Superior Court of New Jersey

Appellate Division

Docket No. AM-_____-25

LINDSAY CIRELLI, *Plaintiff,* vs. GOVERNMENT EMPLOYEES INSURANCE COMPANY and/or ABC CORPORATION (1-100) (a fictitious name for a presently unknown and unidentified corporation) Individually, jointly, severally and in the alternative, *Defendants.*	:	CIVIL ACTION ON MOTION FOR LEAVE TO APPEAL FROM AN INTERLOCUTORY ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MIDDLESEX COUNTY DOCKET NO.: MID-L-2601-25 Sat Below: HON. PATRICK J. BRADSHAW, J.S.C.

BRIEF ON BEHALF OF DEFENDANT IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

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Date Submitted: October 30, 2025

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PRELIMINARY STATEMENT

The interests of justice require that this Court grant immediate appellate review of the trial court's orders permitting plaintiff Lindsay Cirelli ("Plaintiff") to pursue discovery relative to her common law and statutory bad faith claims while simultaneously pursuing discovery relative to her underinsured motorist ("UIM") claim. In so ruling, the trial court ignored binding appellate precedent concerning common law bad faith claims; discounted the plain language of N.J.S.A. § 17:29BB-3 and the Insurance Fair Conduct Act ("IFCA"); and incorrectly analogized IFCA to a separate statute governing punitive damages and bifurcated trials. In particular, the interests of justice compel immediate appellate review of these orders to protect defendant Government Employees Insurance Company ("GEICO") from being forced to prematurely produce bad faith discovery that will irreparably prejudice its ability to defend the underlying UIM action. Moreover, appellate review at this stage of the litigation will also ultimately preserve the court's and the parties' time and resources by staying the bad faith discovery until Plaintiff has prevailed on the UIM action – as this Court has repeatedly required in the past.

In the orders being appealed, the trial court reconsidered its prior decision correctly severing the common law and statutory bad faith claims, and staying discovery on same, in accordance with well-established New Jersey law. The

trial court incorrectly analogized N.J.S.A. § 17:29BB-3 to N.J.S.A. § 2A:15-5.13, which governs bifurcated trials in punitive damages cases. The trial court then declined to reconsider that decision.

Well-established, binding New Jersey appellate precedent dictates that while Plaintiff has properly pleaded and preserved a cause of action for common law bad faith, that claim should be severed, and discovery stayed, until such time that Plaintiff has prevailed on the underlying UIM claim, and established a right to the benefits sought. New Jersey courts have recognized not only the inherent fairness of this approach, by not requiring insurers to prematurely produce materials that could jeopardize their defense of the UIM case, but also the utility of proceeding in this matter in that it makes little sense to force the parties to undergo discovery on a bad faith claim that is wholly contingent on the unresolved UIM claim.

This same logic applies to a claim for statutory bad faith under the relatively new N.J.S.A. § 17:29BB-3, which codified the common law bad faith cause of action, and prohibits unreasonable denials or delays of UIM claims. Discovery on a claim under N.J.S.A. § 17:29BB would seek precisely the same materials that Courts have previously stayed under common law bad faith actions, recognizing that their production would jeopardize the insurer's defense of the underlying UIM action. Moreover, the statute's use of the terms

"unreasonable delay" and "unreasonable denial" presuppose that the claimant has already established a right to the UIM benefits – which is not the case here. For the same reasons that courts routinely sever and stay common law bad faith claims, the statutory bad faith claims must similarly be severed and stayed.

Finally, the trial court incorrectly analogized IFCA claims to punitive damages claims instead of common law bad faith claims, to which they are more akin. The trial court reasoned that while certain evidence may be barred at the liability trial of a punitive damages claim, the discovery has already been conducted. As a result, the trial court permitted Plaintiff to proceed with discovery on her bad faith claims simultaneously with discovery on her UIM claim. This "apples to oranges" comparison ignores the reality that the relevant discovery for a bad faith claim (i) is wholly contingent upon a yet unresolved UIM claim; and (ii) prejudicial to the insurer's defense of the UIM claim in that it involves investigative files and claim valuation information.

Accordingly, and for the reasons set forth in more detail below, the trial court erred in permitting Plaintiff to pursue bad faith discovery concurrently with UIM discovery, and immediate appellate review is warranted not only to prevent the prejudice to which GEICO would otherwise be exposed, but also to promote judicial economy and efficiency.

PROCEDURAL HISTORY

Plaintiff filed this lawsuit against GEICO seeking UIM benefits arising out of a June 21, 2023 motor vehicle accident. (Da7) After filing an Answer to the Complaint, GEICO filed a motion to sever and stay the bad faith allegations, which the trial court granted by order dated July 18, 2025. (Da40 – Da42)

In August 2025, GEICO moved to extend discovery and Plaintiff cross-moved for reconsideration of the July 18, 2025 order, which GEICO opposed. (Da29) By Order dated August 29, 2025, the trial court reconsidered its July 18, 2025 order and held that the Court would "not limit Plaintiff's pursuit of the IFCA [statutory bad faith] claims (17:29BB-3). Discovery on any issue relevant to Plaintiff's entire complaint may be pursued in the course of litigation." (Da2 – Da4; see also 1T55:9-12[1])

On September 5, 2025, this office substituted in as counsel for GEICO, and on September 17, 2025, GEICO moved for reconsideration of the Court's August 29, 2025 Order. (Da43) After hearing oral argument on the motion for reconsideration, by order dated October 10, 2025, the trial court denied GEICO's motion for reconsideration. (Da1)

[1] 1T refers to the transcript of the motion hearing held on August 28, 2025. 2T refers to the transcript of the motion hearing held on October 10, 2025.

