MAHIMA JOISHY, Appellant/Plaintiff, v. CHUBB INSURANCE COMPANY OF NEW JERSEY; FEDERAL INSURANCE COMPANY, INC.; CHUBB GROUP HOLDINGS, INC.; CHUBB LIMITED; PETRA CONSTRUCTION & MANAGEMENT LLC; ALEXANDER DUQUE-SALAZAR; JANE DOE, #1-50; AND JOHN DOE, #1-50, Respondents/Defendants.	:	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **Docket No.: A-001843-24** **CIVIL ACTION** ON APPEAL FROM: Superior Court of New Court of New Jersey, Law Division, Hudson County DOCKET NO. BELOW: HUD-L-597-20 SAT BELOW: Hon. Veronica Allende, J.S.C. **Date Submitted**: July 1, 2025

AMENDED BRIEF ON BEHALF OF APPELLANT/ PLAINTIFF MAHIMA JOISHY

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PRELIMINARY STATEMENT

Despite finding language in Chubb's policy to be ambiguous, the trial court did not construe the ambiguity in favor of the insured as required by well-settled case law and precedent but instead turned the question of whether coverage was provided under the policy to a jury. Having determined the existence of ambiguities in the policy language, the trial court should have found coverage applied and had a jury decide the question of *how much* – and not *whether* – coverage applied.

This bitter coverage dispute stems from the destruction of Plaintiff Mahima Joishy's condominium unit due to water damage resulting from a pipe burst. Following the submission of the claim to her homeowners' insurance carrier, Defendant Chubb Insurance Company of New Jersey accepted the claim and paid benefits under various coverages, including cleanup, repair and restoration, mold remediation, debris removal, and additional living expenses. Ultimately, a repair that should have taken several months was still not completed more than three years later when Chubb cut-off all benefits after paying the policy limit under a certain Additions and Alterations policy coverage form.

Central to this appeal is the undisputed fact that Chubb refused to pay any additional monies to get the unit fixed and repaired pursuant to an untouched, untapped Rebuilding to Code additional coverage provision with no monetary limits. The reason for the repairs not being completed by the Chubb-approved contractor,

the existence and cause of arduous delays and internal mishandling of the claim, and the amount of money paid by Chubb are of no importance or bearing on the ultimate issue to be decided on appeal, *i.e*. whether the trial court erred in not granting summary judgment in favor of the insured after finding the Rebuilding to Code provision to be ambiguous.

The matter on appeal concerns two additional coverage policy provisions: (1) Rebuilding to Code and (2) Additional Living Expenses. The trial court found the Rebuilding to Code provision to be ambiguous and susceptible to two reasonable interpretations – one favoring coverage and the other one not – yet deferred the question of whether and how this provision applies to the jury. Similarly, the court found fact questions as to what constituted a "reasonable amount of time" for determining the coverage limits of the benefits to be paid for Additional Living Expenses.

Thus, the parties went to trial with a jury tasked with determining whether the Rebuilding to Code coverage applies, and if so, the amount of coverage provided. The jury returned a verdict finding no coverage under Rebuilding to Code and did not reach any of the other questions.

Unlike negotiated commercial and private contracts, an insurance policy is a contract of adhesion subject to special rules of interpretation, namely that if an ambiguity exists it *must* be construed in favor of coverage. Yet, on March 17, 2022,

having found an ambiguity in the Rebuilding to Code provision, the trial court did not find coverage and instead kicked the interpretation can to the jury to determine the meaning of the ambiguous language. This error deprived Plaintiff of the benefit of decades of jurisprudence mandating summary judgment in her favor on the issue of coverage.

The only issues that should have gone to the jury were how much coverage is owed under Rebuild to Code and, in light of that determination, what additional benefits, if any, are owed under Additional Living Expenses. Therefore, Plaintiff respectfully requests this Court overturn the trial court's denial of summary judgment and order a new trial to settle the issue of how much is owed under the Rebuild to Code and Additional Living Expenses coverage provision.

PROCEDURAL HISTORY

1. On February 11, 2020, Plaintiff Mahima Joishy ("Joishy") filed a complaint against Defendant Chubb Insurance Company of New Jersey ("Chubb") for breach of an insurance contract, breach of the implied covenant of good faith and fair dealing, bad faith, and breach of fiduciary duty. (Pa1-23).

2. Following discovery, on December 10, 2021, Chubb moved for summary judgment and asked the trial court to dismiss Joishy's claims based on its suggested interpretation of the relevant policy language and assertion that Joishy was not entitled to any additional coverage as a matter of law. (Pa110-112).

3. On December 28, 2021, Joishy filed an opposition to Chubb's motion as well as a cross-motion for summary judgment arguing that ambiguities in the policy language entitled her to summary judgment on the issue of coverage. (Pa404-405).

4. On January 3, 2022, Chubb filed its reply and opposition to Joishy's cross-motion for summary judgment. (Pa1577-1626).

5. On January 7, 2022, the trial court heard oral arguments on the motions. (1T)[1].

6. On March 17, 2022, the court issued its written findings of fact and conclusions of law as well as entered orders denying both summary judgment motions. (Pa51-52; Pa55-83; Pa99-100).

7. Thereafter, Joishy filed a motion for reconsideration highlighting the disparity between the court's finding an ambiguity and not granting summary judgment in favor coverage; Chubb filed a cross-motion for reconsideration again seeking dismissal of Joishy's claims. (Pa1657-1698; Pa1697-1713).

8. On May 2, 2022, the trial court denied both motions for reconsideration. (2T29:15-2T38:12; Pa53-54; 102-103)[2].

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[1] The citation 1T refers to the transcript of the trial court's hearing on summary judgment, held on January 7, 2022.

[2] The citation 2T refers to the transcript of the trial court's hearing on motions for reconsideration of the summary judgment decisions, held on May 2, 2022.

9. During summary judgment and subsequent reconsideration motion practice, Chubb argued that the absence of an expert for Joishy warranted dismissal of her claim for ALE benefits. The trial court rejected those arguments and ruled that the reasonable period of restoration is at the heart of what the jury is going to have to decide because it was undisputed the unit had not been repaired and the true causes of the delays in the unit's repair were very much in dispute. The court did not find that the absence of a competing expert from Joishy precluded a jury from finding that additional ALE coverage was owed due to circumstances beyond Joishy's control, despite Chubb's expert's opinion. (Pa75-77; Pa110-403; Pa1697-1713) (2T29:15-2T38:12)

10. Chubb filed its motion *in limine* on May 10, 2023, recycling previously rejected arguments identical to those advanced in connection with the motion for summary judgment and the motion for reconsideration, and repackaging what was essentially another motion for reconsideration as a motion *in limine*. The motion *in limine* was denied on November 9, 2023. (3T)[3].

11. Ultimately, the matter proceeded to trial on January 14, 2025 and concluded with a jury verdict finding no coverage on January 22, 2025. (Pa1735-1736).

[3] The citation 3T refers to the transcript of the trial court's hearing on Defendant Chubb Insurance Company of New Jersey's motion *in limine*, held on November 9, 2023.

12. On February 26, 2025, Joishy timely filed a Notice of Appeal of the trial court's March 17, 2022 and May 2, 2022 Orders. (Pa84-109).

13. On March 13, 2025, Chubb filed a Notice of Cross-Appeal of the trial court's denial of summary judgment, the subsequent denial of their motion for reconsideration; and denial of the motion *in limine* to bar Joishy's claim for additional living expenses coverage.

CONCISE STATEMENT OF MATERIAL FACTS

In October 2005, Joishy moved into her newly purchased condominium unit at the Galaxy Towers located at 7000 Boulevard East, 10A, Guttenberg, New Jersey. Joishy had always maintained homeowners' insurance and in 2012 became a Chubb insured through the purchase of Chubb Masterpiece homeowners' insurance policy. Specifically, and as relevant to this appeal, Joishy purchased and Chubb issued a condominium homeowner insurance Policy #1398340-01 for the period October 27, 2014 to October 27, 2015 (the "Policy"). (Pa325-378). The Policy contains various relevant coverage forms and provisions, including:

Additions and alterations
This coverage is in effect only if an amount of coverage greater than zero is shown in the Coverage Summary for your Additions and alterations.

We cover your building additions, alterations, fixtures, improvements, installations or items of real property that are part of your unit as defined in the Master Deed. This includes breakage of glass or safety glazing material in the building, or a storm door or window. We also cover any other structure on the condominium property that is:
- owned by you; or
- available for your exclusive use and which you are required to insure.

For a covered loss to these items, we will pay up to the amount of coverage shown in the Coverage Summary for Additions and alterations. The same payment basis applies to Additions and alterations as to contents.

However, if you have a covered partial loss to Additions and alterations and do not begin to repair, replace or rebuild the lost or damaged property within 180 days from the date of loss, we will only pay the reconstruction cost less depreciation.

(the "A&A" or "Additions and Alterations") (Pa344).

Additional living expenses
As described below, under certain conditions when your condominium unit cannot be lived in because of a covered loss to your condominium unit or, if applicable, its contents, we provide coverage for additional living expenses which consists of extra living expenses, loss of fair rental value and forced evacuation expenses. There is no deductible for this coverage.

Extra living expenses. If a covered loss makes your condominium unit uninhabitable, we cover the reasonable increase in your normal living expenses that is necessary to maintain your household's usual standard of living, including the kenneling of domestic animals not primarily owned or kept for business use. We cover this increase for the reasonable amount of time required to restore your condominium unit to a habitable condition, or if you or members of your household permanently relocate, the shortest amount of time required to settle elsewhere. However, if you are constructing additions, alterations, or renovations to your condominium unit at the time of a covered loss, we only cover the increase in your normal living expenses incurred by you for the reasonable amount of time required to restore the condominium unit to the condition it was in prior to the covered loss. This period of time is not limited by the expiration of this policy.

(the "ALE" or "Additional Living Expenses") (Pa345).

