’s charge of self-defense, the Court reversed and set aside the conviction of manslaughter.

In Reilly v. AAA Mid-Atl. Ins. Co. of New Jersey, 194 N.J. 474 (2008), the Court noted that “[w]e have often declined, however, to dismiss a matter on grounds of mootness, if the issue in the appeal is an important matter of public interest.” Id. at 484. The merits issue in that case was whether, and when, a driver

in a single-vehicle accident may be deemed “at-fault” for insurance eligibility rating points. During the pendency of the litigation, the points assessed against the plaintiff had expired, making the issue moot. The defendant argued that the appeal should be dismissed on that basis. The Appellate Division rejected that argument, but still ruled against the plaintiff on the merits. The Supreme Court also decided to address the case on the merits because it concluded that “the questions raised in this appeal qualify as important matters of public interest.” Ibid. However, the Court found that the Department of Banking and Insurance applied its regulations in a way that exceeded the scope of its statutory authority and reversed the merits decision of the Appellate Division.

In Nini v. Mercer Cnty. Cmty. Coll., 202 N.J. 98 (2010), the issue on appeal was whether the failure to renew an employee’s contract was the same as terminating an employee for purposes of the over-seventy-exception to the Law Against Discrimination. The trial court answered in the negative, finding that a failure to renew a contract was akin to “refus[ing] to accept for employment.” Id. at 102. The trial judge then entered summary judgment in the defendant’s favor. The Appellate Division reversed. After the case was argued to the Supreme Court, the parties notified the Court that the matter settled. The Court decided to issue an opinion on the merits anyway because of “the significant effect on senior citizens

in the workplace.” Id. at 105 n. 4. It agreed with the Appellate Division’s reversal of summary judgment.

The most recent reported decision in which the court issued a merits opinion on a moot case was State v. Matrongolo, 479 N.J. Super. 8 (App. Div. 2024). There, the trial court determined that Recovery Court is available only to individuals convicted of a crime, not a disorderly persons offense or petty disorderly persons offense. Therefore, the defendant in that matter, who pled guilty to a petty disorderly persons offense, was denied participation in the program. Before the issue was decided by the Appellate Division, the defendant died. The State moved to dismiss the appeal as moot. The court first noted the heightened caution in criminal cases in which the defendant has died, like in Gartland. Nonetheless, in denying the motion to dismiss, the court stated that the matter was of “significant public importance and is likely to recur.” Id. at 372 (quoting Gartland, 149 N.J. at 491). The court reasoned that the issue of addiction was widespread in New Jersey, and the specific scenario at issue—an individual convicted of a disorderly persons or petty disorderly persons offense being denied admittance to Recovery Court—was likely to recur. Addressing the merits, the court reversed the trial judge’s decision.

In sum, even though New Jersey courts will not issue opinions on abstract issues, they regularly decide moot cases if there is a public interest in the guidance

that a judicial opinion would provide. The issue that the instant appeal presents satisfies this standard. The New Jersey Supreme Court has held that uniform application of the law “reduces unnecessary resource and time-consuming litigation. . . . and promotes efficiency through the reduction in confusion.” McGrogan v. Till, 167 N.J. 414, 422 (2001). Uniformity of application is particularly important where the law has the potential to affect many different individuals or entities. Boldt v. Correspondence Management, Inc., 320 N.J. Super. 74, 87 (App. Div. 1999).

Application of the IFCA affects all automobile insurance companies, and every single resident who is involved in a motor vehicle accident with an uninsured or underinsured motorist in the State of New Jersey. The application of the law to the parties should not be determined by which trial judge is assigned to hear the case. It is respectfully submitted that, to achieve the uniformity of application that is required under New Jersey law, the Appellate Division must render a decision on this issue.

The Trial Courts and litigants require a clear standard as to the order in which UM/UIM claims and related IFCA claims should proceed with regard to discovery and trial, as common law bad faith claims did under the Procopio and Wacker-Ciocco cases. This case presents the opportunity to the Appellate Division to provide that direction. Allstate respectfully requests that this

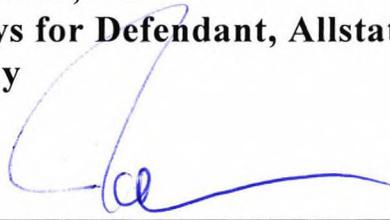
Court follow the common-sense standard as set forth in the common law bad faith precedent and direct that IFCA claims be severed and stayed, pending resolution of the underlying UM/UIM claim.

CONCLUSION

For the foregoing reasons, Defendant Allstate respectfully requests that this Court consider the important procedural issues at play when a Plaintiff asserts an IFCA claim with the related UM/UIM claim and provide direction to the Trial Courts and litigants. Allstate contends that the applicable law which should apply to motions to sever and stay IFCA claims should follow the precedent set forth in two decades of rulings on common law bad faith claims. Therefore, Allstate respectfully submits that this Court should reverse the decision of the Trial Court.

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