STATEMENT OF MATERIAL FACTS

Plaintiff alleges that on or about June 21, 2023, she was the owner and operator of a motor vehicle traveling north on Route 18 at or near South Woodland Avenue, East Brunswick, New Jersey. (Da7) At that time and place, Plaintiff's vehicle came into contact with a vehicle owned and operated by non-party Nathan Roldao ("Roldao"). Id.

At the time of the subject accident, Plaintiff maintained automobile insurance, including uninsured and underinsured motorist coverage ("UM/UIM"), with GEICO. (Da9) Plaintiff alleges that GEICO has "failed to resolve … [her] injury claims, and Plaintiff continues to be and has been monetarily harmed as a result of [GEICO's] … failures, [*sic*] to pay [P]laintiff's claims and breach of its contractual obligations." (Da10)

The First Count of Plaintiff's Complaint alleges breach of contract against GEICO. (Da7 – Da11) The Second Count of Plaintiff's Complaint alleges common law bad faith against GEICO in connection with GEICO's adjustment of Plaintiff's UIM claim. (Da11 – Da12) The Third Count of Plaintiff's Complaint alleges statutory bad faith against GEICO pursuant to the New Jersey Insurance Fair Conduct Act ("IFCA"), N.J.S.A. § 17:29BB. (Da12 – Da13)

LEGAL ARGUMENT

I. LEAVE TO FILE AN INTERLOCUTORY APPEAL SHOULD BE GRANTED IN THE INTEREST OF JUSTICE (ISSUE NOT RAISED BELOW)

Leave to appeal an interlocutory order is appropriately granted when doing so is in the "interest of justice." See N.J. Ct. R. 2:2-4. Leave to appeal an interlocutory order, therefore, should be permitted when "there is the possibility of 'some grave damage or injustice' resulting from the trial court's order." Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008). Alternatively, leave may be granted "where the appeal, if sustained, will terminate the litigation and thus very substantially conserve the time and expense of the litigants and the courts...." Romano v. Maglio, 41 N.J. Super. 561, 567 (App. Div.), certif. den., 22 N.J. 574 (1956). For example, leave to appeal may be appropriate if it will resolve a fundamental issue and thereby prevent the court and the parties from embarking on an improper or unnecessary course of litigation. See Dinizo v. Butler, 315 N.J. Super. 317, 319 (App. Div. 1998).

Here, granting leave to appeal the trial court's erroneous rulings permitting Plaintiff to pursue bad faith discovery while simultaneously pursuing discovery relative to her UIM claim would further the interests of justice. In particular, granting leave to appeal would prevent the grave damage or injustice that would otherwise befall GEICO if it were required to produce otherwise

privileged investigative files showing how GEICO processed and valued the UIM claim while that very claim was still being litigated. Recognizing the inherent unfairness of such a requirement, New Jersey courts regularly sever bad faith claims from the principal UIM actions and stay discovery on the same until such time as Plaintiff has prevailed on the underlying UIM claim. See Procopio v. GEICO, 433 N.J. Super. 377 (App. Div. 2013); Taddei v. State Farm Indemnity Co., 401 N.J. Super. 449 (App. Div. 2008). Although Procopio and Taddei predate IFCA, the logic underlining the policy to sever and stay common law bad faith claims applies equally to statutory bad faith claims, and should be applied here.

Granting leave to appeal would also resolve a fundamental issue in the litigation and thereby prevent the court and the parties from embarking on an improper or unnecessary course of litigation. In particular, it is well-settled that Plaintiff must first prevail on the UIM claim before she can pursue a common law bad faith claim. New Jersey courts apply the "fairly debatable" standard to determine whether a policyholder can prevail on a bad faith claim. Pickett v. Lloyd's, 131 N.J. 457, 473 (1993). Pursuant to New Jersey's fairly debatable bad faith test, a policyholder must prove that: (1) "no debatable reason existed for denial of the benefits"; and (2) the insurer "knew or recklessly disregarded" the lack of a debatable basis for delaying payment. Pickett, 131 N.J. at 481.

The "fairly debatable" standard for a bad faith action gives rise to a further litmus test: if a plaintiff does not ultimately secure summary judgment on the breach of contract question, then the breach of contract question will necessarily be regarded as "fairly debatable" and no bad faith claim will lie. See e.g., Pickett, 131 N.J. at 481; Hudson Universal v. Aetna Ins. Co., 987 F. Supp. 337, 341 (D.N.J. 1997); Universal-Rundle v. Commercial Union Ins., 319 N.J. Super. 223 (App. Div. 1999); Tarsio v. Provident Ins. Co., 108 F. Supp. 2d 397, 400 (D.N.J. 2000). Consequently, Plaintiff cannot prevail on a claim for breach of good faith and fair dealing unless she first obtains summary judgment on the principal breach of contract claim contained in the First Count.