Rebuilding to code
After a covered loss to covered property, we cover the necessary cost of conforming to any law or ordinance that requires or regulates:
- the repair, replacement, or rebuilding of the damaged portion of your additions and alterations made necessary by the covered loss;
- the demolition, replacement, or rebuilding of the undamaged portion of your additions and alterations necessary to complete the repair, replacement or rebuilding of the damaged portion of your additions and alterations; or
- the demolition of the undamaged portion of your additions and alterations when your condominium unit must be totally demolished.

(the "Rebuilding to Code") (Pa348).

The coverage limit for A&A is $229,700; there is no monetary limit on the Rebuilding to Code or ALE coverages. (Pa344; Pa345; Pa348).

In June 2015, Joishy's condominium unit sustained extensive water damage due to a burst pipe while Joishy was not home. (Pa3-4; Pa440). Joishy submitted the loss claim to Chubb and Chubb agreed to cover the damage pursuant to the Policy. (Pa4; Pa440-475). Chubb agreed to pay for repairs, including clean-up, demolition, mold remediation, and re-construction as well as for a rental unit for Joishy to live in while she was displaced from her damaged unit. (Pa56-67).

The claim process was riddled with delays, obstacles, and inefficiencies. For instance, despite having early possession of the Galaxy Towers master deed and governing documents, which required an architect to submit detailed repair plans for approval before any construction work could take place, Chubb did not realize this requirement and failed to approve the hiring of an architect and submission of the required plans until well more than a year into the claim process. Chubb paid a furniture rental company almost $135,000 (about 44% of total monies paid out by Chubb under Additional Living Expenses) for rental furniture worth about $20,000 if purchased new yet balked at an early contractor's $64,000 proposal to rebuild the unit (and then accepted a subsequent contractor's $167,000 proposal several years later). (Pa458-460; Pa462-464; Pa763-788; Pa1398-1413; Pa1842-1870).

Many times throughout the claim process Chubb threatened to cut-off Joishy's housing benefits despite her damaged unit not being rebuilt (and remaining uninhabitable) forcing her to write to Chubb's CEO and plead with Chubb to continue her benefits. (Pa727-730; Pa745-750; Pa793-795; Pa1274-1275; Pa1298-1307; Pa1309-1311; Pa1319-1320.) Every time it tried to cut her off Chubb cited the unit repairs not being completed yet totally disregarded the reasons for the delays which were outside of Joishy's control, *i.e.* the nearly 9 months it took Galaxy to approve the rebuild plans, the discovery of mold in the unit and subsequent remediation, the discovery of asbestos in the unit and subsequent remediation, damages caused by the asbestos remediation that were not part of the original rebuild scope of repair, the increased costs of material and labor, the limited use of elevators at the Galaxy, *etc*.

Over the years Chubb paid the full A&A policy limit of $229,700 as well as covered Joishy's housing expenses (rent, rental furniture, utilities, etc.) for 43 months. (Pa645-655). In January 2019, after the contractor who had been hired to rebuild the damaged unit failed to complete the work despite being paid, Chubb determined it did not owe any further coverage and terminated all Policy benefits. (Pa465-488). Notably, Chubb did not pay anything under the Rebuilding to Code additional coverage provision despite the unit not being rebuilt and failing to meet building codes.

This left Joishy scrambling given that her unit was still in shambles, did not meet applicable building codes, and was uninhabitable. As a result, Joishy filed suit against Chubb for breach of contract and sought additional and further coverage under relevant policy provisions, including the Rebuilding to Code and ALE. (Pa1-23).

Joishy has not been able to fund the rebuild of her unit, which is estimated to cost more than $268,000 in today's dollars and since January 2019 has been paying for two units – taxes and mortgage for her damaged unit as well as rent and utilities for her rental unit. (Pa1-23; Pa495-496; Pa1534-1558).

Chubb has refused to provide any additional coverage under either Rebuilding to Code or ALE and has taken the position that it has satisfied all its coverage obligations under the Policy and does not owe any further coverage. Despite all the money Chubb has paid out, Joishy's unit remains unfinished, uninhabitable, unrentable, and unsaleable while Joishy remains financially saddled with her mortgage, taxes, condo fees, rental unit lease, and ongoing legal fees.

LEGAL ARGUMENT

The trial court's determination that a policy ambiguity constituted a "genuine issue of material fact" misapprehends the legal nature of insurance policy interpretation. The construction of ambiguous policy language is a question of law, not fact, and is uniquely suited for resolution on summary judgment. The trial court erred by failing to construe the ambiguous provision in favor of coverage even after citing the law holding that if a policy provision is ambiguous it must be interpreted in favor of coverage. (Pa68-70; Pa73-75; 2T30:24-25; 2T31:1-11).

Despite recognizing the applicable law and rules of insurance policy interpretation, the trial court failed to follow that law and instead tasked a jury with interpreting whether Rebuilding to Code coverage applied. Given that the trial court's finding of an ambiguity was sound and supported by the open-ended policy language, the trial court should have entered summary judgment in the insured's favor and only submitted the question of measure of damages to the jury.

I. THE TRIAL COURT ERRED IN DENYING SUMMARY JUDGMENT TO PLAINTIFF AND NOT CONSTRUING THE AMBIGUOUS REBUILDING TO CODE PROVISION IN FAVOR OF COVERAGE (Pa68-70; Pa73-75; 2T30:24-25; 2T31:1-11)

A cornerstone of New Jersey insurance contract law is that if policy language is ambiguous and reasonably supports two interpretations – one favoring coverage and the other not – then the interpretation that provides coverage must be adopted

and applied, even if the insurer's suggested interpretation is plausible. *See Cypress Point Condominium Ass'n, Inc. v. Adria Towers, L.L.C.*, 226 N.J. 403, 415 (2016). Despite recognizing this long-standing precedent, the trial court nevertheless went against the grain and determined that a jury must decide how to interpret the Rebuilding to Code provision thereby depriving Joishy of the benefits of coverage in the face of an ambiguity. *See Doto v. Russo*, 140 N.J. 544, 556 (1995) (Our courts "have recognized the importance of construing contracts of insurance to reflect the reasonable expectations of the insured in the face of ambiguous language and phrasing, and in exceptional circumstances, when the literal meaning of the policy is plain.").

Principles of insurance contract law are well settled and established. As a threshold matter, the interpretation of an insurance contract is a question of law to be decided by the trial court. S*ee Stone v. Royal Ins. Co.*, 211 N.J. Super. 246, 248, (App. Div. 1986). On this score, when interpreting an insurance contract, the basic rule is to determine the intention of the parties from the language of the policy, giving effect to all parts so as to give a reasonable meaning to the terms. *Tooker v. Hartford Acc. & Indemn. Co.*, 128 N.J. Super. 217, 222-223 (App. Div. 1974).

When the terms of the contract are clear and unambiguous, the court must enforce the contract as it is written; the court cannot make a better contract for parties than the one that they themselves agreed to. *Stone*, 211 N.J. Super. at 248. Where

an ambiguity exists, however, it must be resolved against the insurer. *DiOrio v. New Jersey Manufacturers Ins. Company*, 79 N.J. 257, 269 (1979). If the controlling language of the policy will support two meanings, one favorable to the insurer and one favorable to the insured, the interpretation supporting coverage will be applied. *Corcoran v. Hartford Fire Ins. Co.*, 132 N.J. Super. 234, 243 (App. Div. 1975).

Even if a particular phrase or term is capable of being interpreted in the manner sought by the insurer, "where another interpretation favorable to the insured reasonably can be made that construction must be applied." *Ellmex Const. Co., Inc. v. Republic Ins. Co.*, 202 N.J. Super. 195, 204 (App. Div. 1985), *certif. denied*, 103 N.J. 453 (1986). In this regard, coverage clauses should be interpreted liberally, whereas those of exclusion should be strictly construed. *Butler v. Bonner & Barnewall, Inc.*, 56 N.J. 567, 576 (1970).

Because insurance contracts are contracts of adhesion, our courts construe insurance contract ambiguities in favor of the insured via the doctrine of *contra proferentem*. *Progressive Cas. Ins. Co. v. Hurley*, 166 N.J. 260, 273 (2001). In applying *contra proferentem*, courts "adopt the meaning that is most favorable to the non-drafting party." *Pacifico v. Pacifico*, 190 N.J. 258, 267 (2007); *see also Oxford Realty Grp. Cedar v. Travelers Excess & Surplus Lines Co.*, 229 N.J. 196, 208 (2017) (If the insurance policy's terms are ambiguous, courts will ordinarily

"construe . . . ambiguities in favor of the insured via the doctrine of contra proferentem.").

Sophisticated commercial insureds, however, do not receive the benefit of having contractual ambiguities construed against the insurer since *contra proferentem* is a consumer-protective doctrine "only available in situations where the parties have unequal bargaining power. If both parties are equally 'worldly-wise' and sophisticated, contra proferentem is inappropriate." *Pacifico*, 190 N.J. at 268.

The doctrine of reasonable expectations is a related doctrine commonly applied in cases where an ambiguity is alleged. Under that doctrine, "the insured's 'reasonable expectations' are brought to bear on misleading terms and conditions of insurance contracts and genuine ambiguities are resolved against the insurer." *DiOrio*, 79 N.J. at 269. Like the doctrine of *contra proferentem*, the doctrine of reasonable expectations is less applicable to commercial contracts. *See Nunn v. Franklin Mut. Ins. Co.*, 274 N.J. Super. 543, 549-51 (App. Div. 1994) (distinguishing commercial policy from homeowners' policy).

Here, there is no question that the subject Policy is a homeowners' policy that was issued to a non-commercial consumer, and therefore, the doctrines of *contra proferentem* and reasonable expectations apply. *See Kievit v. Loyal Protective Life Ins. Co.*, 34 N.J. 475 (1961) ("When members of the public purchase policies of insurance they are entitled to the broad measure of protection necessary to fulfill

their reasonable expectations. They should not be subject to technical encumbrances or to hidden pitfalls and their policies should be construed liberally in their favor to the end that coverage is afforded "to the full extent that any fair interpretation will allow.").

