ROBERT MAGEE, *PLAINTIFF/APPELLANT* v. BARBARA OBREZA; JOHN OBREZA; JOHN DOE #1-10 (fictitious names designating the owner and/or operator); ABC CORP. #1-10 (fictitious corporations designated as owners and/or operators) *DEFENDANTS/RESPONDENTS*	§ SUPERIOR COURT OF NEW JERSEY § APPELLATE DIVISION § § CIVIL ACTION § § APPEAL FROM FINAL JUDGMENT § OF THE SUPERIOR COURT OF § NEW JERSEY, CAMDEN COUNTY § DOCKET NO. CAM-L-0613-23 § § APPELLATE § DOCKET NO. A-002264-24 § § SAT BELOW: § THE HON. DONALD J. STEIN, J.S.C. § § SUBMITTED: JUNE 21, 2025 §

APPELLANT'S AMENDED BRIEF IN SUPPORT OF APPEAL FROM FINAL JUDGMENT, SUMMARY JUDGMENT ORDER OF FEBRUARY 28, 2025, DENIAL OF RECONSIDERATION MARCH 28, 2025, THE HON. DONALD J. STEIN, J.S.C., PRESIDING

ON THE BRIEF:
Jeremy M. Weitz, Esquire
jweitz@injuryline.com
ID# 018842009
SPEAR, GREENFIELD, RICHMAN, WEITZ & TAGGART, P.C.
10,000 Lincoln Drive East
One Greentree Centre, Suite 201
Marlton, New Jersey 08053
(856) 985-4663
Attorney for Plaintiff/Appellant, Robert Magee

TABLE OF CONTENTS

AMENDED BRIEF

[1] 1T: Transcript of Argument, Motion for Summary Judgment February 28, 2025
[2] 2T: Transcript of Argument, Motion for Reconsideration March 28, 2025

AMENDED APPENDIX

Table of Contents

[3] pursuant to R. 2:6-1(b), for the purpose of evidencing the issue raised in the Trial Court

[4] to the extent arguments are contained within the certification, it is attached pursuant to R. 2:6-1(b), for the purpose of evidencing the issue raised in the Trial Court

[5] pursuant to R. 2:6-1(b), for the purpose of evidencing the issue raised in the Trial Court

STATEMENT OF ITEMS SUBMITTED TO THE COURT ON SUMMARY JUDGMENT MOTION

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED

TABLE OF AUTHORITIES

Constitution of the United States of America

Constitution of the State of New Jersey

New Jersey Rules of Court

New Jersey Statute

New Jersey Case Law

Supreme Court

Appellate Division

Appellate Division – Unpublished

Law Division – Published

I

PRELIMINARY STATEMENT

On October 26, 2021, Plaintiff/Appellant, Robert Magee, was the owner and operator of an automobile, involved in an automobile collision with a vehicle operated by Defendant/Respondent, Barbara Obreza, in Cherry Hill, New Jersey. The instant Appeal involves the application of New Jersey's 'No-Pay, No-Play' Statute to Appellant's claims for personal injury, stemming from said incident; and the barring of Appellant's claims, accordingly, via Summary Judgment.

At all relevant times hereto, Appellant was the owner of a single-family house in Marlton, New Jersey; and Appellant maintained a New Jersey drivers' license with said Marlton address. Appellant identified himself as a New Jersey "resident" within legal pleadings filed in this litigation, as well as upon a New Jersey PLIGA application; which as an aside, has no implication on any of the claims herein, due to the existence of insurance coverage.

Appellant, who is now eighty-three (83) years old, retired in or around 2005. Thereafter, he and his wife retained a second residence in Vero Beach, Florida; which during deposition testimony, Appellant described as "seasonal". The vehicle Appellant was operating in the subject automobile collision, was registered to Appellant's address in the State of Florida and was insured

through a Florida policy of automobile insurance, underwritten by Allstate. Appellant certified that his automobile involved in the subject collision was kept more days in the State of Florida, than the State of New Jersey, within the calendar year preceding the collision.

Appellant sustained personal injuries as the result of the subject collision and sought medical treatment accordingly. Appellant's medical treatment was paid by his automobile insurer, Allstate; who provided increased first-party medical coverage in accordance with New Jersey's *Deemer* Statute.

Appellant's vehicle at issue was neither registered, nor principally garaged in the State of New Jersey, relative to the subject claim. Despite the clear and unambiguous language of N.J.S.A. 39:6B-1(a) mandating New Jersey insurance coverage for vehicles registered and/or principally garaged in New Jersey, the Court applied N.J.S.A. 39:6A-4.5(a); on the basis that the evidence was sufficient for a Court determination that Appellant was a New Jersey "resident". As such, Summary Judgment was granted pursuant to the provisions of N.J.S.A. 39:6A-4.5(a), which bars those culpably uninsured from seeking damages stemming from an automobile collision.

II

PROCEDURAL HISTORY

On February 28, 2023, Appellant Magee initiated this litigation with the filing of her Complaint, naming as Defendants, Barbara and John Obreza; and fictitious entities. Pa114.

On March 16, 2023, Respondents Barbara and John Obreza filed an Answer to the Complaint. Pa125. Thereafter, discovery ensued. The discovery period in this matter concluded on December 6, 2024; the final discovery end date.

On January 23, 2025, Respondents filed a Motion for Summary Judgment, seeking to dismiss Appellant's Complaint with prejudice, pursuant to application of N.J.S.A. 39:6A-4.5(a), the New Jersey *No-Pay, No-Play* Statute. Pa093. Respondents' Motion asserted the statutory bar should apply to Appellant's claims herein, because the allegedly undisputed facts establish Appellant to have been a New Jersey resident on the date of loss.

On January 30, 2025, Appellant both opposed Respondents' Motion for Summary Judgment and Cross-moved for costs and fees, asserting Respondents' Motion was frivolous based upon N.J.S.A. 39:6B-1(a)'s application to vehicles that are registered or principally garaged in the State of

New Jersey; and that there was no evidence in the record for the Court to make such a determination. Pa096.

On February 20, 2025 and February 21, 2025, Respondents filed and re-filed a response to Appellant's Motion and Opposition; both as sur-reply to the Motion for Summary Judgment and as opposition to Appellant's cross-motion. Pa102. On February 21, 2025, Appellant also filed sur-reply to the cross-motion. (not attached pursuant to R. 2:6-1).

Oral argument was held on February 28, 2025. Immediately thereafter, the Court granted Respondents' Motion for Summary Judgment and denied Appellant's cross-motion for costs and fees. Pa111 and Pa112.

On March 3, 2025, Appellant filed a Motion for Reconsideration (Pa103), attaching certification attesting to the location of the subject automobile during the calendar year preceding the subject collision (Pa059). On March 20, 2025, Respondents submitted opposition to Appellant's Motion. (not attached pursuant to R. 2:6-1). Appellant submitted sur-reply on March 21, 2025. Pa107.

Oral argument was held March 28, 2025. Immediately thereafter, the Court denied Appellant's Motion for Reconsideration. Pa113.

The instant appeal follows. Pa142.

III

STATEMENT OF FACTS

On October 26, 2021, Appellant Robert Magee was the owner and operator of an automobile, involved in a collision with an automobile operated by Respondent, Barbara Obreza; and owned by Respondent, John Obreza. Pa001. The collision occurred in Cherry Hill, New Jersey, within the intersection of Springdale and Greentree Roads; and involves a left-turn negotiated by Respondent Barbara Obreza, across Appellant's opposite lane of travel. Id.

On the date of the subject collision, Appellant owned a home in Marlton, New Jersey; which he owned since the early 1980s, prior to moving full-time to Vero Beach, Florida in 2023. Pa018 (11:20 – 12:08); *see also* Pa016 (07:21 – 08:06). Appellant was staying at this home, on the date of incident. Id. Appellant maintained a New Jersey drivers' license identifying the Marlton address as his own. Pa001.

Appellant retired in or around 2005. At that time, Appellant and his wife retained a residence in Vero Beach, Florida. Pa018 (12:22 – 13:11). Appellant would split-time between New Jersey and Florida, on a 'seasonal' basis, from around 2005 and through the sale of the New Jersey home in 2023. Pa016 (07:21 – 08:06).

Appellant was operating a 2000 Mercedes S500, when involved in the subject collision. Pa001. Said vehicle was registered in the State of Florida, to Appellant's Vero Beach address, at all relevant times hereto. Pa001, *see also* Pa040. Said vehicle was insured by Allstate Insurance Company, on the subject date of loss; which identified the Vero Beach, Florida address as the address of garaging location for said vehicle. Pa041. Allstate Insurance Company provided an increased amount from the purchased first-party medical benefit coverage limit, relative to Appellant's incident related medical treatment, pursuant to N.J.S.A. 17:28-1.4, New Jersey's *Deemer* Statute. Pa050. Appellant has certified that the subject vehicle was principally garaged in the State of Florida for the calendar year preceding the subject collision, based upon time spent in each location. Pa059.