Accordingly, because Plaintiff's bad faith claims are entirely contingent upon her first establishing a right to the UIM benefits, which she has not yet done, it would be illogical to permit discovery into the unripe bad faith claims at this juncture – as this Court has previously held. The better approach, which "promotes judicial economy and efficiency" is to hold "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." Procopio, supra, at 381.

Permitting GEICO leave to file this interlocutory appeal would both prevent the possibility of 'some grave damage or injustice' to GEICO, and

would also very substantially conserve the time and expense of the litigants and the courts. The interests of justice dictates that GEICO's motion for leave to appeal to trial courts' August 29, 2025 and October 10, 2025 Orders should be granted.

II. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION ON AUGUST 29, 2025 AND DENYING GEICO'S MOTION FOR RECONSIDERATION ON OCTOBER 10, 2025 (Da1 – Da4; Da43 – Da44)

A. The Trial Court's Decisions Ignore Binding Appellate Precedent and Well-Settled Principles for Litigating Bad Faith Claims (2T5:7-24)

First and foremost, the trial court's decisions to allow Plaintiff to pursue common law bad faith discovery while simultaneously pursuing discovery on her UIM claim should be reversed because they fly in the face of controlling published appellate law holding precisely the opposite.

In Taddei v. State Farm Indemnity Co., 401 N.J. Super. 449 (App. Div. 2008), following a trial of his first-party claim, the trial court molded an excess jury verdict to reflect the limits of the policyholder's available coverage. On appeal, the policyholder argued that he was entitled to the full amount of the jury verdict, which he asserted represented damages arising out of the insurer's alleged bad faith. In affirming the trial court, this Court outlined the procedure

to adjudicate first-party coverage disputes – such as this UIM claim – involving allegations of bad faith:

> To respect the rights of all the 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 right to discovery, motions, and, if necessary, a separate trial.

Taddei, 401 N.J. Super at 465-66 (*emphasis added*). As this Court explained in Taddei, this procedure exists to preserve the policyholder's ability to pursue a potential bad faith claim without risking the disclosure of privileged information and/or other prejudice that would inappropriately "jeopardize the insurance company's defense." Taddei, 401 N.J. Super. at 466.

Since Taddei, this Court has reaffirmed the principle that a plaintiff alleging bad faith must first prove that she is entitled to recovery under the insurance contract before she can prove bad faith, and also that bifurcating claims for insurance benefits from claims for bad faith is the preferred method of adjudicating such cases:

> 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. This procedure also avoids the premature disclosure of arguably privileged materials to the prejudice of the insurer's defense while, at the

> same time, preserving the insured's pursuit of its bad faith claim.

Procopio v. Gov't Empl. Ins. Co., 433 N.J. Super. 377, 381 (App. Div. 2013).

Procopio also correctly observed that:

> Indeed, if an insured attempting to prove the validity of his or her claim against an insurer could obtain the insurer's investigative files showing exactly how the company processed the claim, how thoroughly it was considered and why the company took the action it did merely by alleging the insurer acted in bad faith, then there would be an open invitation to all plaintiffs to include such allegations with every breach of contract claim.

Procopio, supra at 380.

Plaintiff does not – because she cannot – point to any caselaw or statute overruling or otherwise limiting Taddei and Procopio, supra, which expressly set forth the manner in which cases such as this matter, alleging a claim for UIM benefits and bad faith, should be litigated to protect the parties' interests and to promote judicial economy. Therefore, it was error for the trial court to ignore this published, binding appellate caselaw and permit Plaintiff to pursue discovery on all of her claims simultaneously.

B. NJSA § 17:29BB-3 Codified – But Did Not Overrule – Common Law Bad Faith (2T15:14-25)

The trial court also erred in allowing Plaintiff to pursue discovery on her statutory bad faith claims under IFCA, N.J.S.A. § 17:29BB-3, while

simultaneously pursuing discovery relative to her UIM claim. There is no principled distinction between the type of discovery needed to prevail on a common law bad faith claim and a claim under IFCA. As a result, the same well-founded logic for severing and staying common law bad faith claims applies to severing and staying IFCA claims, and the trial court erred by holding to the contrary.

Prior to the enactment of IFCA, first-party bad faith claims, such as those brought in connection with UIM benefits, as in this matter, were governed by common law under the standard set by Pickett 131 N.J. 457, supra which established a two-part test for determining whether a carrier had unreasonably delayed or denied a valid claim in bad faith. Let there be no mistake: Pickett is still good, valid law. NJSA § 17:29BB-3 did not overrule or otherwise supersede Pickett. To the contrary, NJSA § 17:29BB-3 merely codified in statute the common law rights under Pickett that a policyholder may assert a private cause of action against her own insurer for an ***unreasonable*** delay or an ***unreasonable*** denial of benefits. The statute did not add (or subtract) any rights a policyholder already had under Pickett. It merely codified existing common law into statute.