In the event of an ambiguity, the reasonable expectations doctrine will govern the interpretation, even where detailed textual analysis would undermine those expectations. *Zacarias v. Allstate Ins. Co.*, 168 N.J. 590, 595 (2001); *see also Sparks v. St. Paul Ins. Co.*, 100 N.J. 325, 338 (1985) ("The objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.") As the New Jersey Supreme Court opined:

> We conceive genuine ambiguity to arise where the phrasing of the policy is so confusing that the average policy holder cannot make out the boundaries of coverage. In that instance, application of the test of objectively reasonable expectation of the insured often will result in benefits coverage never intended from the insurer's point of view.
>
> [*Weedo v. Stone-E-Brick, Inc.*, 81 N.J. 233, 247 (1979).]

Rebuilding to Code is a coverage clause that provides additional coverage for "the necessary cost of conforming to any law or ordinance that requires or regulates … the repair, replacement, or rebuilding of the damaged portion of your additions and alterations made necessary by the covered loss [and] the demolition,

replacement, or rebuilding of the undamaged portion of your additions and alterations necessary to complete the repair, replacement or rebuilding of the damaged portion of your additions and alterations". (Pa351).

Rebuilding to Code has no monetary limit and provides coverage in addition to the coverage provided under Additions and Alterations, which has a policy limit of $229,700. (Pa340; Pa347). Per its terms, Rebuilding to Code coverage exists to cover the necessary cost of repairing damaged property such that it meets applicable building codes. Here, because Joishy's damage unit was not rebuilt despite Chubb having exhausted the Additions and Alterations coverage, Rebuilding to Code coverage is triggered and provides an additional source of funds to complete the repairs to get the unit habitable and in conformance with building codes. *See Danek v. Hommer*, 28 N.J. Super. 68, 76 (App. Div. 1953) (a policy should be "construed liberally" in the insured's favor to the end that coverage is afforded "to the full extent that any fair interpretation will allow.").

Chubb will argue Rebuilding to Code does not apply because it is meant to cover only "increased" costs above those subsumed in the Additions and Alterations coverage repairs to conform the property to a new code or standard that was not in place at the time of initial repair. But, as the trial court pointed out, the actual Policy language does not use the word "increased" and makes no distinction between initial

repairs and subsequent repairs due to a new ordinance or building code. (Pa72-Pa74).

As such, the trial court properly determined Rebuilding to Code to be ambiguous and susceptible to two differing interpretations. (Pa68-70; Pa73-75; Pa100). But then for some reason, the trial court did not construe the ambiguity against Chubb as it should have. *See Meier v. New Jersey Life Ins. Co*, 101 N.J. 597, 611 (1986) (a "basic tenet of insurance law [is] that in interpreting insurance contracts any ambiguities should be construed against the insurer and in favor of the insured.").

As such, the trial court erred in denying summary judgment in favor of coverage and such denial must be reversed and the matter reinstated for purposes of determining amount of coverage afforded under Rebuilding to Code.

II. ON REMAND, A DETERMINATION MUST BE MADE ON ADDITIONAL COVERAGE AFFORDED UNDER ADDITIONAL LIVING EXPENSES (Pa58-59; Pa75-77; 3T).

Additional Living Expenses provides coverage for extra living expenses such as secondary housing “for the reasonable amount of time required to restore your condominium unit to a habitable condition”. (Pa348). The trial court found a genuine issue of material fact exists regarding what constitutes a “reasonable amount of time” considering “the totality of the circumstances surrounding the efforts to

rebuild the Unit." (Pa58-59; Pa75-77; 3T). At trial, the jury did not reach this question having found no coverage under Rebuilding to Code. (Pa1735-1736).

Therefore, should this Court reverse the denial of summary judgment and find coverage owing under Rebuilding to Code, the issue of how much additional coverage is owed under Additional Living Expenses must also be determined considering Chubb's denial of coverage, the trial court's erroneous decision, and the unnecessary trial that ensued.

CONCLUSION

For the foregoing reasons, Joishy respectfully requests that this Court reverse the denial of summary judgment to Plaintiff, find coverage under Rebuild to Code, and remand for a determination of the amount of coverage owed under Rebuild to Code as well as how much additional coverage is owed under Additional Living Expenses considering the coverage to be provided under Rebuilding to Code.

Respectfully submitted,

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Dated: July 1, 2025

MAHIMA JOISHY, **Plaintiff/Appellant,** **vs.** **CHUBB INSURANCE COMPANY OF NEW JERSEY; FEDERAL INSURANCE COMPANY, INC.; CHUBB INA HOLDINGS INC.; CHUBB GROUP HOLDINGS INC.; CHUBB LIMITED; PETRA CONSTRUCTION & MANAGEMENT LLC; ALEXANDER DUQUE, a/k/a ALEXANDER DUQUE-SALAZAR; JANE DOE, #1-50; and JOHN DOE, #1-50,** **Defendants/Respondents.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO. A-1843-24** **Civil Action** **SUBMITTED ON: November 4, 2025** **ON APPEAL FROM:** **Superior Court of New Jersey** **Law Division: Hudson County** **Docket No. HUD-L-597-20** **SAT BELOW:** **Honorable Veronica Allende, J.S.C.**

AMENDED BRIEF ON BEHALF OF DEFENDANT/RESPONDENT/CROSS-APPELLANT, CHUBB INSURANCE COMPANY OF NEW JERSEY

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PRELIMINARY STATEMENT

This insurance coverage action arises from a claim under a condominium owner's policy (the "Policy") issued by defendant/cross-appellant Chubb Insurance Company of New Jersey ("Chubb") to plaintiff Mahima Joishy. Chubb already paid plaintiff the limits of applicable coverage under the Policy for the claim. The question to resolve in this appeal is whether the Policy has "no monetary limit" under the Rebuilding to Code coverage, entitling plaintiff to further payments to repair her condominium. The answer is clearly "no."

Following an incident wherein plaintiff's condominium unit sustained water damage, plaintiff filed a claim under the Policy. Chubb paid plaintiff the full limit of the Additions and Alterations coverage, which covers building additions, alterations, fixtures, improvements, installations, or items of real property that are part of the unit's Master Deed. Plaintiff selected two different contractors, neither of which was selected by Chubb. Neither contractor completed the repairs.

The primary issue on appeal is whether plaintiff is entitled to more payments under Additions and Alterations coverage because, as she erroneously asserts, the Rebuilding to Code provision—which provides for conformance to laws or ordinances during the repair of additions and alterations—has "no monetary limit." Specifically, plaintiff argues that the provision is ambiguous

because it gives rise to two interpretations: (1) that the provision covers compliance with current laws and ordinances in effect at the time that work is being done to additions and alterations after a loss, and (2) that the provision covers "repairs to get the unit habitable and in conformance with building codes" and is governed by "no monetary limit."

The Honorable Veronica Allende, J.S.C., found the Rebuilding to Code provision to be ambiguous and left the question of its meaning to the jury. A jury unanimously found that Chubb did not breach the Policy, thus entitling Chubb to a judgment of no cause of action. While the ultimate entry of judgment following a jury trial in favor of Chubb was proper, Judge Allende's finding of ambiguity and decision to deny Chubb's motion for summary judgment were errors as a matter of law, and as such Chubb has cross-appealed the decision. The plain language of the Policy demonstrates that the Rebuilding to Code coverage is for the "necessary cost of conforming to any law or ordinance" when repairing, replacing, or rebuilding the condominium unit's additions and alterations and is not a separate and additional limit for Additions and Alterations coverage. Accordingly, this Court should reverse the determination of Judge Allende that the Rebuilding to Code provision is ambiguous and dismiss plaintiff's appeal as moot.

Further, the relief that plaintiff seeks—a trial on the issue of damages under the Rebuilding to Code provision—has already been afforded to her. As part of the eight-day trial, plaintiff testified on her own behalf, called her own witnesses to testify, and cross-examined Chubb's witness. When asked whether Chubb breached the contract by not providing even more compensation to plaintiff under the Rebuilding to Code provision, the jury quickly and unanimously responded "no." As such, a new trial is unwarranted.

Chubb has also filed a protective cross-appeal of the Trial Court's denial of Chubb's motion in limine to bar plaintiff's claim for Additional Living Expenses above and beyond those already paid. In spite of the fact that plaintiff did not retain an expert witness to testify as to the reasonable amount of time that it would take to restore plaintiff's condominium unit to a habitable condition, the Trial Court allowed the claim to proceed to trial. That was also an error as a matter of law because the subject matter relating to that claim is beyond the knowledge and experience of the average juror. While this Court should find that the Rebuilding to Code provision is unambiguous and dismiss plaintiff's appeal as moot, in the event of a remand it should also reverse the Trial Court's denial of Chubb's motion in limine so that plaintiff's claim for Additional Living Expenses coverage is dismissed with prejudice.

PROCEDURAL HISTORY

Plaintiff, an attorney, but proceeding pro se, initiated this action by filing an eleven-count complaint on February 11, 2020, asserting causes of action against Chubb for breach of contract (Count I), breach of the implied covenant of good faith and fair dealing (Count II), bad faith (Count III), and breach of fiduciary duty (Count IV). 2T27:25-28-1; Pa1. Counts II and III were severed and stayed pending adjudication of plaintiff's breach of contract claim. The remaining counts asserted claims against a contractor.

On September 23, 2020, plaintiff filed a motion for partial summary judgment. Chubb subsequently filed a cross-motion for summary judgment. In two orders dated October 30, 2020, the Honorable Marybeth Rogers, J.S.C. denied both the motion and cross-motion. Pa293.

On December 10, 2021, Chubb filed a motion for summary judgment. Plaintiff then filed a cross-motion for summary judgment. In two orders dated March 17, 2022, Judge Allende denied both the motion and cross-motion. Pa51, 99. In an opinion filed on the same day, Judge Allende ruled, among other things, that the Rebuilding to Code provision is ambiguous and its meaning was a genuine issue of material fact.