Appellant, through his counsel, filed an application with New Jersey PLIGA (solely for protection/preservation from the 180-day filing requirement), in which the Marlton, New Jersey address is identified as Appellant's address. Pa053. Appellant's Complaint filed in the Superior Court of New Jersey, Camden County Law Division, identifies Appellant as a "citizen and resident of the Township of Evesham and County of Burlington, in the State of New Jersey." Pa116. Appellant's answers to interrogatories, provided July 31, 2023 identify his Marlton address as his address. Pa003.

Appellant sold his Marlton home in November of 2023, moving to Vero Beach, Florida permanently. Pa016 (07:21 – 08:06).

IV

JURISDICTIONAL AUTHORITY

Appeals may be taken to the Appellate Division as of right, from final judgments of the Superior Court trial divisions, or the judges thereof sitting as statutory agents; the Tax Court; and in summary contempt proceedings in all trial courts except municipal courts. N.J. R. 2:2-3(a)(1).

The Court Order(s) of February 28, 2025 and March 28, 2025, entered summary judgment in favor of Respondents and denied the reconsideration of same, thereby constituting final judgment in this matter.

As the February 28, 2025 and March 28, 2025, Order(s) for Summary Judgment constitutes final judgment, Appellant Magee hereby appeals the ruling(s) of February 28, 2025 and March 28, 2025, pursuant to R. 2:2-3(a)(1).

The Scope of Review in this matter is governed by N.J. R. 2:10-2, the de novo standard. In reviewing summary judgment orders, the propriety of the trial court's order is a legal, not factual, question. See Fernandez v. Nationwide Mut. Ins., 402 N.J. Super. 166, 170 (App. Div. 2008), aff'd o.b., 199 N.J. 591 (2009); Ohio Cas. v. Island Pool & Spa, 418 N.J. Super. 162, 168 (App. Div.), certif. Den. 206 N.J. 329 (2011). Thus, the appellate court applies the same standard as the trial court in respect of the same motion record. See Templo Fuente v. Nat. Union Fire, 224 N.J. 189, 199 (2016). That is, the movant is

entitled to judgment if, on the full motion record, the adverse party, who is required to have the facts and inferences viewed most favorably to it, has not demonstrated a prima facie case. See, e.g. C.W. v. Cooper Health System, 388 N.J. Super. 42, 57 (App. Div. 2006). It is, in effect, a sufficiency of evidence test. See Winstock v. Galasso, 430 N.J. Super. 391, 395-396 (App. Div.), certif. Den. 215 N.J 487 (2013) (reversing summary judgment order dismissing legal malpractice claims when the evidence presented sufficient disagreement to require submission to a jury). Consequently, an appellate court must consider the correctness of the decision below based on the case only as it has unfolded to the point of the motion, and the evidential material submitted on that motion. Lombardi v. Masso, 207 N.J. 517, 542 (2011).

V

LEGAL ARGUMENT

The Trial Court erred in Granting Summary Judgment to Defendants pursuant to application of New Jersey's 'No-Pay, No-Play' Statute, relative to automobile insurance requirements: first, as to Statutory interpretation and despite precedential case law to the contrary; second, by essentially shifting the burden-of-proof onto the non-moving party, to disprove allegations and negate affirmative defense, relative to Summary Judgment; and third, by then failing to consider supplemental certification from the non-moving party, in reconsideration of Summary Judgment.

Point 1: N.J.S.A. 39:6A-4.5(a) Applies to Only Automobiles Registered and/or Principally Garaged in the State of New, Regardless of Residency (1T: 06:12 – 07:01)

N.J.S.A. 39:6A-4.5(a), commonly referred to as New Jersey's 'No-Pay, No-Play' Statute, provides as follows:

> "Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-4), section 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of P.L.2003, c.89 (C.39:6A-3.3) shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile."

For reference, N.J.S.A. 39:6A-4 relates to *Standard* automobile insurance policies in the State of New Jersey; N.J.S.A. 39:6A-3.1 relates to

Basic automobile insurance policies in the State of New Jersey; and N.J.S.A. 39:6A-3.3 relates to *Special* automobile insurance policies in the State of New Jersey, also known as 'Dollar-a-Day' insurance policies.

The aforementioned automobile insurance policy types are offered by insurers authorized to transact automobile insurance business in the State of New Jersey; and the coverages are mandated by the State, pursuant to N.J.S.A. 39:6B-1(a), which reads as follows:

> "Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle wherein such coverage shall be at least in…{setting forth *Standard* compulsory coverage; subsections b and c dealing with *Basic* and *Special* policy coverages}."

Relative to 'out-of-state' drivers, operating automobiles within the State of New Jersey; if said vehicle is insured out-of-state by a company authorized to transact insurance business within the State of New Jersey, New Jersey's *Deemer Statute*, N.J.S.A. 17:28-1.4, applies to reform the out-of-state automobile insurance policy to provide mandatory minimum coverages, pursuant to N.J.S.A. 39:6B-1(a).

Essentially, it is clear from New Jersey Statute that vehicles registered and/or principally garaged within the State of New Jersey are required to carry

compulsory automobile insurance coverage subject to State mandated minimum(s); and that the failure to do so, while operating and/or occupying such an uninsured automobile, precludes the owner from the ability to pursue claims for damages resulting from an automobile collision involving the uninsured vehicle. It is also clear that the legislature foresaw out-of-state individuals and/or split-residents operating automobiles within the borders of the State, and accordingly, enacted the Deemer Statute; to ensure the goals of the New Jersey legislature relative to insurance coverages would be satisfied in any scenario.

In the instant matter, the Trial Court erred in determining the applicability of N.J.S.A. 39:6A-4.5 to the Appellant herein, based upon a subjective *Residency* standard; as opposed to an objective *Principally Garaged* (or even Residency) standard, which is required to be proven prior to the application of 'No-Pay, No-Play'.

A. Principally Garaged (1T: 06:12 – 07:01, Pa100)

As indicated above, N.J.S.A. 39:6B-1(a) mandates that "[e]very owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain... motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance...." (Emphasis added). Those prescribed coverages included, as of the times

relevant to this case for policies issued before January 1, 2023, a $15,000 minimum level of coverage for Personal Injury Protection ("PIP") benefits under N.J.S.A. 39:6A-3(a) and N.J.S.A. 39:6A-4.

The term Principally Garaged has been previously discussed by the Appellate Division, in the matter of Chalef v. Ryerson, 277 N.J. Super. 22 (App. Div. 1994), relative to N.J.S.A. 39:6B-1(a):

> "The statutes do not define the term "principally garaged." However, we have broadly construed the term to mean "the physical location where an automobile is primarily or chiefly kept or where it is kept most of the time."

Chalef v. Ryerson, 277 N.J. Super. 22, 27 (App. Div. 1994).

The physical location standard is objective; a vehicle owner's subjective intent about which state has a greater nexus to the vehicle is not controlling. Id. at 28. However, if a vehicle is principally garaged and insured in another state (by an insurer that also does business in New Jersey) and is involved in an accident in New Jersey, our so-called "Deemer provisions" will deem that the vehicle has at least the minimum levels of coverage required in our State. N.J.S.A. 17:28-1.4; see, e.g., Rojas v. DePaolo, 357 N.J. Super. 115, 120 (Law Div. 2002). *See also* Hernandez v. Kurtz, A-1519-23 (App. Div. December 17, 2024).

B. Principally Garaged and Residency are Mutually Exclusive (1T: 06:12 – 07:01, 2T: 04:11-18)

As. N.J.S.A. 39:6B-1(a) mandates New Jersey compliant insurance coverage for all automobiles Registered in the State of New Jersey, or principally garaged in the State of New Jersey, the Court should further consider the application of N.J.S.A. 39:3-17.1(b), which requires any non-resident of the State of New Jersey who becomes a resident of the State, to within sixty (60) days of becoming a resident, register any owned automobiles with the State of New Jersey, that will be operated upon the public highways.

This Court has dealt with numerous past factual scenarios where appellants' dismissals were affirmed, on the basis that the appellants' vehicle should have been registered in the State of New Jersey, pursuant to N.J.S.A. 39:3-17.1(b); and that the failure to timely register the vehicle, coupled with the applicability of *out-of-state* automobile insurance coverage (based upon the registering State), amounts to being 'culpably uninsured' for the purpose of applying N.J.S.A. 39:6A-4.5. In Guerrero v. Moore, A-4197-14T3 (January 5, 2017), the Appellate Division dealt with an appellant dismissed pursuant to N.J.S.A. 39:6A-4.5, who admitted to residing in New Jersey for the period of six (6) months prior to her automobile collision; while the vehicle involved remained registered to a boyfriend's address in Pennsylvania, under a 'Pennsylvania' insurance policy. In Scholes v. Hausmann, 2018 WL 4997186 at

*1 (App. Div. 2018), the Appellate Division dealt with an appellant dismissed pursuant to N.J.S.A. 39:6A-4.5, who admitted to residing in New Jersey for the period of five (5) years prior to his automobile collision; while further admitting to utilizing a friend's address in Florida for vehicle registration and insurance purposes, in order to reduce insurance premiums. Finally, in Hernandez v. Kurtz, A-1519-23 (App. Div. December 17, 2024), the Appellate Division dealt with an appellant dismissed pursuant to N.J.S.A. 39:6A-4.5, who had continued to utilize a prior address in Maryland for vehicle registration and insurance purposes, despite having 'moved-back' to the State of New Jersey well-over sixty (60) days prior.