The crux of the issue, then is ***when*** that claim becomes ripe. Pickett holds that the policyholder must first show entitlement to the underlying UIM benefits as a threshold matter, before she can pursue a claim for bad faith. It would be a

tremendous waste of the attorneys', the parties', and the courts' time and resources to allow policyholders to pursue bad faith claims when they were never entitled to the underlying benefits in the first place. "A claimant who could not have established as a matter of law a right to summary judgment on the substantive claim would not be entitled to assert a claim for an insurer's bad faith." Pickett, supra at 473.

Both logic and the plain text of N.J.S.A. § 17:29BB-3 compel the same result: that is, a delay or a denial of claims cannot, by definition, be unreasonable, if the claimant was never entitled to the benefits as a threshold matter. Thus, the statutory language of IFCA also implicitly requires Plaintiff to first demonstrate an entitlement to the UIM benefits before pursuing a bad faith claim – statutory or otherwise. In fact, recent Law Division decisions faced with the issue have not distinguished between the common law and statutory causes of action for bad faith, severing and staying plaintiff's claims under IFCA. See Urbaniak v. Progressive Ins. Co., 2022 N.J. Super. Unpub. Lexis 5174 (Law Div. Dec. 16, 2022) (Da50 – Da51); Rizzo v. USAA Prop. & Cas. Ins. Co., 2022 N.J. Super. Unpub. Lexis 4979 (Law Div. Dec. 9, 2022) ("New Jersey case law has recognized that a bad faith claim should be severed from an underlying claim for purposes of trial and that any litigation involving the bad faith claim(s), including discovery, should be severed and stayed until the underlying claim is

resolved. ***Similarly, a claim under the IFCA should be severed and stayed as well***."). (*emphasis added*) (Da52 – Da54)

Accordingly, because the trial court did not extend the well-reasoned rationale for severing and staying common law bad faith claims, as expressed in Taddei, Procopio, and their progeny to the IFCA bad faith claims, and because the same rationale for severing and staying common law bad faith claims applies equally to statutory bad faith claims under IFCA, the trial court's erroneous decision to permit Plaintiff to pursue bad faith discovery concurrently with UIM discovery must be reversed.

C. The Trial Court Incorrectly Analogized N.J.S.A. § 17:29BB-3 to N.J.S.A. § 2A:15-5.13 (2T9:18-2T12:5)

The trial court also erred when, in ruling that Plaintiff could pursue discovery on both her UIM and bad faith claims simultaneously, it based its determination on the erroneous rationale that IFCA was somehow analogous to N.J.S.A. §2A:15-5.13, which governs bifurcated trials involving punitive damages. Those statutes are wholly separate and distinct, dealing with different subject matters entirely. Therefore, N.J.S.A. §2A:15-5.13 does not provide a rational basis to allow simultaneous discovery under IFCA.

Specifically, N.J.S.A. §2A:15-5.13 provides that "any actions involving punitive damages shall, if requested by any defendant, be conducted in a

bifurcated trial." See N.J.S.A. § 2A:15-5.13(a). The statute further provides that "evidence relevant only to the issue of punitive damages shall not be admissible" in the first stage of the trial to determine liability. See id. at 2A:15-5.13(b). Conversely, N.J.S.A. § 17:29BB-3(a) simply provides that a claimant may file a civil action "against its automobile insurer for an unreasonable delay or unreasonable denial of a claim for payment of benefits under an insurance policy."

Plainly, the two statutes are separate and distinct from one another as N.J.S.A. § 2A:15-5.13 governs punitive damage claims in bifurcated trials and N.J.S.A. § 17:29BB-3 simply provides a private cause of action for bad faith. Critically, however, while inadmissible at the liability phase of the trial, evidence relevant to a plaintiff's claims for punitive damages may be pursued at the same time as other discovery in the underlying claim since disclosure of such evidence does not materially prejudice the defendant's ability to defend the liability trial. Conversely, in first party bad faith actions, such as this matter, permitting discovery into the alleged bad faith issues would completely compromise GEICO's defense in the UIM claim, as this Court has recognized. For this reason, N.J.S.A. § 2A:15-5.13 and IFCA are not analogous, and the trial court incorrectly treated them as such:

> Again, the reasons for this determination to proceed with all discovery on all claims without severance is, in

> this Court's mind, analogous with a punitive damage claim pursuant to 2A:15-5.13 in that while a punitive damage trial is bifurcated, all of the discovery has been accomplished such that the same trier of fact is able to hear the separate claim. This Court views an IFCA cause of action in kind with a punitive damage cause of action as opposed to a common law bad faith claim which is routinely severed and stayed.
>
> In other words, in a punitive damage claim case, only the trial is bifurcated, and discovery and severance of the claim is not generally ordered during the litigation. Given that an IFCA claim is a separate cause of action, this Court believes that discovery as to that claim may proceed whenever a Plaintiff so desires even if the trial (Jury or Bench) of that cause of action may itself be bifurcated.