On April 12, 2022, plaintiff filed a motion to reconsider the order denying her cross-motion for summary judgment. Chubb then filed a cross-motion to

reconsider the order denying its own motion for summary judgment. In an oral decision, Judge Allende denied both the motion and the cross-motion, reasoning in part that where there is ambiguity in a contract, the question of extrinsic evidence to determine its meaning are for the jury. 2T31-12-25.[1]

On May 10, 2023, Chubb filed a motion in limine to dismiss plaintiff's claim for Additional Living Expenses because she did not retain an expert in support of that claim. In an order dated May 26, 2023, the Honorable Susanne Lavelle, J.S.C. granted the motion effectively as unopposed because she did not consider plaintiff's opposition. After an interlocutory appeal by plaintiff was granted, Judge Lavelle visited the motion again, considering plaintiff's papers. In an oral opinion delivered on November 9, 2023, Judge Lavelle denied Chubb's motion in limine. 3T17-7-8.

This matter proceeded to trial, which began on January 14, 2025. Pa96. On January 22, 2025, the jury returned a unanimous verdict of no cause of action. Ibid. Plaintiff filed a notice of appeal on February 26, 2025, and Chubb filed a notice of cross-appeal on March 13, 2025. Pa84; Da1.

[1] Pursuant to R. 2:6-8, counsel refers to the motion transcript dated January 7, 2022 as 1T, the motion transcript dated May 2, 2022 as 2T, and the motion transcript dated November 9, 2023 as 3T.

STATEMENT OF FACTS

a. The Policy.

Plaintiff purchased a Chubb Masterpiece homeowner's insurance policy that covered her condominium and was effective for a one-year period commencing on October 27, 2014. Pa337. The Policy provides Homes and Contents coverage up to $56,000 and Additions and Alterations coverage up to $229,700. Ibid. Homes and Contents covers personal property. Pa341. Additions and Alterations covers "building additions, alterations, fixtures, improvements, installations or items of real property that are part of [plaintiff's] unit as defined in the Master Deed." Pa344. The Policy also includes other extra coverages, including but not limited to Mold Remediation expenses coverage up to $10,000, Debris Removal coverage, which covers the "reasonable expenses" of Debris Removal after a covered loss, and Additional Living Expenses coverage, which covers the "reasonable increase in [the insured's] normal living expenses that is necessary to maintain [the insured's] household's usual standard of living" if the condominium unit becomes uninhabitable. Id. at Pa345-48.

The Policy also contains a Rebuilding to Code provision which states as follows:

> **Rebuilding to Code**
> After a covered loss to covered property, we cover the necessary cost of conforming to any law or ordinance that requires or regulates:

> - the repair, replacement, or rebuilding of the damaged portion of your Additions and Alterations made necessary by the covered loss;
> - the demolition, replacement, or rebuilding of the undamaged portion of your Additions and Alterations necessary to complete the repair, replacement or rebuilding of the damaged portion of your Additions and Alterations; or
> - the demolition of the undamaged portion of your Additions and Alterations when your condominium unit must be totally demolished.
>
> [Pa348.]

b. The claim.

On June 15, 2015, plaintiff's condominium sustained water damage. See Pa586-91. She subsequently filed a claim with Chubb. See ibid. Chubb determined that plaintiff had sustained a covered loss. Air Consulting Services, LLC, American Fire Restoration, and Paul Davis Restoration of Metro N.J. ("Paul Davis Restoration") inspected the condominium unit and prepared a plan and estimates to repair the damage. Pa316. Because Chubb determined that plaintiff was unable to live in the condominium unit, it also began to immediately make payments to plaintiff under the Additional Living Expenses coverage. Ibid.

In August 2015, Chubb issued two payments to plaintiff totaling $13,035.60 based on proposals prepared by American Fire Restoration for debris removal and mitigation. Ibid. At that time, Plaintiff retained Quality Air Care

Corp. ("Quality Air Care") to perform the remediation and other related work. Ibid.

Based on an initial reconstruction estimate prepared by Paul Davis Restoration, Chubb issued payment to plaintiff on November 16, 2015, in the amount of $37,514.15 under the Additions and Alterations coverage. Ibid. It subsequently issued an additional $29,090.70 under the Additions and Alterations coverage to plaintiff on December 22, 2015, based on an agreed settlement with Quality Air Care for the work it performed. Ibid.

Plaintiff informed Chubb that she had retained A.T.Z. Home Improvement ("A.T.Z.") to perform the restoration work. She subsequently submitted a repair estimate prepared by A.T.Z. in March 2016 and sought additional Additions and Alterations coverage to cover the expanded scope of work contemplated by A.T.Z. Id. at 317. On June 17, 2016, Chubb issued an additional $10,485.85 to Plaintiff under the Additions and Alterations coverage, which was based on an agreement with A.T.Z. as to the scope and cost to restore the condominium to a habitable condition. The work was expected to take two months. Ibid. However, A.T.Z. never performed any of the agreed upon work. Ibid.

On December 22, 2016, Chubb notified plaintiff in writing that it would be extending Additional Living Expenses coverage through June 15, 2017. It also informed her, based on the then presently available information, that the

only remaining coverage available under the Policy was for mold-related expenses and that it would be paying her $5,110.05, which constituted the balance of coverage available. Ibid.

In February 2017, plaintiff retained Chris Teeter, an architect with Metamechanics, LLC, to design a repair plan. Ibid. On February 24, 2017, Chubb agreed to issue a $5,700 payment to Plaintiff under the Additions and Alterations coverage to cover the architectural services. Ibid. With the assistance of Teeter, plaintiff selected Alexander Duque and Petra Construction & Management ("Petra") as the general contractor to complete the scope of repairs outlined by Teeter. Id. at 317-18.

On or about May 8, 2017, plaintiff submitted Petra's proposal to Chubb, which indicated that restoration was to be completed within four months. Id. at 318. On July 3, 2017, Chubb issued an additional $112,213.64 to plaintiff under the Additions and Alterations coverage, based on an agreement with Petra as to the scope and cost of the work to be completed. Ibid. However, Petra did not actually commence working on the job until approximately January 10, 2018. Ibid.

On or about March 23, 2018, Chubb was advised by Petra and Teeter that the restoration work had stopped in February 2018 because the presence of asbestos in the condominium unit had been discovered. Ibid. Plaintiff retained

Quality Air Care to prepare an abatement plan and on June 6, 2018, Chubb paid Plaintiff $26,868.24 under the Additions and Alterations coverage to cover this work. Ibid.

After the asbestos abatement was completed in August 2018, Petra informed Chubb that it would restart work on the condominium on September 12, 2018. However, it did not restart the work and instead requested an additional $51,011.15 to complete the job, claiming that Quality Air Care had damaged some of the previously completed work and that its costs had increased. Ibid. In light of this demand, Chubb requested in writing an inspection of the condominium unit to determine what additional work needed to be completed to restore the condominium unit to a habitable condition. In that correspondence, Chubb also notified plaintiff that she had been paid $218,710.62 under the Additions and Alterations coverage and that only $10,989.38 was available for any additional work. Ibid.

Following its inspection with Petra, Chubb notified plaintiff in writing on October 18, 2019, that it would be issuing the remaining $10,989.38 available in Additions and Alterations coverage. Chubb also notified plaintiff that it would extend coverage under the Additional Living Expenses provision for an additional eight weeks until December 15, 2018. The extension was based on Petra's representation that it would be restarting work during the week of

October 22, 2018, and that it would need five weeks to complete the job. Id. at 318-19.

On December 10, 2018, Chubb re-inspected the condominium and discovered that there had been little, if any, change in the condition of the premises since its last inspection. Id. at 319. Chubb notified plaintiff in writing the next day that Additional Living Expenses coverage would cease on December 15, 2018. Ibid.

In response to plaintiff's request for further coverage, Chubb agreed as a courtesy to extend coverage under the Additional Living Expenses provision until January 18, 2019, in order to meet with plaintiff, Petra, and Teeter to identify the reasons for the delays in the project and to determine whether further Additional Living Expenses coverage was warranted. Ibid. As part of its investigation, Chubb also retained Don Pierro, a Senior Regional Consultant with Young & Associates ("Y&A"), to determine the reasonable amount of time that should have been required to restore Plaintiff's condominium to a habitable condition. Ibid. Based on its review of the circumstances of the loss, Y&A determined that the restoration should have been completed by March 2, 2017, which constitutes a twenty-one-month period of restoration.

On January, 24, 2019, after providing Additional Living Expenses coverage for forty-three months, Chubb notified plaintiff in writing that the

construction should have been completed in twenty-one months and provided a copy of Y&A's calculation. Chubb confirmed that it would not be further extending Additional Living Expenses coverage for the reasons previously set forth in its earlier coverage letters and also reminded plaintiff that no further Additions and Alterations coverage was available under the terms of the Policy. Id. at 320. Between February and March 2019, Chubb reiterated its position to plaintiff in writing on at least four separate occasions. Id. at 320-21.

On August 7, 2019, Chubb subsequently paid an additional $9,345.21 to plaintiff based on a contents assessment prepared by Asset IQ, which inspected and valued plaintiff's personal property located in storage. Since the contents were deemed a total loss, Chubb also paid to have the contents discarded. Id. at 321. This amount was in addition to several previous payments made to plaintiff for damage to her personal property, including $5,766.73 in December based on an invoice from Fabric Renewal to clean and restore plaintiff's clothing and $3,333.39 in September 2016 based on a separate contents assessment prepared by Asset IQ. Ibid.

Over the course of the claim, Chubb paid $306,501.21 in Additional Living Expenses coverage, $230,082.58 in Additions and Alterations coverage, $19,997.93 in contents coverage, $13,761.34 in Debris Removal coverage, and

$10,000 in Mold Remediation expenses coverage. Pa113. In total, Chubb paid plaintiff $580,343.06 in relation to this claim.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DETERMINING THAT THE REBUILDING TO CODE PROVISION OF THE POLICY IS AMBIGUOUS; THEREFORE, THE COURT SHOULD REVERSE THE TRIAL COURT'S MARCH 17, 2022, ORDER AND GRANT SUMMARY JUDGMENT IN FAVOR OF CHUBB.
(Raised below: Pa110, 1697)

a. The standard of review.