However, Appellant Magee, unlike the appellants discussed above, actually had and utilized a residence in the State of Florida, at all relevant times hereto; and to which address the subject automobile he was operating was **both** registered and principally garaged. Appellant Magee owned a home in Marlton, New Jersey, for approximately forty-two (42) years; an original-build in 1979, which Appellant sold in November 2023 (after the subject incident herein) when he and his wife moved full-time to their address in Florida. Appellant has been splitting his residence between New Jersey and Florida, since the early 2000s, when he retired.

Principally garaged is an objective standard, specifically: "the physical location where an automobile is primarily or chiefly kept or where it is kept most of the time." Chalef v. Ryerson, 277 N.J. Super. 22, 27 (App. Div. 1994). Accordingly, one could have homes/residences in many different States throughout the Country, simultaneously; and the issue of principally garaged relative to the individual's vehicles would therefore be an objective determination based upon where said vehicle spent most of its time. It is possible and practical for an individual to own multiple automobiles, with each automobile being principally garaged at different locations. For example, one in Appellant's circumstances may choose to have a 'New Jersey' vehicle and a 'Florida' vehicle; so as to avoid transportation of the vehicle between the two destinations, quite far apart.

Unlike the term 'principally garaged' which the Chalef Court explained was strictly an *objective* standard, there is certainly a *subjective* component when dealing with the issue of 'Residency'. In other words, the individual's intentions relative to their primary residence, or permanent residence, may have an impact upon which State the individual obtains a drivers' license from, utilizes as mailing address, etc.; but, residency relative to obligations such as income taxes remains an *objective* standard. The most recent memory of the aforementioned being relevant, would be the litigation surrounding Derek Jeter

and his claimed residence in the State of Florida (which has no State Income Tax) versus the State of New York, where it was alleged he spent most-of his time while a member of the New York Yankees. As such, it was clearly Mr. Jeter's intention to claim residence in the State of Florida, where he in fact owned a residence; but the subsequent settlement with the State of New York proves the objective measurement of *Residency* is what ultimately drives the determination.

C. The Trial Court's Statutory Interpretation is Unconstitutional (issue raised in brief only – Pa107)

The Trial Court's interpretation of the relevant Statutes, in light of the established precedent in Chalef v. Ryerson, 277 N.J. Super. 22 (App. Div. 1994), was incorrect and amounts to an unconstitutional effect upon individuals with property in the State of New Jersey. A resident of the State of New Jersey can still own an automobile principally garaged outside of the State of New Jersey; and reading the relevant Statutes as a requirement for all 'residents' to register all vehicles in the State of New Jersey, even if they are going to be operated predominantly outside of New Jersey, violates the Fourteenth Amendment of the United States Constitution and Article One of the New Jersey State Constitution; which guarantee that fundamental rights cannot be deprived by any State. *See* Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985). A statute is invalid on substantive due process grounds if it "seeks

to promote [a] state interest by impermissible means," and is invalid on equal protection grounds when it does not apply "evenhandedly" to similarly situated people. Id at 562. Based upon the Trial Court's interpretation of the Statute(s) at issue, the Court is effectively requiring all New Jersey landowners to register and insure any and all vehicles that they intend to operate within the State of New Jersey at any time, to their New Jersey address; regardless of where said vehicle is primarily utilized and/or stored.

Moreover, while the 'No-Pay, No-Play' Statute is certainly designed to prevent the culpably uninsured from drawing upon insurance funds, the underlying principle behind the punitive effects of the Statute are rooted-in insurance policy rate evasion. Rate evasion is a civil and potentially criminal form of *Fraud*; for which insurance policies may be retroactively cancelled, claims disclaimed, and ultimately, may rise to the criminal level of insurance fraud, subjecting the alleged offender to potential criminal penalties. As such, the United States Constitution and New Jersey Constitution both afford due process; which is contraindicated by the Trial Court's interpretation of the relevant Statutes.

Appellant was never proven to have committed any impropriety by registering the subject vehicle to his Florida address and insuring the vehicle with a Florida automobile insurance policy. Said policy, issued by Allstate,

reformed relative to coverages applicable to the subject collision, pursuant to New Jersey's Deemer Statute. Allstate did not disclaim coverage, nor retroactively cancel the insurance policy; rather, Allstate paid over and above the amount of first-party medical benefits purchased on the Florida policy, pursuant to New Jersey's Deemer Statute.

Nevertheless, the Trial Court held that based upon a handful of subjective representations as to address, Appellant was required to have the subject vehicle insured under a New Jersey policy of insurance and applied the punitive 'No-Pay, No-Play' Statute to Appellant's claims. This is a denial of due process and a promotion of State interests by impermissible means.

In the instant matter, Appellant split his time between New Jersey and Florida; choosing to maintain his New Jersey drivers' license with established address of forty-two (42) years, while utilizing his Florida address where he spent more of his time, for vehicle registration and insurance purposes. Appellant never intended to 'move-back' to New Jersey; and quite opposite, sold his New Jersey residence after the subject incident in order to live in Florida full-time. Certainly, Appellant is not committing impropriety by 'principally garaging' his vehicle at his Florida address, if that is where said vehicle is "..kept most of the time." Chalef, 277 N.J. Super. at 27. The mere fact that Appellant remained in New Jersey for a period of more than sixty (60)

days at his house, does not change the objective fact that the subject automobile spent more time in the State of Florida than in New Jersey, at all relevant times hereto. Such a Statutory interpretation would essentially require all Pennsylvania, New York and Delaware residents with shore houses at the New Jersey shore, to re-register their automobiles to the New Jersey address at the beginning of each summer; since the individual will be 'residing' in the State of New Jersey and their automobile(s) utilized upon the roadway.

Furthermore, imagine the individual who rents an apartment in New York City, where said individual works Monday through Friday and to which address said individual registers and garages his/her vehicle. Imagine the same individual owns a home in Southern New Jersey, where he/she resides on weekends and holidays; driving from New York City and returning by vehicle at the conclusion of the trip. This same imaginary individual maintains a New Jersey drivers' license, listing his/her permanent residence as opposed to the New York rental apartment address, which may change pursuant to lease. In such a situation, the Trial Court's application of the relevant Statutes would arguably necessitate the individual registering and insuring his/her vehicle in New Jersey, despite the uncontroverted fact that both the individual and vehicle spend more time in New York, than in New Jersey. Again, the Trial Court's application effectively places a burden on all drivers who own property

in the State of New Jersey to insure any vehicle they may ever operate within the State of New Jersey under a New Jersey policy of automobile insurance, or face the application of No-Pay, No-Play if involved in a collision while operating an owned vehicle in New Jersey. This simply cannot be, as it is not practical nor constitutional.

D. Appellant is Not Culpably Uninsured to Warrant the Punitive Sanctions of N.J.S.A. 39:6A-4.5(a) (1T: 05:20 – 06:11, 2T: 04:19-22)

The Supreme Court upheld the constitutionality[6] of {N.J.S.A. 39:6A-4.5} in Caviglia v. Royal Tours of Am., 178 N.J. 460, 478-79 (2004). The statute "advances a policy of cost containment by ensuring that an injured, uninsured driver does not draw on the pool of accident-victim insurance funds to which he did not contribute." Id. at 471. This, in turn, "gives the uninsured driver a very powerful incentive to comply with the compulsory insurance laws: obtain automobile liability insurance coverage or lose the right to maintain a suit for both economic and noneconomic injuries." Ibid.

The Supreme Court makes clear that the purpose of the "No-Pay, No-Play" Statute is to punish those who do not comply with the requirement to carry automobile insurance; and that such individuals should not have the right

[6] The Supreme Court upheld the constitutionality of the Statute; not the application of the Statute as the Trial Court has applied it herein

to recover from someone (…'s insurance coverage) for liability, where if the shoe were on the other foot, the aggrieved party would need to seek compensation from the pool of uninsured motorist coverage. Scholes and Hernandez continue along this line of punitive application, by applying the law to those who make misrepresentations as to their address for the purpose of rate evasion, or to those who fail to comply with N.J.S.A. 39:3-17.1(b) when the State of New Jersey becomes their permanent residence.

The Courts have never held 'No-Pay, No-Play' to be applicable where an individual brings his out-of-state registered vehicle into New Jersey, where he/she also owns a residence; and where the insurance upon said vehicle was converted to apply New Jersey required minimum coverages, without incident, pursuant to the Deemer Statute. While Scholes upheld a decision in which the Motion Judge found that the Deemer Statute could not 'save' a plaintiff from "No-Pay, No-Play", it was in the context of a plaintiff who admitted to using a friend's address in Florida, for rate evasion, where he admitted to being a full-time New Jersey resident for at least five (5) years; and no mention that the plaintiff in that matter was actually afforded the coverage that the Deemer Statute would have required, if determined applicable.