(Da4) By viewing an IFCA cause of action in kind with a punitive damage action as opposed to a common law bad faith claim (to which it is actually akin), the trial court ignored the prejudice to which GEICO would be faced by the premature disclosure of its investigative files and claim valuation information. Moreover, the trial court's comparison of IFCA to a punitive damages claim as opposed to a bad faith claim also failed to recognize that severing and staying the IFCA claim, which like common law bad faith, is contingent upon Plaintiff's successful resolution of the underlying UIM claim, promotes judicial economy and efficiency by delaying discovery on the unripe bad faith claim. This same concern is not present in punitive damage actions. As such, it was error for the

trial court to "view[] an IFCA cause of action in kind with a punitive damage cause of action as opposed to a common law bad faith claim." (Da4)

Accordingly, because an IFCA claim is actually analogous to a common law bad faith claim, and not a punitive damage claim, and further because the trial court erroneously analogized IFCA claims to punitive damages claims, the trial court's decision to permit Plaintiff to pursue bad faith discovery while simultaneously pursuing UIM discovery should be reversed.

CONCLUSION

For all of the reasons set forth herein, this Court should grant GEICO's application for interlocutory relief, reverse the trial court's denial GEICO's motion for reconsideration, and hold that Plaintiff's statutory and common law bad faith claims are severed and stayed from her underlying UIM claim.

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Attorneys for Defendant, Government Employees Insurance Company

By: */s/ Thomas M. Wester*
THOMAS M. WESTER

Dated: October 30, 2025

LINDSAY CIRELLI Plaintiff-Respondent v. GOVERNMANT EMPLOYEES INSURANCE COMPANY and/or ABC CORPORATION (1-100)(a fictitious name for a presently unknown and unidentified corporation) Individually, jointly, severally and in the alternative Defendant-Appellant.	:SUPERIOR COURT OF NEW JERSEY :APPELLATE DIVISION : : : DOCKET No.: AM-000154-25 : : CIVIL ACTION : : : : SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : MIDDLESEX COUNTY : : DOCKET NO: MID-L-2601-25 : : Sat below : :HON.PATRICK BRADSHAW, J.S.C. :

BRIEF
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PRELIMINARY STATEMENT

NJIFCA is a First Party **statutory enactment**! New Jersey Insurance Fair Conduct Act was adopted on January 18, 2022 which created a private cause of action for First Party Claimants in part for unreasonable delay and unreasonable denial of claim for benefits under an insurance policy ie the Statute was Enacted for these instances that insurance companies when they refuse to exercise and/or engage in unreasonable delay, it is applicable when a First Party Claimant whom is defined as an insured is an individual entitled by contract to uninsured and/or underinsured motorist's coverage from that of their own company experienced either unreasonable delay and/or denial of payment for benefits.

In fact, the NJIFCA was developed and enacted to afford litigants rights in matters where insurance companies wrongful deny UM or in this case, UIM benefits. To now suggest that the Plaintiff's statutory rights should be reversed predicated on the Defendant's failure to pay Plaintiff's reasonable and legitimate claims must be denied by the Court.

Therefore, to hold in accordance with the Defendant's request, would be direct opposition to the purpose in which NJIFCA was enacted. A point of law which is apparently lost on that of GEICO.

Having said same, there is nothing within New Jersey Law that remotely calls for the dismissal of a statutory right which has been invoked by the Plaintiff for the purpose of dealing with the Defendant's wrongful denial of the Plaintiff's request for UIM benefits.

In light thereof, it is respectfully requested that the Court deny the Defendant's Application in this regard as being meritless.

PROCEDURAL HISTORY

On June 21, 2023, Plaintiff, Lindsay Cirelli, was in an accident whereby she was sideswiped by an individual driving on the shoulder of the roadway upon which she was traveling, and as a result of a violent impact she incurred the aforementioned injuries.

The Plaintiff instituted suit on April 30, 2025, against the Tortfeasor. The Tortfeasor tendered their policy insurance on September 13, 2024. The Plaintiff filed a comprehensive demand for UM Compensation on July 30, 2024.

To date, GEICO has refused, without any explanation, to provide any reasonable offer of settlement. At the time of the accident, Plaintiff held a UIM Proviso with GEICO in the amount of $100,000.00. The Tortfeasor tendered $25,000.00, thereby placing into play a possibility of recovery of $75,000.00.

RESPONSIVE STATEMENT OF FACTS

The plaintiff agrees she was in an accident on June 21, 2023 wherein she was an owner of a motor vehicle traveling north on Route 18 at or near South Woodland Avenue, East Brunswick, New Jersey. At said time and place the Plaintiff's vehicle was struck (emphasis added) by another vehicle being operated by Nathan Roldao whom was traveling on the shoulder of the road, racing another vehicle when he attempted to come into the Plaintiff's lane of travel, he sideswiped the Plaintiff's vehicle. (See attached police report as Pa1-2).