Because this appeal concerns interpretation of a contract, the standard of review is de novo. Kieffer v. Best Buy, 205 N.J. 213, 222 (2011). This Court should "pay no special deference to the trial court's interpretation and look at the contract with fresh eyes." Id. at 223 (citing Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995)). Accordingly, Judge Allende's finding of ambiguity is owed no special deference. For the reasons set forth below, this Court should rule that the Policy is unambiguous in that Chubb is not required to pay plaintiff any additional compensation for the subject claim.

b. By its plain language, the Rebuilding to Code provision of the Policy does not provide limitless coverage to plaintiff.

The Rebuilding to Code provision covers the "necessary cost of conforming to any law or ordinance that requires or regulates" repair. It does not provide limitless Additions and Alterations coverage.

As an initial matter, "courts enforce contracts based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract." Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 118 (2014) (internal citation and quotation omitted). If the plain language of a contract is "capable of legal construction," then that language determines "the agreement's force and effect." Ibid. (internal citation and quotation omitted).

"Only where there is a genuine ambiguity, that is, where the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage, should the reviewing court read the policy in favor of the insured. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 200 (2016) (emphasis added) (internal quotations and citations omitted). "Rules of construction favoring the insured cannot be employed to disregard the clear intent of the policy language." Stone v. Royal Ins. Co., 211 N.J. Super. 246, 249 (App. Div. 1986). In other words, an ambiguity is not created merely because the litigants suggest two conflicting

interpretations. Fed. Ins. Co. v. Campbell Soup Co., 381 N.J. Super. 190, 195 (App. Div. 2005). And of course, "[i]t is a cardinal principle of construction that courts shall interpret contracts . . . so as to give meaning to each provision rather than rendering some provisions, or portions thereof, superfluous." Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424, 458 (D.N.J. 1999).

The Additions and Alterations coverage states that Chubb will cover the "repair, replace[ment] or rebuild[ing]" of "[the insured's] building additions, alterations, fixtures, improvements, installations or items of real property that are part of [the insured's] unit as defined in the Master Deed" up to "the amount of coverage shown in the Coverage Summary for Additions and Alterations, [$229,700]." Pa344.

Plaintiff's position is that the Rebuilding to Code provision provides an "untouched, untapped" source of Additions and Alterations coverage with "no monetary limit." Pa1. That position grossly misconstrues the Rebuilding to Code provision and is squarely refuted by the plain language of the provision as well as other language in the Policy.

The plain language of the Rebuilding to Code provision itself does not support plaintiff's proposed interpretation. It states, in its entirety, as follows:

> **Rebuilding to Code**
> After a covered loss to covered property, we cover the necessary cost of conforming to any law or ordinance that requires or regulates:

> - the repair, replacement, or rebuilding of the damaged portion of your Additions and Alterations made necessary by the covered loss;
> - the demolition, replacement, or rebuilding of the undamaged portion of your Additions and Alterations necessary to complete the repair, replacement or rebuilding of the damaged portion of your Additions and Alterations; or
> - the demolition of the undamaged portion of your Additions and Alterations when your condominium unit must be totally demolished.
>
> [Pa348 (emphases added).]

The language above, particularly the underlined portions, shows that the Policy covers the cost of conforming certain repair, replacement, and rebuilding to current laws and ordinances. It does not cover the repair, replacement, and rebuilding itself. Those items are specifically, and unsurprisingly, addressed in the Additions and Alterations section of the Policy.

Plaintiff's proposed reading calls for the same coverage under the provisions for Additions and Alterations and Rebuilding to Code, but up to an infinite limit. Plaintiff argues as follows:

> Here, because Joishy's damage [sic] unit was not rebuilt despite Chubb having exhausted the Additions and Alterations coverage, Rebuilding to Code coverage is triggered and provides an additional source of funds to complete the repairs to get the unit habitable and in conformance with building codes.
>
> [Pb16.]

Plaintiff's desired reading of the provision runs counter to the common law because it calls for the Court to read one part of the Policy in a way that renders another superfluous. Iwanowa, 67 F.Supp.2d at 458 (declining to find that a first treaty subsumed the claims of nationals of certain countries because it would render language in a subsequent treaty, which provided for deferment of such claims, superfluous); see, e.g., Dobco, Inc. v. Bergen Cnty. Improvement Auth., 468 N.J. Super. 519, 538 (App. Div. 2021), aff'd, 250 N.J. 396 (2022) (stating that a court must avoid rendering any part of a statute "inoperative, superfluous or meaningless"). In particular, accepting plaintiff's reading would render the Additions and Alterations coverage superfluous as it would overlap with Rebuilding to Code provision providing coverage the repair, replacement, or rebuilding the condominium after a covered loss. Pa344, 348. If plaintiff is correct, and the Rebuilding to Code provision calls for this coverage but with "no monetary limit," then why would the Policy also include the Additions and Alterations coverage which provides for the same coverage but up to the specified limit of $229,700? There is no reasonable answer. Rather, the clear interplay of these two sections of the Policy is that the Additions and Alterations coverage provides for repair, replacement, or rebuilding of Additions and Alterations up to $229,700, and the Rebuilding to Code provision provides that

coverage when such repair, replacement, or rebuilding must conform to the laws and ordinances in effect at the time of repair.

Significantly, the Policy's non-duplication provision makes clear that no payments will be made for the same loss under different parts of the Policy. That section provides as follows: "If a loss is covered under more than one part of this policy, we will pay you under the part giving you the most coverage, but not under more than one part . . . In no event will we make duplicate payments." Pa370. It follows that no reasonable person could read the Rebuilding to Code provision to provide the same coverage as the Additions and Alterations coverage because doing so would render the Additions and Alterations coverage entirely meaningless. Indeed, even plaintiff never suggested that the Rebuilding to Code provision provides limitless coverage until after she commenced this action. At no point during Chubb's handling of the claim did plaintiff assert that she is entitled to limitless coverage for the repair, replacement, and rebuilding of her Additions and Alterations.

c. Plaintiff's proposed reading of the Rebuilding to Code provision would lead to an absurd result.

The rule that the plain language of a contract will be enforced as written is conditioned on such enforcement not producing an absurd result. Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 616 (2020); see also H.K. v. Div. of Med. Assistance & Health Servs., 379 N.J. Super. 321, 328 (App. Div. 2005)

(affirming State's decision to refuse to deduct alimony from Medicaid patient's income where patient and his wife divorced only for tax benefit because patient's position would allow a Medicaid beneficiary to obtain an "unlimited" increase in spousal allowance and such increase, nullifying statute and regulation, would produce "an absurd result"); see also R.S. v. Div. of Med. Assistance & Health Servs., 434 N.J. Super. 250, 262 (App. Div. 2014) (case similar to H.K. finding that Medicaid patient's position would "ignore the context of the Medicaid Program" and "would lead to an absurd result"); see also Trump Plaza Assocs. v. Dir., Div. of Tax'n, 25 N.J. Tax 56, 69 (Tax 2009) (declining to find that there is no statute of limitations for actions for electricity sales tax refunds even though such sales tax for electricity, unlike for all other instances, is included in the sale price, because "unlimited time to seek a refund is absurd").

It follows that a contract provision cannot be deemed ambiguous merely because the proponent of the ambiguity asserts that it can be interpreted in a second way, which would produce an absurd result. Here, plaintiff calls for the Court to endorse her position that the Rebuilding to Code provision has "no monetary limit." Pa1, 8, 16. Of course, as stated above, that would run counter to the specific limits of coverage set forth in the Policy. But even if the Policy language supported plaintiff's position, it is undeniable that the result would be

absurd. In effect, plaintiff's desired interpretation would call for court-ordered payment to plaintiff for as long as (1) her unit remains uninhabitable, and (2) she has exhausted the most recent round of funding from Chubb. In theory, if plaintiff prevails, she can continue to throw money, provided by Chubb, at contractors, professionals, and supplies until she runs out, only to return to Chubb and demand more, for eternity.

As absurd as this sounds, this scenario is already happening. After plaintiff filed her claim, she retained A.T.Z. to restore the unit. Under the Additions and Alterations coverage, Chubb paid plaintiff, who then paid A.T.Z., which never completed the work. Plaintiff then retained Petra to restore the unit. Again, Chubb paid plaintiff, who then paid Petra, which never completed the work. Without even explaining what became of those payments, plaintiff now comes back again—this time to the Court—to ask for more from Chubb. Further, plaintiff has placed no limit on her relief sought. She has made explicitly clear that what she seeks is for this Court to find that the insurance policy at issue is limitless. Pb1, 8, 16. It is undisputable—indeed, it is the entire legal theory of her appeal—that Chubb's exposure is infinite. That position is patently absurd.

POINT II

THE SECOND TRIAL THAT PLAINTIFF SEEKS IN THIS APPEAL—A TRIAL ON THE ISSUE OF DAMAGES UNDER THE REBUILDING TO CODE PROVISION—IS UNNECESSARY BECAUSE THAT VERY ISSUE WAS ALREADY PRESENTED TO THE FIRST JURY. (Not raised below).

After an unfavorable jury verdict, plaintiff identified Judge Allende's decision to deny summary judgment as an appealable issue. Plaintiff now asks this Court to "remand for a determination of the amount of coverage owed under Rebuild[ing] to Code." Pb18. Specifically, she asks that she be allowed to submit the question of damages under the Rebuilding to Code provision "to the jury." Pb11. Fatal to plaintiff's position is that, in effect, she has already presented that very question to the jury in January 2025.

The question put to the jury after the eight-day trial in this matter was whether Chubb breached its contract with plaintiff under the Rebuilding to Code provision of the Policy, and if so, what damages were owed to plaintiff. Pa1735. The jury was not asked whether the Policy language was ambiguous.

During the trial, the jury heard testimony about the nature of the claim, Chubb's handling of the claim, and Chubb's payments to plaintiff. Plaintiff testified on her own behalf and had the opportunity to present her case. Plaintiff also called two Chubb employees to testify: Gerard Rudoshko, Senior General

Adjuster, and Larry D'Avenia, Vice President. See Pa314, 982. Finally, plaintiff called her own expert witness to testify, architect Christopher Teeter. See Pa1534. Additionally, Chubb called its own expert witness, Don Pierro, who, of course, plaintiff cross-examined. See Pa193.