Rather, if a vehicle is principally garaged and insured in another state (by an insurer that also does business in New Jersey) and is involved in an

accident in New Jersey, our so-called "deemer provisions" will deem that the vehicle has at least the minimum levels of coverage required in our State. N.J.S.A. 17:28-1.4; see, e.g., Rojas v. DePaolo, 357 N.J. Super. 115, 120 (Law Div. 2002). *See also* Hernandez v. Kurtz, A-1519-23 (App. Div. December 17, 2024).

In the instant matter, Appellant was afforded first-party medical coverage in accordance with New Jersey's compulsory coverage; which was a reformation of the subject Allstate automobile insurance policy, pursuant to the New Jersey Deemer Statute. Pursuant to the holding in Rojas v. DePaolo, 357 N.J. Super. 115 (Law Div. 2002), which was relied upon by the Appellate Division in Hernandez, A-1519-23 (App. Div. December 17, 2024), Appellant herein is not uninsured for purposes of N.J.S.A. 39:6A-4.5. Notably, Rojas held that "N.J.S.A. 39:6A-4.5a advances a policy of cost containment by ensuring that an injured, uninsured driver does not draw on the pool of accident-victim insurance funds to which he did not contribute." *See* Caviglia, 178 N.J. 460 (2004); yet makes specific note of the Deemer Statute's effect of making an out-of-state operator compliant with New Jersey insurance requirements.

Point 2: The Trial Court Erred in Granting Summary Judgment to Defendants, Both in Applying Relevant Statute(s) to the Facts at Hand, as well as Application of the Summary Judgment Standard Regarding Burden of Proof (2T: 03:24 – 04:21)

Rule 4:46-2(c) governs motions for summary judgment. The rule sets forth:

> [T]he pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the no-moving party, would require submission of the issue to the trier of fact.

The determination of whether there exists a genuine issue of material fact requires the court to consider whether the competent evidence presented, when viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

A party may defeat a Motion for Summary Judgment by demonstrating that the evidentiary materials relied upon by the moving party, considered in light of the applicable burden of proof, raise sufficient credibility issues 'to permit a rational fact finder to resolve the alleged disputed issue in favor of the

non-moving party'. D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 114 (App. Div. 1997) citing Brill, 142 N.J. 520, 523 (1995).

When reviewing a trial court's grant of summary judgment, the Court is "bound by the same standard as the trial court under Rule 4:46-2(c)." State v. Perini Corp., 221 N.J. 412, 425 (2015) (citations omitted). The Court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Ibid. (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). "To the extent that the grant or denial of summary judgment is based on an issue of law, we owe no deference to an interpretation of law that flows from established facts." Ibid. (citing Town of Kearny v. Brandt, 214 N.J. 76, 92 (2013)).

The standard for granting Summary Judgment mandates that the evidence must be viewed in the light most favorable to the non-moving party; and that the moving party has the burden of proving that no genuine issue of material fact remains, relative to the issue upon which Summary Judgment is sought.

In the instant matter, Summary Judgment was erroneously granted: because the Trial Court applied an erroneous legal standard to the facts set

forth; incorrectly determined there to have been no genuine issue of material fact even as to those facts considered relative to the erroneous legal standard; and incorrectly shifted the burden upon Appellant to disprove Summary Judgment. Appellant has previously addressed the issue of legal standard above; and will now address the remaining issues below.

A. Even if a "Residency" Standard were Utilized, a Genuine Issue of Material Fact Remains as to Appellant's "Residency" (specific argument not raised below)

In support of their Motion for Summary Judgment, Respondents relied upon the following *factual* allegations:

1) that Appellant's Complaint identifies him as a "citizen and resident of the Township of Evesham and County of Burlington, in the State of New Jersey;
2) that Appellant's certified answers to interrogatories identify his Marlton address as current;
3) that Appellant's counsel submitted an application to NJPLIGA, identifying Appellant and his New Jersey address upon the form;
4) that the police report relative to the subject automobile collision identifies Appellant at his New Jersey address (in accordance with his New Jersey drivers' license)
5) that Appellant lived "seasonally" (per his deposition testimony) in Florida, until making Florida his full-time/sole residence in 2023; and
6) that on the date of incident, which occurred in New Jersey, Appellant and his vehicle were both in the State of New Jersey and Appellant was staying at his Marlton residence.

The aforementioned 'facts' as set forth by Respondents in support of Summary Judgment, at best can be construed to indicate Appellant's subjective intention as to claimed residency; but objectively, the determination of

residency hinges on the amount of time Appellant spent at his residence in Florida, versus that of New Jersey.

Accordingly, the facts relied upon by the Respondents in support of Summary Judgment do not conclusively establish Appellant to have been a New Jersey Resident on the date of the automobile collision; despite Appellant's intentions and/or any arguments as to what those intentions were, based upon drivers' license, property ownership or self-identification. There is still a genuine issue of material fact as to how much time Appellant spent in New Jersey versus Florida within the relevant time period; to which moving Respondents presented **no** evidence. The only evidence that can objectively establish either residency or principally garaged, is the supplemental certification submitted by Appellant in support of his Motion for Reconsideration; which was disregarded by the Court.

B. Respondents' Motion Should Have Failed as Devoid of Necessary Factual Support; but instead, the Court Improperly Shifted the Burden of Proof Upon Appellant, to Disprove Respondents' Contentions (2T: 03:24 – 04:21)

Noting the Summary Judgment standard as set forth above, Appellant opposed Respondents' Motion for Summary Judgment on the basis it was factually devoid of the necessary elements, to garner Summary Judgment under N.J.S.A. 39:46A-4.5. Appellant could not foresee the Trial Court faulting Appellant, for the failure to present evidence contrasting the

allegations set forth by Respondents; where said allegations should have been insufficient upon their face to objectively establish that which is required to apply N.J.S.A. 39:6A-4.5 to Appellant herein. There was no evidence in the record as to the amount of time Appellant's vehicle involved in the subject collision was kept/utilized in the State of New Jersey, versus that of Florida.

The Trial Court reasoned that there was enough evidence to apply N.J.S.A. 39:6A-4.5 to Appellant, based upon subjective statements relative to address of residency. The Trial Court then ruled it did not have any evidence 'to the contrary' as submitted by Appellant, to refute the subjective determination of residency. The Trial Court held it was not applying a burden of proof upon Appellant, despite the above.

In light of the above, Appellant filed a Motion for Reconsideration with a Certification attesting to the location of the subject vehicle, having been kept 'more' in Florida than in New Jersey, during the calendar year prior; and in doing so, providing the same evidence as to Appellant's residency from an *objective* standpoint, also being that of Florida. Appellant argues it was in error for the Court to require him to *disprove* allegations of the Respondents; allegations which should not have been held to establish moving Respondents' burden relative to the Motion. Moreover, the Trial Court committed error by

failing to consider Appellant's supplemental certification in support of Motion for Reconsideration, as explained more fully below.

The objective certification submitted by Appellant, which speaks to both vehicle location and location of Appellant himself, in the calendar year prior to the subject collision, is competent evidence which not only establishes Summary Judgment should have been denied outright for Respondents' failure to establish the necessary elements warranting Summary Judgment; but that genuine issues of material fact remain as to residency and/or principally garaging of the subject vehicle, in light of the subjective representations as compared to the objective certification.

Point 3: The Trial Court Erred in Failing to Consider Appellant's Supplemental Certification Supporting Reconsideration (2T: 08:08-18)

Following the Trial Court's granting of Summary Judgment to Respondents, whereupon the Court determined Respondents' proofs sufficient to establish the issue of 'principally garaged' and noted specifically that Appellant did not submit evidence to the Court regarding the location of his vehicle; in order to contradict Respondents' allegations, Appellant filed a Motion for Reconsideration and attached a sworn Certification, attesting to the subject vehicle's location during the calendar year preceding the collision. Appellant made said Motion pursuant to R. 4:49-2, identifying both the

misapplication of relevant Statute and attaching the Certification, in support of reconsideration.

Respondents opposed reconsideration, citing Cummings v. Bahr, 295 N.J. Super. 374, 382 (App. Div. 1996), which was a matter where the filer of the Motion for Reconsideration changed their legal theory following the granting of Summary Judgment; specifically, arguing that the plaintiff was an invitee where having previously argued/conceded licensee status. The Court in Cummings held, relevant to said Motion, that Reconsideration should only be utilized if 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis; 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence; and/or 3) if a litigant wishes to bring new or additional information to the Court's attention which it could not have provided on the first application, the Court should, in the interest of justice (and in the exercise of sound discretion), consider the evidence. Cummings, 295 N.J. Super. 374, 384 (App. Div. 1996).

Respondents asserted that the supplemental Certification could have been created for consideration with respect to the underlying Motion for Summary Judgment'; although it was not Appellant's burden-of-proof to negate the application of 'No-Pay No-Play,' an affirmative defense. It was and

remains Appellant's position that the evidence set-forth by Respondents is insufficient to grant Summary Judgment and as such, Appellant would not have needed to attach a Certification relative to vehicle location in opposition to Summary Judgment; rather, Summary Judgment should have been denied based upon Respondents' failure to establish and/or substantiate the defense.