At the time of the accident, the Plaintiff maintained automobile insurance with that of Geico including uninsured and underinsured motorist coverage (UM/UIM) in the amount of $100,000.00. The tortfeasor readily and without argument tendered $25,000.00. As a result of the accident the Plaintiff sustained the following injures: cervical and lumbar radiculopathy, low back pain, neuralgia and neuritis, carpal tunnel syndrome, cervicalgia, sciatic and myalgia, along with: MRI Cervical Spine: Disc herniation @C3-C4 and bulging discs @C4-C5, @C5-C6 and @ C6-C7; MRI Lumbar Spine: Bulging discs @L1-L2, @L2-L3 and disc herniation @L3-L4 and L4-L5.

At no point and time and/or juncture, during the last 2 ½ years has GEICO, Plaintiff's UIM insurer sought to challenge the happening of the accident and/or Plaintiff's injuries derived and/or arising from the accident in question. The Plaintiff instituted suit (see attached Pa3-14) Plaintiff's Complaint, includes a count for damages pursuant to Count Three, includes a count for damages pursuant to New Jersey's Insurance Fair Conduct Act (IFCA) N.J.S.A. 17:29BB. (See attached Pa15-26).

The Trial Court first heard argument on the Defendant's application to sever Plaintiff's First-Party Claims and benefits pursuant to the aforementioned act on September 17, 2025 at which time Judge Patrick Bradshaw granted said application. Upon reconsideration (see attached Pa27-29) the court reversed finding in Paraphrase: Page 33, lines 16 thru 25. In Paraphrase the court found that the act in question does "one heck of a lot to protect the interest that you're looking to protect, and insomuch I think I said it, that I think, based upon what I just read, someone can go back after a verdict. There's no limitation on it. I guess it would still be based on – on whatever the statute of limitations is on this . I don't even—I don't even think there is one in it. So may it goes—". Page 48, Judge Bradshaw averred starting at line 7, The IFCA, you – you put that claim together with the underlying claim. It's a belief that – that some outcome, whether it be a settlement or a jury trial, some determination, I think, has to be concluded before --before the IFCA claims becomes ripe, I would think, because that's really the threshold determination, did they act reasonably and then so – but I guess that issue is not actually before me. That could be motion practice later down the line, I suppose. But that wasn't what I was originally asked so may I don't even put that in the order. The court went on at Page 54, line 4 And also, I mean, you've got to admit, putting this particular litigation aside, it is a – it is a law that speaks to unreasonable delay or unreasonable denial. And how does a cause of action not allow for discovery to get information to prove those elements? Whereby the court reversed itself and indicated that the Plaintiff had the right to explore that which facilitated unreasonable delay and denial in a First-party claim which did not note and/or require any element of Bad Faith and/or a finding of same and/or awaiting a jury verdict on the issue of damages before one's argument of Bad Faith ripened into a particular cause of action.

With this as a backdrop the Plaintiff sought to take the deposition of the underlying claims adjuster to which all attempts have been thwarted to date. (See attached Pa30-41).

The Plaintiff sought next to go to the Head of GEICO to take said deposition of the CEO in order to avoid the ranker of delay and interference which had began to form, defense counsel's refusal to confer and/or allow GEICO's adjuster to be deposed. Judge Bucca heard an application for a Protective Order on October 30, 2025 at which time Judge Bucca granted Defendant's application for Protective Order but indicated the parties were to engage in discovery commensurate with Judge Bradshaw's ruling, any delay associated therewith could be the product of a future for New Jersey Rule of Court 4:23-2 application.

In response thereto the Plaintiff noticed the deposition again for the adjuster(s) in question (see attached correspondence from that of counsel as Pa42-43) whereby counsel has once again refused to produce said adjusters under the auspices that he wished to limit the scope of their depositions. For the record there has never been said suggestion and there is no agreement in association therewith and/or more importantly order limiting same. Having said same, defense counsel has forwarded two (2) Subpoena's seeking discovery to which he has denied and refused to engage on behalf of his client. The incongruity of same is appalling but telling(an issue more fully addressed herein in the argument for irreparable harm).

As a result of the aforesaid, Plaintiff moved to Quash the Defendant's Subpoenas predicated on the face that the Defendant wished to engage in discovery but refused to present its adjuster for the very same discovery in which it sought to avail.

LEGAL ARGUMENT

I. LEAVE TO APPEAL AN INTERLOCUTORY ORDER

Leave to Appeal is not as a matter of right, in fact there exists a significant threshold which must provide grave damage or injustice. See Brundage vs. Estate of Carambio 195 N.J. 575, 599 (2008). Alternatively, leave may be granted where the appear, if sustained, will terminate the litigation and thus very substantially conserve the time and expense of the litigants and courts.... Romano v. Maglio , 41 N.J. Super. 561, 567(App. Div.) certif.den. 22 N.J. 574 (1956). Here there is no legitimacy to that of the Defendant's appeal. Defendant's request for Appeal is predicated on GEICO doesn't appreciate and/or agree with Senator Scatturo's Statutory Enactment codified in N.J.S.A. 17:29BB-3 commonly known as the IFCA. In applying the aforementioned mandate to the herein matter there is no grave danger and/or injustice that will result if the Appellate Court refuses to grant Interlocutory relief. Query what's the protective secret does GEIGO maintain predicated on its refusal to reasonably and timely adjust Plaintiff's contractual request for UIM benefits exist? The answer is simply none.