The jury found that there was no breach. Implicit in that verdict is that Chubb was simply not obligated to pay anything more to plaintiff under the Policy. See Totaro, Duffy, Cannova & Co., L.L.C. v. Lane, Middleton & Co., L.L.C., 191 N.J. 1, 13 (2007) ("Under contract law, a party who breaches a contract is liable for all of the natural and probable consequences of the breach of that contract" (quoting Pickett v. Lloyd's, 131 N.J. 457, 474 (1993)).

The jury was informed of the damages alleged by plaintiff, the alleged losses that she contends that Chubb still owed, as well as Chubb's contentions as to the amounts that it had already paid and their position on the payment of further benefits. In essence, these are the same proofs and arguments that would be submitted in the proposed new trial. The second jury would be asked to decide what the first jury already did, namely whether Chubb owed any additional compensation under the Rebuilding to Code provision. Since the first jury

already answered that question with a resounding "no,"[2] a trial on this issue is unwarranted.

POINT III

THE TRIAL COURT ERRED IN DETERMINING THAT PLAINTIFF DID NOT NEED AN EXPERT WITNESS TO PROVE HER CLAIM FOR ADDITIONAL LIVING EXPENSES COVERAGE IN EXCESS OF THE FORTY-THREE MONTHS OF SUCH COVERAGE THAT CHUBB ALREADY PROVIDED.
(Raised below: Da7).

As a preliminary matter, the standard of review for this issue is also de novo because the trial court's error is one of law. See R.L.U. v. J.P., 457 N.J. Super. 129, 134 (App. Div. 2018). In particular, Judge Lavelle held that plaintiff did not need to retain an expert to testify as to the reasonable amount of time to restore the condominium to a habitable condition. 3T13-17-23. That holding is an error as a matter of law, and as such this Court owes it no deference. See Kieffer, 205 N.J. at 223.

N.J.R.E. 702 permits expert witnesses to testify "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the

[2] The jury's answer to question 1—"Did Plaintiff prove that Defendant breached the contract by not providing additional coverage under the rebuilding to code provision of the policy?"—was "NO." Pa1735. Implicit in this decision was the jury's conclusion that Chubb did not owe any payment under the Rebuilding to Code provision.

evidence or to determine a fact in issue." Expert testimony is required when the subject matter to be dealt with "is so esoteric that jurors of common judgment and experience cannot form a valid judgment as to whether the conduct of the party was reasonable." Rocco v. New Jersey Transit Rail Operations, Inc., 330 N.J. Super. 320, 341 (App. Div. 2000) (internal quotation and citation omitted). In other words, an expert witness is required where "the average person could not be expected to have sufficient knowledge or experience." State v. Doriguzzi, 334 N.J. Super. 530, 538 (App. Div. 2000).

Here, plaintiff claims that she is entitled to Additional Living Expenses coverage above the forty-three months that Chubb already provided. The governing language for this coverage in the Policy is that Chubb "cover[s] this increase for the reasonable amount of time required to restore your condominium unit to a habitable condition." Pa345. Accordingly, in support of her claim for Additional Living Expenses coverage, plaintiff must prove that the reasonable amount of time required to restore her condominium exceeded forty-three months. She cannot do so without the aid of an expert witness because the knowledge and experience required to understand the practices, regulations, and standards is simply beyond the ken of the average juror.

There are numerous types of cases that require a plaintiff to retain an expert witness. For example, in D'Alessandro v. Hartzel, 422 N.J. Super. 575,

581 (App. Div. 2011), the court held that expert testimony is required in construction defect cases. And in Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 407-08 (2014), the Court, citing Supreme Court and Appellate Division decisions, listed several such cases: "the ordinary dental or medical malpractice case," "the responsibilities and functions of real-estate brokers with respect to open-house tours," "precautions necessary to ensure the safe conduct of a funeral procession," "the appropriate conduct of those teaching karate," "the proper application of pertinent skydiving guidelines," and "the proper repair and inspection of an automobile." (internal quotations and citations omitted). Most analogous to the instant case, the Court in Davis held that expert testimony is required to aid the jury in finding the standard of care for fire sprinkler inspectors. Id. at 408-09. The Court reasoned that "New Jersey's fire codes and standards are particularly complex," and that "familiarity with that standard [inspection, testing, and maintenance of water-based fire protection systems], as well as other provisions of the fire code, is necessary to determine the appropriate standard of care by which to assess defendants' conduct, and identification of the relevant standard." Ibid.

Here too, the New Jersey construction code is complex. To determine the reasonable amount of time to rehabilitate plaintiff's condominium would require a familiarity with the code, and the average juror cannot be expected to have

that familiarity. Indeed, the construction code, N.J.S.A. 52:27D-119 et seq., is much more robust than the fire code, N.J.S.A. 52:27D-21 et seq., which the Court in Davis found to be so complex as to require expert testimony to explain. The average juror is unlikely to have significant knowledge and experience in the field of construction, especially restorative construction following water damage. And the average juror certainly does not have a close familiarity with the construction code or the practices, regulations, and standards that govern the rehabilitation of plaintiff's condominium. For that reason, plaintiff needed to retain an expert witness. She did not, and as such her claim for Additional Living Expenses coverage should be dismissed with prejudice.

CONCLUSION

Chubb met all of its obligations to plaintiff under the Policy, including the payment of the entire Additions and Alterations coverage limit, and total payments of $580,343.06. Plaintiff's tortured reading of the Rebuilding to Code provision is insufficient to create an ambiguity in the language of the Policy. Accordingly, Chubb respectfully requests that this Court reverse the finding of the Trial Court that the provision was ambiguous, and dismiss plaintiff's appeal as moot. Further, plaintiff's claim for Additional Living Expenses is simply

unsupported by an expert, and the Trial Court's ruling to allow plaintiff to pursue such a claim should also be reversed.

Respectfully submitted,

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Chubb Insurance Company of New Jersey

By: 
Thomas A. Morrone

Dated: November 4, 2025

MAHIMA JOISHY, Appellant/Plaintiff, v. CHUBB INSURANCE COMPANY OF NEW JERSEY; FEDERAL INSURANCE COMPANY, INC.; CHUBB GROUP HOLDINGS, INC.; CHUBB LIMITED; PETRA CONSTRUCTION & MANAGEMENT LLC; ALEXANDER DUQUE-SALAZAR; JANE DOE, #1-50; AND JOHN DOE, #1-50, Respondents/Defendants.	:	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **Docket No.: A-001843-24** **CIVIL ACTION** ON APPEAL FROM: Superior Court of New Court of New Jersey, Law Division, Hudson County DOCKET NO. BELOW: HUD-L-597-20 SAT BELOW: Hon. Veronica Allende, J.S.C. **Date Submitted**: Dec. 17, 2025

REPLY/OPPOSITION BRIEF ON BEHALF OF APPELLANT/ PLAINTIFF/CROSS-RESPONDENT MAHIMA JOISHY

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SUMMARY OF RESPONSE

This appeal presents a fundamental question of insurance law: when a trial court determines that policy language is ambiguous, must it construe that ambiguity in favor of coverage, or may it instead submit the question to a jury? New Jersey law is unequivocal and unmistaking — ambiguous insurance provisions must be interpreted in favor of the insured as a matter of law. The trial court erred by failing to do so. The only function that should have been assigned to the jury is a determination of the "necessary cost" to complete the condo unit such that it complies with building codes, *i.e*. is habitable and receives a Certificate of Occupancy.

Chubb's response confirms the ambiguity it seeks to deny. The drafter of the provision in question devotes substantial briefing to "explaining" what its Rebuilding to Code section purportedly means — an exercise that would be unnecessary if the language were unambiguous. Chubb drafted this language yet now argues for an interpretation at odds with the plain meaning of the words used thereby illustrating precisely why the *contra proferentem* doctrine exists.

Interestingly, Chubb argues that the "plain language" of its policy, which it drafted using the specific words contained therein, means something other than what it says. The fact that Chubb goes to lengths to "explain" what the Rebuilding to Code provision means is by its very nature an admission that the language is ambiguous.

The "necessary cost of conforming to any law or ordinance" means what it says – that Chubb will pay whatever cost necessary to make sure the rebuilding of the condominium conforms to applicable building codes and regulations. The "necessary cost" is not defined, left purposefully open-ended and suggests that there is no limit on how much can be paid under this provision because it depends on what is "necessary." Each case is different and what may be necessary in one case would be different from another. Therefore, the "necessary cost" is not tied to any payments made or exhaustion of any other coverage form, *i.e*. Additions and Alterations.

As for Chubb's cross-appeal on the ALE (Additional Living Expenses) issue, the trial court correctly determined that an expert was not required for a jury to determine "reasonableness" after being presented with all the facts of the matter. What is reasonable depends on the specific and often unique circumstances, which in this case includes efforts to rebuild Plaintiff's condominium unit, reason for delays, discovered mold and asbestos, regulatory constraints (*i.e*. approvals from Galaxy towers), and funding constraints (*i.e*. Chubb having to agree to pay for expenses or costs). Consideration of these factors to arrive at a "reasonable period of time" for completing Plaintiff's condominium unit is not beyond the knowledge and experience of the average juror. Therefore, the trial court correctly denied Chubb's summary judgment and motion *in limine* seeking to bar the ALE claims for failure to present expert testimony.

LEGAL ARGUMENT

The trial court's determination that a policy ambiguity constituted a "genuine issue of material fact" misapprehends the legal nature of insurance policy interpretation. The construction of ambiguous policy language is a question of law, not fact, and is uniquely suited for resolution on summary judgment. The trial court erred by failing to construe the ambiguous provision in favor of coverage even after citing the law holding that if a policy provision is ambiguous it must be interpreted in favor of coverage. (Pa55-74).

Despite recognizing the applicable law and rules of insurance policy interpretation, the trial court failed to follow that law and instead tasked a jury with interpreting whether Rebuilding to Code coverage applied. Given that the trial court's finding of an ambiguity was sound and supported by the open-ended policy language, the trial court should have entered summary judgment in the insured's favor and only submitted the question of measure of damages to the jury.