R. 1:1-2(a) permits a Court to relax any of the Court Rules in the interest of fairness; and to the extent R. 4:49-2 prohibits the supplementation of the underlying record, as is being implied by the defense but not stated in the rule, it is submitted that this would be a situation where the interest of fairness warrants relaxation and the reconsideration of Summary Judgment, with the additional evidence. That said, neither Respondents, nor the Trial Court, cited to any authority that says a Court may not consider supplemental evidence upon a Motion for reconsideration.

As the subject certification is the only *objective* evidence to establish 'Principally Garaged' relative to Statutory application, the Trial Court should have considered the certification in the interest of justice. Even if the Trial Court is found to have rendered its initial decision as to Summary Judgment upon a rational basis and/or correct interpretation of statutory application, the certification at the very least evidences a genuine issue of material fact relative

to residency and principal garaging, for which Summary Judgment should have been denied.

Point 4: Regardless of the Outcome of Summary Judgment Motion at the Trial Court Level, Appellant is Entitled to Costs Pursuant to R. 1:4-8 (1T: 07:13 – 08:13)

Understandably, the Trial Court's granting of Summary Judgment to Respondents in this matter creates an appearance that Respondents' Summary Judgment Motion was not a frivolous filing. However, Appellant submits the Trial Court erred in its application of Statutory provisions as discussed at length above; and that Respondents' forwarding of their assertions and allegations in support of applying 'No-Pay, No-Play' in the instant matter, was and remains frivolous, even if it was able to persuade the Trial Court.

Simply put, Appellant is an eighty-three (83) year-old retiree, with (at the relevant times hereto) residences in both New Jersey and in Florida. Appellant split-time between said residences on what he classified as a "seasonal" basis; without any further clarification as to "seasonal," until submitting his supplemental certification in support of reconsideration. Appellant owned an automobile that was registered to his Florida address (Florida tags) and insured via Allstate, under a policy approved by the powers-that-be for the State of Florida. During a period of time Appellant was visiting the State of New Jersey and staying at his New Jersey home, he was involved

in an automobile collision while operating said vehicle. Appellant returned to his Florida home, shortly after the subject incident and did not return to the State of New Jersey until the following summer.

Appellant has committed no impropriety by registering his automobile and insuring same, to the address where he has certified the automobile was kept 'most-of-the-time'. Appellant's automobile insurance policy through Allstate reformed pursuant to the Deemer Statute, relative to the subject incident; and therefore, Appellant did not 'draw-upon' the pool of accident-victim insurance proceeds to which he did not contribute. Appellant sent Respondents a demand for withdrawal of the Summary Judgment, pursuant to R. 1:4-8, because Respondents are/were seeking to exploit what they believe to be a technicality in Statutory construction, in furtherance of precluding a law-abiding individual from recovering damages incurred through their negligence. Such application of N.J.S.A. 39:6A-4.5 was not the legislative intent and does not further the interests of public policy. Appellant submits the Motion for Summary Judgment was filed to delay this matter from proceeding to trial and to cause undue hardship and suffering upon Appellant; who simply seeks compensation for the proven losses proximately caused by Respondents' negligence.

Point 5: Summary Judgment Standard (standard discussed in brief only – Pa100)

Rule 4:46-2(c) governs motions for summary judgment. The rule sets forth:

> [T]he pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the no-moving party, would require submission of the issue to the trier of fact.

The determination of whether there exists a genuine issue of material fact requires the court to consider whether the competent evidence presented, when viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

A party may defeat a Motion for Summary Judgment by demonstrating that the evidentiary materials relied upon by the moving party, considered in light of the applicable burden of proof, raise sufficient credibility issues 'to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party'. D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 114 (App. Div. 1997) citing Brill, 142 N.J. 520, 523 (1995).

The standard for granting Summary Judgment mandates that the evidence must be viewed in the light most favorable to the non-moving party.

In the instant matter, Summary Judgment grated as to Respondents must be reversed and remanded. The Trial Court mistakenly interpreted New Jersey Statutes and applied a punitive sanction upon Appellant, pursuant to the misapplication of said Statutes. There was no evidence at the time of the initial Summary Judgment Motion for the Court to determine that Appellant's vehicle was 'principally garaged' in the State of New Jersey on the date of incident. The Court thereafter disregarded a Certification from the Plaintiff, which was the only evidence in the record from which the Court could determine the issue of 'principally garaged'.

Even if the Trial Court is not found to be in error by considering Appellant's 'residency' as applicable to the relevant Statutes, a genuine issue of material fact remains relative to Appellant's residency, as well. Appellant maintained two (2) separate residences and utilized both addresses. At the time of the Motion for Summary Judgment, the Court had for its consideration subjective representations of residency by Appellant; and relative to objective evidence, the mere fact that Appellant maintained a home in New Jersey and happened to be in New Jersey on the date of loss. Once again, Appellant's certification in support of his Motion for Reconsideration is the only **objective**

evidence from which an **objective** determination of residency can be determined; which based upon same, should warrant Summary Judgment in Appellant's favor on the issue of his Florida residency.

VI

CONCLUSION

Based upon the foregoing, Appellant, Robert Magee, respectfully requests that this Honorable Court reverse Summary Judgment granted to Respondents on February 28, 2025, remanding this matter for trial; and Granting Appellant's Cross-Motion for Costs and Fees against the Respondents.

Respectfully submitted,

SPEAR, GREENFIELD
RICHMAN, WEITZ & TAGGART, P.C.

/s/ Jeremy M. Weitz

JEREMY M. WEITZ, ESQUIRE

Dated: June 21, 2025

ROBERT MAGEE Plaintiff vs BARBARA OBREZA and JOHN OBREZA and JOHN DOE #1-10 (fictitious names designating the owner and/or operator) and ABC CORP. #1-10 (fictitious corporations designated as owners and/or operators). Defendants	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002264-24 CIVIL ACTION ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, CAMDEN COUNTY Docket No: CAM-L-613-23 Sat below: THE HON. DONALD J. STEIN, J.S.C.

RESPONDENTS' BARBARA O'BREZA AND JOHN O'BREZA'S BRIEF IN OPPOSITION TO PLAINTIFF'S APPEAL

LAW OFFICE OF ALPHONSO H. IBRAHIM
Attorneys for Defendants, Barbara O'Breza and John O'Breza
P.O. Box 6835
Scranton, Pennsylvania 18505
(856) 359-2836
lisar.ma@libertymutual.com

NISHI PATEL, Esq.
Attorney ID: 226612018
Of Counsel and
On the Brief

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

PRELIMINARY STATEMENT

The origin of this Appeal stems root from a motor vehicle accident that occurred on October 26, 2021. Specifically, Appellant, Robert Magee and Respondent, Barbara O' Breza were involved in a motor vehicle accident in Cherry Hill, NJ at the intersection of Green Tree Road and Springdale Road. As a result of the October 26, 2021 accident, Appellant alleges permanent injuries and filed his Complaint on February 28, 2023.

At the time of the filing of his Complaint, Appellant lived at 12 Meeting House Place, Marlton, NJ 08053. During his deposition, Appellant testified that he lived in Marlton, NJ when the October 26, 2021 accident and had been living there for approximately forty two (42) years. Additionally, Appellant identified himself as a New Jersey resident on his NJ PLIGA application, his Complaint, answers to interrogatories, and as a beneficiary of New Jersey Medicare.

Appellant noted that he owned a seasonal home in Verona Beach, Florida, but did not move to Florida until November 30, 2023, nearly two years after the accident. As of October 26, 2021, Appellant's 2000 Silver Mercedez Benz was insured with a Florida All State policy and was registered in the state of Florida. At the time of the accident, it is clear through documentary evidence, that Appellant's vehicle was physically present in the state of New Jersey and garaged herein. Photos of his vehicle were authenticated at his deposition. Appellant even admits to driving his vehicle from his home to a car wash, when the accident occurred.

Appellant did not need to explicitly state the vehicle was principally garaged in the state of New Jersey, to determine where the Mercedez was kept. This was made readily apparent through his testimony, presence of the vehicle at the time of the accident, NJ PLIGA application and answers to interrogatories.

Given Appellant's vehicle was principally garaged within the state, he was required to maintain New Jersey auto insurance, pursuant to the clear language of N.J.SA. 39:6B-1(a) and N.J.S.A. 39:6a-4.5(a). Accordingly, upon the close of discovery, Respondents moved for Summary Judgment under New Jersey's "No Pay No Play" statute. Appellant opposed the motion and filed a cross-motion for attorney's fees arguing that Respondent's motion is frivolous. The trial court found Respondents' arguments to be viable, holding that No Pay No Play was applicable to the case herein, and granted Summary Judgment in favor of Respondents. The trial court also denied Appellant's Cross-Motion for attorney's fees. Appellant now appeals the trial court's orders. Respondents, Barbara O'Breza and John O'Breza ask this court to uphold the decisions of the trial court and affirm summary judgment.

PROCEDURAL HISTORY

Respondent agrees with the procedural history described in the brief of Plaintiff-Appellant.