Moreover there is no grave damage or injustice in the Trial Court's determination. In fact the Trial Court found that the plain language of the act allowed for the pursuit of 1st party claims against an insurer whom has refused without argument to pay first party claims. Therefore the only fundamental right at issue is GEICO's denial, not there confidential of a claim that the underlying matter is a cause of and for Bad Faith.

Counsel further argues that the Trial court erroneously permitted Plaintiff to pursue Bad Faith Discovery. Yet that which the Trial court mandates was that the IFCA which states" granted first party claimants the right in discovery to determine why their claims haven't been paid, why they have been unreasonably denied as the statute mandates in the event that the Plaintiff can show that the Defendant's actions in this regard were in fact of unreasonable denial and/or delay that the Plaintiff is entitled to damages pursuant to the act by way of trebling of the UIM benefits maintained by an individual in this particular case the Plaintiff in the imposition of reasonable attorney's fees. In fact as indicated above Judge Bradshaw indicated he could not reconcile how the act called for said investigation, required said investigation, required proof of said determination and that same should be stayed pending the outcome of Plaintiff's compensatory damages.

As repeatedly argued the Defendant has fallen back on improper argument that New Jersey has repeatedly held that Bad Faith is derived from a award of compensatory damages. Herein Senator Scatturo and the Enactment of the IFCA provided first party right and claim unlike that of argument in Procopio and Taddei to individuals whom have wrongly been denied resolve of their claims on a fair and reasonable time frame as is the case at bar. More particularly the Plaintiff made demand for UIM payment (see attached Pa44-45 (upon the tortfeasors tender) and to date GEICO has failed to tender any offer of settlement without right and/or justification. In fact the underlying issue of liability is without contestation and to date only doctors that have opined that the Plaintiff's injuries are causally related to that of the underlying injury, accident and/or are permanent in nature have gone unchallenged by that of GEICO, therefore there is no reasonable argument which has been advanced by GEICO that there refusal to pay said claim is "fairly debatable" as mandated by the act and/or warrants

reasonable delay pending the outcome of Plaintiff's compensation trial. In fact the legislature in question is devoid of bifurcation the reasonable reading thereof suggests that GEICO's current actions of delay as set forth above in and of itself give rise to Plaintiff's ongoing damages to wit delay is unwarranted by the plain language of the act contrary to that of the Defendant's arguments.

Counsel further suggests that the Trial court erroneously allowed Plaintiff to pursue Bad Faith by simultaneously pursuing her UIM action, as there is nothing in the Statute in question that precludes presentment of both simultaneously the Defendant's argument for irreparable harm are without basis.

Counsel without support in the record further suggests that GEICO's investigation file is privileged. For the record there has been no finding of same to date. There has been no finding that it is analogous to some trade secret. Further it is abundantly clear that GEICO does not wish to comply with the mandates of the IFCA despite determination, as its failure to pay Plaintiff's claim "is without justification" and a by product of placing millions of dollars of GEICO premiums into the stock market while delaying the payment of legitimate claims under the guise that Bad Faith is the by product of a juries determination only after there has been an award of compensable damages. Insomuch that the Enactment in question has no such language, requires no such findings, there is nothing proprietary concerning the Defendant's refusal to pay a claim in good faith but for its desire to without hold premiums as long as it can especially in light of making millions of dollars in the stock market. In fact in Pickett v. Lloyd's 131 N.J. 457, 473 (1993) our courts indicated fairly debatable is a test of bad faith

whereby the policyholder must prove that : (1) no debatable reason existed for denial of the benefits. Query how can one make said determination when GEICO refusing to engage in discovery. Pickett also requires (2) the insurer knew or recklessly disregarded the lack of a debatable basis for delaying payment. Again how can one make said inquiry when GEICO has refused and railed against engagement of discovery, therefore GEICO is suggesting that the elements necessary for the purpose of providing factual argument in support of the statute that apparently be thwarted as it is damning in nature. If the Court will recall in Pickett the court found that there was no debatable argument to the Defendant's delay and as a result of which posed damages along with attorney's fees.

Herein Defendant continues to argue that the Plaintiff's claims are entirely contingent on establishing a right to UIM benefits. For the record the Plaintiff has already done so, the Plaintiff has the contractual right to UIM benefits. Having said same Plaintiff's rights to contractual benefits are not a requirement of proceeding with the IFCA. The IFCA was enacted looking at the Legislative history to prevent a systemic reasonable and unwarranted delay of resolving viable claims.

Therefore the interest of justice warrants the denial of the Defendant's request for Interlocutory review, as Defendant has failed to evidence any harm that would befall GEICO as a result of an inquiry as to the Statutory elements and requirements associated with unreasonable and unwarranted delay.