I. THE REBUILDING TO CODE PROVISION IS AMBIGUOUS AND SHOULD BE CONSTRUED IN FAVOR OF COVERAGE

Chubb is correct – the Rebuilding to Code provision is not "limitless;" rather, it is limited by the "necessary cost," which will be different in each case. Chubb argues the Rebuilding to Code provision is meant to cover "the cost of conforming certain repair, replacement, and rebuilding to current laws and ordinances" but it

"does not cover the repair, replacement, and rebuilding itself." Chubb Br. at p. 16. We agree.

The Additions and Alterations coverage provides the funds for the repair of property damaged by a covered loss, *i.e*. Plaintiff's water damaged condo unit. It is undisputed and uncontested that any repair or rebuilding activities must be performed by a licensed contractor and meet applicable building codes and standards. Thus, any money paid for repair and rebuilding work performed by a contractor under Additions and Alterations would necessarily cover construction work performed per building codes.

Additions and Alterations coverage, however, has a monetary limit; but what happens if that limit is reached but the repairs are incomplete, and the finished work fails to conform to building codes? That is exactly why the Policy contains the separate Rebuilding to Code coverage to provide funds for the "necessary cost" of conforming the completed repair work to current codes. It is therefore not superfluous as Chubb contends but perfectly complementary and congruous with Additions and Alterations. The provisions are not overlapping and do not provide for the "same coverage."

Rebuilding to Code is only triggered when the work paid for by Additions and Alterations does not conform to building codes. It is in essence a savings clause that ensures the repair work conforms to code – which makes sense when considering the

purpose and intent of the Policy is to make the insured whole after damage to her home renders the home uninhabitable. There is no overlap: Additions and Alterations covers repairs, and if those repairs are deficient or the coverage limit is exhausted, Rebuilding to Code kicks in to cover any "necessary costs" of conforming the repair work to building codes. That is precisely what the provision says and what it means.

Notably, Chubb does not identify how and when the Rebuilding to Code provision would be triggered under its interpretation. It merely argues that Plaintiff's interpretation is wrong. But the Rebuilding to Code language, which was chosen and drafted by Chubb, ***does not use*** any words such as "new," "additional," "current," or "changed" – rather, the provisions explicitly states that Chubb will pay the cost "necessary to complete the repair, replacement or rebuilding of the damaged portion of your Additions and Alterations" such that it conforms to building codes and ordinances that govern the repairs. The fact that the provision references "Additions and Alterations" and acknowledges there may be "necessary costs" to "complete" repairs demonstrates that Rebuilding to Code applies *in tandem* with Additions and Alterations and does not overlap or subsume.

Therefore, requiring Chubb to pay the "necessary costs" under Rebuilding to Code after the Additions and Alterations repairs were inadequate to obtain a Certificate of Occupancy does not violate the Policy's non-duplication provision. A finding of coverage under Rebuilding to Code would not result in "duplicate

payments." Money paid under Additions and Alterations was for repair work at a certain moment in time and subject to the then building codes and regulations. The work was not completed and by the time the monetary limit was exhausted, the applicable codes changed and the scope of work needed to complete the repairs (which included repairing damage caused by asbestos remediation) was markedly different than the original scope of repairs paid by Additions and Alterations. Therefore, any monies paid from Rebuilding to Code would not be duplicative of monies paid under Additions and Alterations.

As such, the only issue to be decided is the amount of "necessary costs" to be paid from Rebuilding to Code.

A. Chubb's "Absurd Result" Argument is Meritless and Is Itself Absurd

Chubb's parade of horribles about "infinite" exposure is both hyperbolic and contradicted by its own claims handling.

Coverage Is Not "Infinite"

The Rebuilding to Code provision is naturally limited by:

- *Code Requirements* - Coverage extends only to costs necessary to meet specific, identifiable building codes, which Architect Teeter, the Chubb-approved architect for the rebuild, and Plaintiff's expert, has identified at length. (Pa129-130; Pa138-140; Pa150-155; Pa1535-1558; Pa1571-1576).

- *Causation* - Costs must relate to conforming completion of the repair work to codes, which is different than the original scope of work covered by Additions and Alterations. (Pa348; Pa344).

- *Completion* - Coverage ends when the repair work conforms with applicable codes and regulations, which includes Galaxy Towers approvals, township inspections, and the issuance of a Certificate of Occupancy. (Pa1873-Pa1925).

Chubb's Own Conduct Contradicts Its Position

Remarkably, Chubb paid out $580,343.06 over 43 months – yet now claims that paying anything more would be "absurd." Upon being forced to evacuate from her condominium unit, Plaintiff requested used furniture from Chubb or a budget for discounted furniture. (Pa443-444; Pa1772-1773). Instead, Chubb opted to pay six-figures to a "preferred vendor" for "rental furniture" without blinking an eye (Pa1842-1870) but now claims any more spent on needed repairs and to bring the unit into habitable condition would be "absurd." What would be absurd is to leave Plaintiff without a home to live in despite Chubb shelling out hundreds of thousands of dollars.

Getting the unit fixed does not require "infinite coverage" – Plaintiff is simply seeking to enforce the policy she paid for, which provides coverage for any necessary expenses to complete repairs to bring the unit to code. This is not absurd but the whole purpose and point of the homeowner's insurance policy. Indeed, Chubb's corporate representative confirmed that the Rebuilding to Code coverage ***has no monetary limit and is an extra coverage***. (Pa1441).

Settled law provides that insurance policies are contracts of adhesion, and ambiguities arise when policy language is "susceptible to more than one reasonable interpretation." Here, Plaintiff's interpretation – that Rebuilding to Code affords

coverage for needed repairs to conform the unit to applicable building codes in addition to repairs performed under Additions and Alterations – is reasonable and aligns with the Policy's promise of comprehensive "deluxe" coverage for condominium repairs. (Pa327; Pa344-363). Chubb could have drafted the Rebuilding to Code provision any way it wanted and yet it chose to use the words “necessary costs” and “to complete the repair, replacement or rebuilding of the damaged portion” ***without qualification or condition.***

Chubb could have used better language to effectuate its now post-drafting, self-serving interpretation of the provision, but it did not, thus rendering the Rebuilding to Code ambiguous and requiring interpretation in favor of coverage in accordance with the doctrine of *contra proferentem*. *See Longobardi v. Chubb Ins. Co. of N.J.*, 121 N.J. 530, 537 (1990) (*Contra proferentem* is a doctrine of insurance-policy interpretation that requires courts to construe any ambiguities in an insurance contract against the insurer and in favor of the insured — because insurers draft the policy language and hold superior bargaining power).

Chubb's reliance on *Princeton Ins. Co. v. Chunmuang*, 151 N.J. 80 (1997) is misplaced because that case involved unambiguous exclusionary language (exclusions must be narrowly construed), not an affirmative grant of coverage (broadly construed) like at issue here. In consideration of the entire policy and finding the Rebuilding to Code "vague and open to interpretation," the trial court correctly

determined the provisions to be ambiguous but erred in not going one step further in finding coverage as required by our jurisprudence. (Pa55-74).

Under *contra proferentem*, ambiguities are strictly construed against the insurer, especially in coverage-granting provisions. *Progressive Cas. Ins. Co. v. Hurley*, 166 N.J. 260, 273 (2001); *see also Oxford Realty Grp. Cedar v. Travelers Excess & Surplus Lines Co.*, 229 N.J. 196, 208 (2017). Chubb and Chubb alone drafted the Policy; it cannot now complain that Plaintiff's reasonable expectation of coverage for code-related costs stemming from a covered loss is "absurd."

Chubb misapplies *Homesite Ins. Co. v. Hindman*, 413 N.J. Super. 41 (App. Div. 2010), which involved a clear exclusion, not an ambiguous coverage provision like here. As espoused in *Progressive Cas. Ins. Co. v. Hurley*, insurance policies must be read to fulfill the insured's "objectively reasonable expectations," which in this case would be the code-compliant repair of a damaged unit following a covered loss that resulted in displacement. 166 N.J. at 273.

As such, the trial court’s determination of ambiguity should be sustained and the matter remanded for determination of the amount of “necessary costs” needed to achieve the condo unit’s compliance with building codes.

II. THE ISSUE OF MEASURE OF COVERAGE OWED UNDER REBUILDING TO CODE WAS NEITHER REACHED NOR DECIDED BY THE JURY

The first question on the verdict sheet to the jury was whether Chubb owed coverage to Plaintiff under the Rebuilding to Code provision. (Pa1735-1736) Having answered that question in the negative, the jury never reached the question of the amount of coverage owed under either Rebuild to Code or ALE.

This sequence confirms the error requiring reversal. The jury should never have decided the coverage question because, upon finding the provision ambiguous, the trial court should have determined coverage as a matter of law. The jury's sole function should have been quantifying the "necessary cost" of bringing Plaintiff's unit to code compliance.

As such, if this Court were to determine as it should that the trial court erred in not interpreting the ambiguous Rebuilding to Code provision in favor of coverage then the jury’s determination of non-breach is of no consequence and does not preclude the necessary determination of how much coverage is owed.

III. THE TRIAL COURT CORRECTLY DETERMINED THAT PLAINTIFF COULD PROCEED WITH ITS ALE CLAIMS WITHOUT EXPERT TESTIMONY (Da7)

Chubb argues that Plaintiff needed an expert to prove her ALE claim for benefits beyond the 43 months Chubb provided, claiming the "reasonable amount of time" to restore habitability is "esoteric" and beyond lay jurors' knowledge. *See*

Chubb Br. at 23-27, citing N.J.R.E. 702; *Rocco v. New Jersey Transit Rail Operations, Inc*., 330 N.J. Super. 320, 341 (App. Div. 2000). As determined by the trial court, Chubb's argument misapplies the expert testimony standard and ignores a jury's ability to determine reasonableness. (3T13-17-23).

Assessing reasonableness of how long it should take to restore Plaintiff's unit to habitable status requires common knowledge and experience, and does not implicate specialized, technical knowledge of specific construction methods, materials, or defects. Chubb's cross-appeal overstates the complexity of the jury's task – to determine whether it would be reasonable for Chubb to continue paying additional living expenses until the unit gets completely fixed given all the facts and circumstances presented to it.