STATEMENT OF FACTS

This matter arises out of a motor vehicle accident which occurred on October 26, 2021, in Cherry Hill, New Jersey, wherein Appellant claims to have been injured (Pa114-Pa124). The accident occurred at the intersection of Greentree Road and Springdale Road between Appellant, who was operating a silver 2000 Mercedes S500 and Respondent, Barbara O'Breza (Pa001-002, Pa040).

Appellant filed his Complaint on February 28, 2023 wherein he states that he "is a citizen and resident of the Township of Evesham and County of Burlington, in the State of New Jersey. (Pa114-Pa124). Similarly, Plaintiff's Answers to Interrogatories establish that Plaintiff was a resident of Marlton, New Jersey as of July of 2023. (Pa003).

Additionally, at the time of his deposition, Appellant testified that his current address is a Florida address. However, his Florida home was a seasonal home until December of 2023. (Pa015-016, T:7:21-8:6). Notably, on October 26, 2021, Plaintiff lived at an address in Marlton, NJ. (Pa018, T:11:20-21). Plaintiff admitted to living at the Marlton, NJ address for 42 years. (Pa018, T:11:23-25). Plaintiff admits to driving his vehicle home after the accident, to an address in Marlton, NJ. (Pa031," T:38:13-14).

Appellant moved to Florida permanently on November 30, 2023. (Pa035, T:45:8-11).

On October 26, 2021, Appellant's 2000 Mercedes S5000 was insured through a Florida Allstate motor vehicle insurance policy. (Pa041-049). The same vehicle was also registered in Florida, despite Appellant's permanent residence being in the state of New Jersey. Notably, Appellant's vehicle was also being operated and present, garaged in the state of New Jersey when the accident occurred. (Pa001-Pa002).

Only after Summary Judgment was granted in favor of Respondent, and in support of his Motion for Reconsideration, Appellant for the first time, after the close of discovery, provided a self-serving certification wherein he states his 2000 Mercedes S500 was principally garaged in Florda. (Pa059-061).

The Court properly granted Summary Judgment in favor of Respondent, given Appellant was culpably uninsured on October 26, 2021. (Pa111, Pa112).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY FOUND THAT DEFENDANTS/RESPONDENTS ARE ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW SINCE APPELLANT DID NOT POSSESS NEW JERSEY MOTOR VEHICLE INSURANCE AS REQUIRED BY N.J.S.A. 39:6A-4 AND N.J.S.A. 39:6A-4.5

In the case at bar, Appellant failed to maintain New Jerey Automobile Insurance despite being a resident of New Jersey and garaging a vehicle within the state. Appellant attempts to make the matter convoluted and intricate, but the fact is that the issues are simple: Was Plaintiff required to maintain New Jersey automobile insurance on October 26, 2021 while operating the vehicle within the State? Was Appellant's vehicle principally garaged in New Jersey? It is Respondents' position that Appellant's vehicle was principally garaged in the state of New Jersey on October 26, 2021 and therefore, was required to maintain New Jersey automobile insurance.

A. N.J.S.A 39:6A-4 requires all New Jersey Citizens whose vehicle is principally garaged in the state to maintain New Jersey Automobile Insurance.

N.J.S.A 39:6A-4 states:

> every standard automobile liability insurance policy issued or renewed […] shall contain personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustain bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from

> an automobile, and to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with permission of the named insured.

N.J.S.A 39:6A-4. Simply put, all New Jersey auto insurance policies are required to provide Personal Injury Protection (PIP) benefits to those injured in motor vehicle accidents irrespective of fault liability. The statutory scheme continues in N.J.S.A. 39:6A-4.5(a):

> Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-4), section 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of P.L.2003, c.89 (C.39:6A-3.3) shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.

N.J.S.A. 39:6B-1(a) states:

> 1. a. Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle wherein such coverage shall be at least in: (1) an amount or limit of $15,000 for plans issued or renewed prior to January 1, 2023, $25,000 for plans issued or renewed on or after January 1, 2023 but prior to January 1, 2026, and $35,000 for plans issued or renewed on or after January 1, 2026, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and (2) an amount or limit, subject to such limit for any

> one person so injured or killed, of $30,000 for plans issued or renewed prior to January 1, 2023, $50,000 for plans issued or renewed on or after January 1, 2023 but prior to January 1, 2026, and $70,000 for plans issued or renewed on or after January 1, 2026, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and (3) an amount or limit of $25,000 for plans issued or renewed on or after January 1, 2023, exclusive of interest and costs, for damage to property in any one accident; […]

N.J.S.A. 39:6B-1(a). The clear language of the statutes establishes that all New Jersey residents, whose vehicles are principally garaged within the state, are required to maintain New Jersey auto insurance, or otherwise, will be barred from economic/non-economic recovery resulting from a motor vehicle accident while uninsured. N.J.S.A.39:6A-4.5(a). Here, Appellant was a resident of Marlton, New Jersey at the time of the October 26, 2021 motor vehicle accident. (Pa114-125). Appellant confirmed his New Jersey residency on several occasions, including his Answers to interrogatories (Pa003-Pa012), NJ PLIGA application (Pa053-057), and his sworn deposition testimony (Pa018, Magee Dep T: 11:20-21). Appellant admitted under oath, that he lived in Marlton, Jersey for 42 years until approximately November 30, 2023. (Pa031, Magee Dep T: 38:13-14). Concurrently, Plaintiff had a seasonal home in Verona Beach, Florida for nineteen (19) when he made the move permanent in December of 2023. (Pa016, Pa035 -Magee Dep T: 7:25-8:6, 45:8-10).

On October 26, 2021, Appellant was involved in a motor vehicle accident at the intersection of Greentree Road and Springdale Road in Cherry Hill, New

Jersey. (Pa001-Pa002). At the time, Appellant was driving a 2000 Silver Mercedez, registered in Florida and insured by Allstate under a Florida policy. (Pa040, Pa041). Appellant's vehicle was not insured under a New Jersey auto policy. It must be noted that Appellant's Mercedez was physically present and operated in New Jersey, when the October 26, 2021 accident occurred. (Pa001, Pa003). He admitted that he drove his vehicle home to Marlton, New Jersey, after the accident occurred. (Pa031, Magee Dep T: 38:13-14). The vehicle was deemed a total loss and therefore could not be operated for further use. (Pa038). With the understanding that Appellant was a New Jersey resident, and his vehicle was principally garaged in the state on October 26, 2021 – Appellant was required to maintain New Jersey automobile insurance. Failure to possess New Jersey auto insurance whilst the owner's vehicle is garaged in the state, bars any plaintiff's claims for economic or non-economic damages. N.J.S.A. 39:6A-4.5(a). In this case, Appellant was required to maintain New Jersey auto insurance since he was a New Jersey resident on October 26, 2021, while principally garaging his vehicle in the state. As a result of his failure to maintain New Jersey auto insurance, Appellant is barred from economic and non-economic recovery as a result of alleged injuries from the October 26, 2021, motor vehicle accident.

B. Appellant's Vehicle was Principally Garaged in New Jersey on October 26, 2021

The crux of this matter is whether or not Appellant's vehicle was principally garaged in New Jersey. Appellant's position is that his vehicle was principally garaged in the state of Florida and therefore, N.J.S.A.39:6A-4.5(a), commonly called, the "No Pay No Play" statute, does not apply to him. However, the facts, nor the record, support his position. Appellant argued that the trial court mistakenly used the residency standard as opposed to the principally garaged standard in granting Respondents' Motion for Summary Judgment. (Pa111). Again, Appellant misunderstands the Court's reasoning and order. The court specifically stated in hearing Respondent's Motion for Summary Judgment, that the issue is where the Appellant's vehicle was principally garaged. At the start of the hearing, the court states:

> So, this is a matter involving a motor vehicle accident that occurred on October 26th of '21 in Cherry Hill.
>
> The issue is whether he was – this vehicle was principally garaged in New Jersey, which is the subject of the motion.

(1T: 1:12-17)[1]. Although, the Court acknowledged Plaintiff's residence, it does not nullify the fact that Plaintiff's vehicle was principally garaged in New Jersey.

To determine where a vehicle is principally garaged, the Court does not have to physically observe the presence of Appellant's vehicle. It may simply

1T: Transcript of the Court's Oral Argument Hearing of Respondents' Motion for Summary Judgment on February 28, 2025
2T: Transcript of the Court's Oral Argument Hearing of Appellant's Motion for Reconsideration on March 28, 2025

consider the location of the vehicle, use of the vehicle and other circumstantial evidence. In Chalef v. Ryerson, the Appellate Court offers guidance as to "principally garaged." The Chalef court explains:

The term "principally garaged," as used in N.J.S.A. 39:6A-3, is not defined by statue. Therefore, it should be given its ordinary and well understood meaning, consistent with the Legislature's intent in enacting our current system of compulsory automobile insurance providing basic PIP coverage. Chalef v. Ryerson, 277 N.J. Super. 22, 27 (App. Div. 1994) citing State v. Arslanouk, 167 N.J.Super. 387, 393 (App.Div.1979). The court construes the term "principally garaged" to mean the physical location where an automobile is primarily or chiefly kept or where it is most of the time. Id citing Frasca v. United States, 702 F.Supp. 715, 718 (C.D.Ill.1989).