II. THE TRIAL COURT DID NOT ERROR REFUSING TO COMPLATE WITHHOLDING OF BAD FAITH CLAIMS PENDING THE UNDERLYING CLAIM OF COMPENSATION

Defendant repeatedly relying on the holding of Taddei v. State Farm Indemnity Co. 401 N.J. Super.449 (App. Div. 2008) whereby wrongly suggesting a third-party claim of Bad Faith was entirely contingent on first establishing a right to UIM benefits. Said argument is ill-constructed and continues to be such as the two (2) are distinctly different. Having said same there is nothing in the IFCA which indicates one is dependent on the other as noted by Judge Bradshaw. Counsel for that of the Defendant seeks to proverbial pound the drum and beat the issue into submission ie Bad Faith requires bifurcation to avoid judicial economic and efficiency by holding in abeyance said faith pending the outcome of one's compensable claims in front of a jury. The Enactment in question has no such requirement, in fact the Enactment in question indicates and mandates the contrary. Set forth repeatedly the Enactment requires the establishment of the facts in support of Cure's refusal to pay legitimate claims which is an of itself a jury question which must be determined through discovery and adjudicated in conjunction with one's compensable claims. See the plain language of the IFCA.

In fact to hold otherwise would be to thwart the economics the engagement of determination in discovery to adopt the suggestion of a Defendant would require duplicative questioning on each and every IFCA case regardless of the outcome of the underlying claim for compensatory damages as Judge Bradshaw opined and one can concede a jury could even absent the finding of compensable damages award attorney's fees through fee shifting and additional monetary damages as a result of an unreasonable delay and denial. For the record

there is no correspondence from GEICO denying Plaintiff's claim, providing rationale for their failure to adjust Plaintiff's claims and/or challenging the issue of liability at this juncture. Therefore to accept the Defendant's position would actually be counter intuitive and require redundancy of inquiry regardless of the jury determination of compensability as it relates to one's injuries.

III. N.J.S.A. 17:29BB-3 MANDATES AND WARRANTS SIMULTANEOUS INQUIRY INTO THE INSURER'S REFUSAL TO PROPERLY PAY IN A TIMELY AND REASONABLE AND FAIR MANNER.

Unlike Procopio whereby the imposition of compensable damages invoked notice of Bad Faith. Here and as wrongly argued by that of the Defendant the issue is of timing, timely which must give way to plain language of the Act being engaged in simultaneously as to avoid delay and further injustice as a result of New Jersey's Insurance Companies long standing refusal to resolve first party claims under the cloak of privilege fueled by insurance companies economic desire to wrongly withhold the payment of claims making millions of dollars in the stock market through the investment of their insured's premiums.

Here Defendant continuously argues that the plain language of N.J.S.A. 17:29BB-3 suggests a threshold ie the same tired argument that compensability and the receipt thereof only therefore invokes the establishment of Bad Faith. Insomuch as the Statutory Enactment in question has no such language and sets for the Plaintiff's obligation to establish the factual predicate associated with denial, the Defendant's argument is unfounded and unsubstantiated. It certainly doesn't invoke grave danger and/or injustice. In fact the injustice which has been perpetuated on New Jersey's insured by refusing to pay legitimate claims over the last fifty (50) years cries out for the pulling back of the New Jersey's insurer's refusal to pay legitimate claims. Clearly the rationale associated therewith is that the longer they can continue to allow the delay of legitimate claims and the making of millions of dollars in our stock market to the detriment of our (insureds).

IV. THE TRIAL COURT DID NOT ANALOGIZE N.J.S.A. 17:29BB-3 to N.J.S.A. 2A:15-5.13

The court simply advised that the Enactment of N.J.S.A. 2A:15-5.13 clearly invoked a measure of inquiry by way of discovery, gave guidance to the court to allow the Plaintiff, Cirelli to proceed in a fashion in which could make by and through that of counsel inquiry in support of her arguments concerning reasonable delay and denial of her claim.

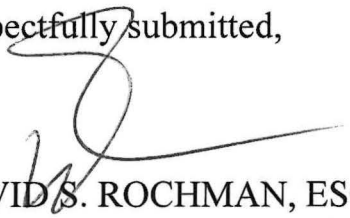
Herein counsel continues to suggest the court's interpretation of the IFCA created a punitive inquiry which would prejudice GEICO that the premature disclosure "of its investigative files and claim evaluation information" . To the contrary the Statute requires proof of same in order to be successful in one's first party cause of action.

Finally the consternation and ranker concerning the Plaintiff's right to pull back the iron curtain which has protected insurance companies over the refusal for years denying and refusing to pay legitimate claims has finally been unmasked by Senator Scatturo's Enactment. As a result of which the only harm that has been established by the Defendant concerning its request for Interlocutory Appeal is its blatant continued interference of Plaintiff's right to compensation along with millions of other New Jerseyans that have wrongly been denied same ostensively as a result of the New Jersey's auto carriers pursuit of millions of dollars in profit in the stock market.

V. CONCLUSION

For the reasons set forth above Defendant's request for relief by way of Interlocutory Appeal is unwarranted and must be denied for the reasons set forth above.

Respectfully submitted,



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