The question is not *how long it takes to rebuild **a** condominium unit*, but rather is it reasonable to continue subsidizing Plaintiff's additional living expenses in the event Chubb owes additional coverage under Rebuild to Code and must now pay to complete the renovation of the unit. Since "You" means the insured, as defined by the Policy, the "Your" means belonging to the insured, or to Plaintiff. If the reasonable period of time applies to "your" condominium unit, rather than "a" condominium then all the facts impacting the time to restore "your" condominium must be considered when coming up with the "reasonable" period of time, especially since 'reasonable period of time' is not defined within the Policy. (Pa345; Pa1433).

What is a 'reasonable period of time' depends on circumstances surrounding a rebuild. Reasonable does not mean the same thing in every situation. *See Gibson v. Callaghan*, 158 N.J. 662, 671-72 (1999) (noting "insurance policies must be construed to comport with the reasonable expectations of the insured" and may require a fact-sensitive analysis).

Based on the scope of work and contractor contracts that provide an estimated time length for repairs, *i.e*. 3-4 months, the various correspondence between Plaintiff and Chubb documenting delays and reasons therefor, and the undisputed fact that after 43 months the unit was not repaired and did not meet code, the jury had and would have ample facts and evidence upon which to determine "reasonableness."

Chubb's arguments to the contrary have been rejected three times: first on summary judgment, then on its motion for reconsideration, and finally in connection with its *in limine* motion. Different judges to have considered the issue found that Plaintiff did not need an expert to opine on "reasonable amount of time" needed to restore the unit because the jury could determine reasonableness based on the facts in the record even if Chubb's expert did not testify as to his estimate of period of restoration. (2T, and 3T).

What is a "reasonable period of time" depends on circumstances surrounding a rebuild. Reasonableness does not mean the same thing in every situation. *See Gibson v. Callaghan*, 158 N.J. 662, 671-72 (1999) (noting "insurance policies must be

construed to comport with the reasonable expectations of the insured" and may require a fact-sensitive analysis). Here, the jury can – without the aid of expert testimony – determine whether a "reasonable period of time" includes consideration of all the delays that occurred, the bringing of this lawsuit, Plaintiff's inability to fund the repairs herself, and the process of getting the unit completed today (*i.e.*, submission of new plans to Galaxy Towers, obtaining approvals and permits, hiring contractors, obtaining materials, scheduling access to the unit, and completing the work).

Expert testimony is only mandated when the issue is "so esoteric that jurors of common judgment and experience cannot form a valid judgment" without it. *Rocco v. New Jersey Transit Rail Operations*, 330 N.J. Super. 320 (2000); *State v. Doriguzzi*, 334 N.J. Super. 530, 538 (App. Div. 2000). Here, the ALE provision covers increased living expenses for the "reasonable amount of time required to restore your condominium unit to a habitable condition" after a covered loss. (Pa75-77; Pa345). This is not an arcane technical matter like medical malpractice or fire code compliance in specialized systems. *See Davis v. Brickman Landscaping, Ltd.*, 219 N.J. 395, 407-09 (2014) (requiring expert fire sprinkler standards due to complex codes). Rather, it involves everyday concepts that are not unfamiliar to the average juror: hiring contractors, delays outside the Plaintiff's control, needing permits and approvals for

repairs, and funding—issues jurors can evaluate based on all the factual evidence presented to them.

Chubb's analogy to construction defect cases like *D'Alessandro v. Hartzel*, 422 N.J. Super. 575, 581 (App. Div. 2011), and *Davis* misses the mark because they involved intricate causation or construction standards. Chubb Br. at 24-26. In contrast, the ALE reasonableness standard turns on factual chronology and practicality, not code minutiae and expert testimony about intricacies of construction defects, cause of water leaks, and how to fix defects.

Jurors routinely assess "reasonableness" without experts. *See Butler v. Acme Mkts., Inc*., 89 N.J. 270, 283 (1982) (lay jury evaluates reasonable care). The record here—Chubb's payments of ALE benefits for 43 months (twice its initial estimate), contractor proposals and estimates for completion of repairs, testimony concerning delays and difficulties securing contractors and getting Chubb to agree to payments, and evidence of why construction efforts started and stopped—provides ample lay-accessible evidence upon which a jury can determine evaluate and determine "reasonableness." (3T; Pa427-493). Chubb's claim that New Jersey's construction code (N.J.S.A. 52:27D-119 *et seq*.) demands expertise overstates the issue; the ALE inquiry focuses on time to restore a unit to livable condition, not esoteric code interpretation or applicability.

Accordingly, the trial court did not err in finding Plaintiff did not need an expert to maintain her ALE claim.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court reverse the denial of summary judgment to Plaintiff, interpret the Rebuilding to Code provision in favor of coverage, and remand for a determination of the amount of "necessary costs" needed to bring the unit to code as well as how much additional coverage is owed under Additional Living Expenses.

Respectfully submitted,

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GENE MARKIN, ESQ.

Dated: December 17, 2025

MAHIMA JOISHY, **Plaintiff/Appellant,** **vs.** **CHUBB INSURANCE COMPANY OF NEW JERSEY; FEDERAL INSURANCE COMPANY, INC.; CHUBB INA HOLDINGS INC.; CHUBB GROUP HOLDINGS INC.; CHUBB LIMITED; PETRA CONSTRUCTION & MANAGEMENT LLC; ALEXANDER DUQUE, a/k/a ALEXANDER DUQUE-SALAZAR; JANE DOE, #1-50; and JOHN DOE, #1-50,** **Defendants/Respondents.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO. A-1843-24** **Civil Action** **SUBMITTED ON: December 31, 2025** **ON APPEAL FROM:** **Superior Court of New Jersey** **Law Division: Hudson County** **Docket No. HUD-L-597-20** **SAT BELOW:** **Honorable Veronica Allende, J.S.C.**

REPLY BRIEF ON BEHALF OF DEFENDANT/RESPONDENT/CROSS-APPELLANT, CHUBB INSURANCE COMPANY OF NEW JERSEY

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PLAINTIFF WAS REQUIRED TO RETAIN AN EXPERT BECAUSE THE REASONABLE TIME TO RESTORE HER CONDOMINIUM TO A HABITABLE CONDITION IS BEYOND THE KEN OF THE AVERAGE JUROR. (Raised below: Da7).

The question that plaintiff seeks to ask a jury is whether defendant/cross-appellant Chubb Insurance Company of New Jersey ("Chubb") breached the subject contract by not providing more coverage under the Additional Living Expenses provision of the policy. Pa1735. It is plaintiff's burden to prove that claim. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406-407 (2014). The provision reads, in pertinent part, as follows: "[W]hen your condominium unit cannot be lived in because of a covered loss to your condominium unit or, if applicable, its contents, we provide coverage for additional living expenses." Pa345. The policy continues, "[w]e cover this increase for the reasonable amount of time required to restore your condominium unit to a habitable condition." Ibid. So, to answer the question with which it is charged, the jury must necessarily determine the reasonable amount of time to restore plaintiff's condominium unit. The jury cannot so determine without the aid of expert testimony.

Contrary to plaintiff's opposition argument, the necessary considerations are beyond the ken of the average juror. Plaintiff asserts that "[a]ssessing reasonableness of how long it should take to restore Plaintiff's unit to habitable status requires

common knowledge and experience, and does not implicate specialized, technical knowledge of specific construction methods, materials, or defects." Prb11. That is simply untrue. To determine the reasonable amount of time to restore plaintiff's condominium, the jury must consider compliance with construction codes, processes for obtaining permits, planning the restoration, procuring subcontractors, obtaining supplies, compliance with inspections, and the construction process generally. Even more to the point, the jury must consider how these different aspects affect the reasonable time to complete the entire restoration. The average juror simply does not have the requisite knowledge to make those considerations without the aid of an expert. Notably, unlike plaintiff, Chubb retained an expert on this issue. Don Pierro of Young & Associates determined that the reasonable amount of time to restore plaintiff's condominium unit to a habitable condition was twenty-one months. Pa319; Db11. His trial testimony was unrefuted by way of plaintiff's failure to retain an expert.

Plaintiff asserts that D'Alessandro v. Hartzel, 422 N.J. Super. 575 (App. Div. 2011) and Davis v. Brickman Landscaping, Ltd., 219 N.J. 395 (2014) are off the mark because "they involved intricate causation or construction standards," unlike the instant matter. Prb14. But the technical issues in those cases are pedestrian compared to the significant issues in this matter. In D'Alessandro, the court found that the issue of whether a single step in a condominium was negligently designed

or constructed was "so esoteric" as to necessitate expert testimony. 422 N.J. Super. at 577, 581. In other words, an expert witness was required to assist the jury in determining whether the property owner acted reasonably. See id. at 579-581. And in Davis, the Supreme Court found that the inspection of fire sprinklers "constitutes a complex process involving assessment of a myriad of factors that is beyond the ken of the average juror." 219 N.J. at 408 (internal quotation marks omitted). In so finding, the Court reasoned that the question of necessity of an expert witness depends on whether "jurors of common judgment" can form a valid decision as to whether the conduct of a defendant was reasonable. Id. at 407.

Like the questions of construction and design of a single step in a condominium in D'Alessandro, and the standard of care of a fire sprinkler inspector in Davis, the question of the reasonable amount of time to restore a water-damaged condominium unit is beyond the ken of the average juror. As such, plaintiff was required to retain an expert witness. She did not do so, and her claim for Additional Living Expenses coverage should be dismissed with prejudice.

CONCLUSION

The complex issues of restoring a water-damaged condominium unit are not within the common knowledge of the average juror. As such, plaintiff must have retained an expert in support of her claim for Additional Living Expenses coverage. She did not do so. Accordingly, Chubb respectfully requests that this Court reverse

the ruling of the Trial Court, and dismiss plaintiff's claim for Additional Living Expenses coverage.

Respectfully submitted,

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By: 
Thomas A. Morrone

Dated: December 31, 2025