In Chalef:

> Plaintiff had lived exclusively in Middletown, New Jersey for approximately four months prior to the [August 23, 1991] accident. Plaintiff first began working as a systems engineer at AT & T Bell Laboratories in Holmdel, New Jersey, in April 1990, approximately one year and four months prior to the accident. While plaintiff was temporarily relocated between New Jersey, Maryland, Washington, D.C., North Carolina and Virginia, from April 1990 until April 1991, she apparently continued to maintain her address in Middletown. Furthermore, while plaintiff claims that she intended to return to Maryland and had several job interviews there, she still resided in New Jersey.
>
> Following the August 23, 1991 accident and during her recuperation, plaintiff continued to reside in

> Middletown, New Jersey. Upon her return to work in November 1991, plaintiff remained in New Jersey and began permanently working at AT & T in Holmdel. Sometime thereafter, plaintiff changed her legal residency and motor vehicle licensure from Maryland to New Jersey. In July 1992, plaintiff moved from Middletown to Lincroft, New Jersey, where she presently resides.

Chalef v. Ryerson, at 27. Plaintiff argued that given she was on temporary assignment in New Jersey at the time of August 23, 1991 motor vehicle accident, residing in NJ for a brief four consecutive months, her vehicle cannot be considered principally garaged in the state. Id at 28. The Chalef court disagreed with Plaintiff, finding that intent is irrelevant for determining where a vehicle is principally garaged. Ibid. Despite possessing a Maryland auto insurance policy, the fact that Plaintiff maintained her NJ address while out of state, on temporary assignment and continued residence in New Jersey were sufficient for the Appellate Court to find that her vehicle was principally garaged within the state. Ibid.

Similarly, in Bell v. Hardy, the Appellate Court affirmed a trial court order granting Summary Judgment in favor of Defendant, finding Plaintiff was culpably uninsured for failure to maintain New Jersey auto insurance while garaging his vehicle in NJ despite possessing a North Carolina auto insurance policy, his vehicle being registered in North Carolina, his vehicle possessing North Carolina plates, and residing in both North Carolina and New Jersey. Bell

v. Hardy, No. A-1954-23, 2025 WL 37362, at *1 (N.J. Super. Ct. App. Div. Jan. 7, 2025). (D001a-004a).

Yet again, in Thomas v. Bobadilla, New Jersey's Appellate Court reversed a trial court order denying Summary Judgment – finding that Plaintiff was culpably uninsured after failing to obtain a New Jersey auto insurance policy despite residing within the state for seven months. Thomas v. Bobadilla, No. A-1834-15T4, 2017 WL 3400814, at *1 (N.J. Super. Ct. App. Div. Aug. 9, 2017). (D005a-006a). Plaintiff, in Thomas, moved from Florida to New Jersey. Even though she moved from Florida to New Jersey, her vehicle was still registered in Florida, while maintaining a Florida auto policy. Ibid. Accordingly, Plaintiff was uninsured and precluded from seeking recovery for bodily injury under N.J.S.A. 39:6A–4.5(a). Id at 2.

Factually and legally analogous to the aforementioned cases, Plaintiff in this matter is culpably uninsured. As of the October 26, 2021 accident, Plaintiff resided in Marlton, New Jersey. (Pa001) He had been living at that address for the past forty-two (42) years. (Pa018. Pa031, T:11:23-25). He purchased a seasonal home in Verona Beach, Florida approximately nineteen (19) years ago. (Pa016). The silver Mercedes vehicle involved in the accident was garaged at his Marlton, NJ home, despite having Florida plates and auto policy. While the New Jersey address was his main residence, his Verona Beach, Florida property was his seasonal home. (Pa016). He testified, under oath, that he traveled back and forth, every six months to Florida, until he moved there permanently in

December of 2023. (Pa035, Magee Dep; T:45:25-46:3). The permanent relocation occurred over two years after the October 2021 motor vehicle accident. (Pa035). He also noted that he was coming from his home in Marlton, NJ when the accident occurred, and returned home, thereafter. (Pa025-030). The evidence established that the vehicle was being garaged at his primary address in Marlton, New Jersey. Accordingly, Plaintiff was culpably uninsured for failing to maintain New Jersey auto insurance while garaging a vehicle in the state, and thus, the trial court did not err in granting Summary Judgment in favor of Respondent.

C. It is Irrelevant that Plaintiff was afforded benefits through the Deemer Statute

Under N.J.S.A. 17:28-1.4, colloquially termed the Deemer statute, it is required that :

> Any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy coverage to satisfy at least the personal injury protection benefits coverage pursuant to section 4 of P.L.1972, c. 70 (C.39:6A-4) or section 19 of P.L.1983, c. 362 (C.17:28-1.3) for any New Jersey resident who is not required to maintain personal injury protection coverage pursuant to section 4 of P.L.1972, c. 70 (C.39:6A-4) or section 4 of P.L.1998, c. 21(C. 39:6A-3.1) and who is not otherwise eligible for such benefits, whenever the automobile or motor vehicle

> insured under the policy is used or operated in this State. In addition, any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy coverage to satisfy at least the liability insurance requirements of subsection a. of section 1 of P.L.1972, c. 197 (C.39:6B-1) or section 3 of P.L.1972, c. 70 (C.39:6A-3), the uninsured motorist insurance requirements of subsection a. of section 2 of P.L.1968, c. 385 (C.17:28-1.1), and personal injury protection benefits coverage pursuant to section 4 of P.L.1972, c. 70 (C.39:6A-4) or of section 19 of P.L.1983, c. 362 (C.17:28-1.3), whenever the automobile or motor vehicle insured under the policy is used or operated in this State.
>
> Any liability insurance policy subject to this section shall be construed as providing the coverage required herein, and any named insured, and any immediate family member as defined in section 14.1 of P.L.1983, c. 362 (C.39:6A-8.1), under that policy, shall be subject to the tort option specified in subsection a. of section 8 of P.L.1972, c. 70 (C.39:6A-8).
>
> Each insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State and subject to the provisions of this section shall file and maintain with the Department of Banking and Insurance written certification of compliance with the provisions of this section.

N.J.S.A. 17:28-1.4. Appellant argues that No Pay No Play is not a viable argument herein, given Plaintiff was afforded PIP benefits through the Deemer statute and therefore, cannot be considered uninsured. Respondents disagree. It

is irrelevant whether Appellant received any benefits through the Deemer statute.

Appellant fails to comprehend the intent of the legislature in enacting the No Pay No Play statute. Plaintiffs who are New Jersey residents, with vehicles that are principally garaged in New Jersey and/or registered within the state are required to have a New Jersey Auto policy. Pursuant to N.J.S.A. 39:6A-4 and N.J.S.A. 39:6A-4.5(a), New Jersey residing Plaintiffs who have motor vehicles in the state are required to hold New Jersey Auto Insurance policy approved by the New Jersey Commissioner of Banking and Insurance. See Scholes v. Hausmann, 2018 WL 4997186 at *1 (App.Div. 2018) citing N.J.S.A. 39:6A-4 and N.J.S.A. 39:6A-4.5(a). (Pa070).

N.J.S.A. 39:6A–4.5a advances a policy of cost containment by ensuring that an injured, uninsured driver does not draw on the pool of accident-victim insurance funds to which he did not contribute. Caviglia v. Royal Tours of Am., 178 N.J. 460, 471 (2004) citing Rojas v. DePaolo, 357 N.J.Super. 115, 119 (Law Div.2002) (noting section 4.5's "evident" purpose of reducing or stabilizing insurance prices). The legislation thus gives the uninsured driver a very powerful incentive to comply with the compulsory insurance laws: obtain automobile liability insurance coverage or lose the right to maintain a suit for both economic and noneconomic injuries. Id at 132.

Thus, it is irrelevant whether or not Plaintiff was provided with PIP benefits through the Deemer statute. The language of the aforementioned statues is clear: a New Jersey resident is required to maintain New Jersey auto insurance approved by the commissioner of banking and insurance, if said resident, principally garages a vehicle in the state. Here, Plaintiff failed to maintain New Jersey auto insurance and therefore, is barred from any economic or non-economic recovery.

POINT II

SUMMARY JUDGMENT IS APPROPRIATE IN THE WITHIN MATTER

The purpose of the summary judgment procedure is to provide a prompt, business-like and inexpensive means of disposing of a case. **Judson v. People's Bank and Trust Co. of Westfield,** 17 N.J**.** 67(1955). **Rule** 4:46-2 provides that "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged, the moving party is entitled to a judgment or order as a matter of law."

The burden is upon the moving party to exclude any reasonable doubt as to the existence of any genuine issue of material fact. **Judson**. 17 N.J. at 74. All inferences should be drawn in favor of the opponent. **Id.** at 75; **Sokolav v. Edlin**, 65 N.J. Super. 112, 120 (App. Div. 1961). The summary judgment procedure pierces the allegations of the pleadings to show that the facts differ from the allegations. **Judson**, 17 N.J. at 75.

Once the movant demonstrates a prima facie right to summary judgment, the opponent must show the existence of a genuine issue of material fact by competent evidence. **Id.** at 74. The burden then shifts to the opponent to affirmatively

demonstrate the existence of a genuine issue of material fact. **Spiotta v. William H. Wilson, Inc.**, 72 N.J. Super. 572 (App. Div. 1962). If the opposing party offers no opposition or sets forth only immaterial, insubstantial information, the movant is entitled to the relief sought. **Robbins v. Jersey City**, 23 N.J. 229, 240-241 (1957).

Although summary judgment should be granted with caution, that hesitancy should not deprive a party of the procedure when the movant is rightfully entitled to it. **N.J. Sports and Exposition Auth. v. McCrane**, 119 N.J. Super. 457, 469 (Law Div. 1971), aff'd, 61 N.J. 1, 7 (1972). Additionally, summary judgment is not to be denied

> **if other papers pertinent to the motion show palpable the absence of any issue of material fact, although the allegations of the pleadings standing alone may raise such an issue. Summary judgment procedure pierces the allegations of the pleadings to show that the facts are other than alleged. Wade v. Six Park View Corp., 27 N.J. Super. 469, 99 A.2d 589 (App. 1953); Judson v. Peoples's Bank and Trust Co. of Westfield, supra.**

Therefore, the rationale of the **Judson** rule is simply to "provide a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion, clearly shows not to present any genuine issues of material fact requiring disposition at trial". **Judson**, 17 N.J. at 74.

In the case of **Brill v. Guardian Life Ins. Co. of America**, 142 N.J. 520, 533-534 (1995), the Court held that on a motion for summary judgment,

> **the motion judge must engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict, "whether the evidence presents a sufficient disagreement to require a submission to a jury or whether it is so one-sided that one party must prevail as a**

> **matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.3d 202 (1986). That weighing process requires the court to be guided by the same evidentiary standard of proof - by a preponderance of the evidence or clear and convincing evidence that would apply at the trial on the merits when deciding whether there exists a "genuine" issue of material fact. Id. at 254-56, 106 S.Ct. at 2513, 91 L.Ed.2d at 215-16.**

Here, Summary Judgment was appropriate given a genuine issue of material fact does not exist as to Appellant's lack of a New Jersey auto policy at the time of the incident.

Contrary to Appellants' position, the Court did not shift the burden of Summary Judgment to Plaintiff. The court specifically stated:

> MR. WEITZ: May I just add for the record, it's not my burden to establish the facts for the
>
> THE COURT: I didn't say it was your burden, but I said they've raised facts, and there's no facts to dispute that presented to me, that are sufficient to justify me denying the motion. I never said you had the burden.
>
> MR. WEITZ: Thank you, Your Honor.

(1T:11:3-10). Per the Court's own statements, the burden of Summary Judgment was not shifted to Appellant. Rather, the motion was properly granted after the evidence showed there is no genuine issue of material fact. Summary Judgment was correctly entered in favor of Respondents.

POINT III

THE COURT WAS NOT REQUIRED TO CONSIDER PLAINTIFF'S SUPPLEMENTAL CERTIFICATION ATTACHED TO HIS MOTION FOR RECONSIDERATION

For the first time, throughout the course of Appellant's case, he provided a certification wherein, he states that his vehicle was principally garaged in the state of Florida. (Pa059-061). This supplemental certification was provided in support of Plaintiff's Motion for Reconsideration of the Court's order granting Defendants Summary Judgment. (Pa111). He argues the same should have been considered given it is the only piece of "objective evidence," as to where his vehicle was principally garaged. Respondents cannot agree that a self-serving certification wherein Plaintiff now conveniently attests that his vehicle was principally garaged in Florida as "objective evidence." (Pa103-106). Frankly, this certification could have been brought forth at any time prior to the Motion for Reconsideration, including in discovery, his deposition testimony, and in support of his opposition/cross-motion to Defendants' Motion for Summary Judgment. (Pa096-101). Appellant failed to do so and simply wanted a second bite at the same apple.

As to Motions for Reconsideration, R. 4:49–2 provides, in part, "[t]he motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the

court has overlooked or as to which it has erred." (Emphasis added). Cummings v. Bahr, 295 N.J. Super. 374, 382 (App. Div. 1996).

Here, the Court has not erred nor overlooked any of Plaintiff's legal or factual presentations argued in opposition to Defendant's Motion for Summary Judgment. The court has not erred in its analysis of the law. The Court did not fail to consider any relevant objective evidence. A motion for reconsideration is not the appropriate time to present new facts and/or theories that could have been presented before. Cummings v. Bahr, 295 N.J. Super. 374, 382 (App. Div. 1996). Appellant's position that he allegedly kept his vehicle in Florida predicates the Reconsideration motion, and he should have provided a certification in opposition to Defendant's Motion for Summary Judgment. Plaintiff's failure to timely submit his certification, does not equate to a judicial error. The trial court explained denying Appellant's Motion for Reconsideration:

> The Court: In his deposition he testified his current address is in Florida. This was a seasonal home until December of '23 when he moved there. On October 6th, '23 in applying the PLIGA he gave this address. He also said he moved permanently on November 30th. The argument about the certification is the only thing different than what was provided at the time. This is not -- new evidence can be considered, but this is not evidence that could not have been provided on the first application. It was submitted after the arguments were made and the proofs done. There's no reason it could not have been provided at the first time. Therefore, the motion for reconsideration will be denied. Thank you.

[2T:8:1-18][2]. Plaintiff's Motion for Reconsideration was properly denied. (Pa113).

POINT IV

APPELLANT IS NOT ENTITLED TO ANY COSTS

It is perplexing and undeniably bizarre that Appellant continues to seek costs related to the filing of a credible Motion for Summary Judgment. It is quite obvious that Respondents' underlying Motion for Summary Judgment was not frivolous when the trial Court agrees with Respondents.

Frankly, Appellant's continued request for costs is frivolous. First and foremost, it appears that Appellant's justification for costs, is empathy. He repeatedly states that this is an 83-year-old Plaintiff, who is seeking compensation for proven losses he suffered while visiting New Jersey. Why does Appellant continue to note his age? Why is it relevant at all? The answer is: there is no relevance, it is a ploy to garner sympathy given the facts do not support his position.

Additionally, Appellant was not visiting New Jersey at the time of the October 26, 2021 accident. He was living here. This was made abundantly clear through his Complaint, Answers to Interrogatories, NJ PLIGA application, deposition testimony, and medical records. (Pa003, Pa03-057, (Pa018, Magee Dep T: 11:20-21), (Pa031, Magee Dep T: 38:13-14).). Nowhere

[2] 1T: Transcript of the Court's Oral Argument Hearing of Respondents' Motion for Summary Judgment on February 28, 2025
2T: Transcript of the Court's Oral Argument Hearing of Appellant's Motion for Reconsideration on March 28, 2025

in the record, did he represent that he was primarily residing in Florida. Even during his deposition, Appellant noted that his Marlton, NJ home was his primary address, while his Verona Beach, FL home was seasonal. (Pa015-016, T:7:21-8:6). This is the exact fact scenario, where the "No Pay No Play," statute would apply.

Respondents moved for Summary Judgment in the underlying action, not to delay trial or "to exploit" a technicality in the statutory construction, but because the motion was warranted. Respondents' Motion for Summary Judgment was and still remains supported by the No Pay No Play statutes, aforementioned case law and legislative intent. New Jersey's legislature is clear:

> N.J.S.A. 39:6A-4.5 was adopted in 1997 to limit the ability of persons injured in motor vehicle accidents to sue persons responsible for their injuries. Craig & Pomeroy, New Jersey Auto Insurance Law § 15:1 (2018). "N.J.S.A. 39:6A-4.5(a) advances a policy of cost containment by ensuring that an injured, uninsured driver does not draw on the pool of accident-victim insurance funds to which he did not contribute. The 1997 legislation limits a plaintiff's ability to sue when he or she has not complied with the compulsory insurance law and "gives the uninsured driver a very powerful incentive to comply with the compulsory insurance laws: obtain automobile liability insurance coverage or lose the right to maintain a suit for both economic and [non-economic] injuries." Ibid.

Scholes v. Hausmann, 2018 WL 4997186, at *2 (N.J. Super. Ct. App. Div. Oct. 16, 2018) citing N.J.S.A. 39:6A-3, -3.1, -3.3, -4.5; see also Caviglia v. Royal

Tours of Am., 178 N.J. 460, 466 (2004) Chalef v. Ryerson, 277 N.J. Super. 22, 26-7 (App. Div. 1994), see also N.J.S.A. 39:6A-4.5. (Pa070). Appellant was required to obtain New Jersey auto insurance approved by New Jersey's Commissioner of Banking and Insurance, while primarily keeping his vehicle in New Jersey. N.J.S.A. 39:6A-3. Appellant failed to do so, which substantiates Respondents' Motion for Summary Judgment and renders Appellant's claims for attorney's fees and costs under R. 1:4-8, void.

CONCLUSION

For the foregoing reasons, Respondents, Barbara O'Breza and John O'Breza, respectfully request that this Court deny Appellant's Appeal and affirm the trial court's February 28, 2025 and March 28, 2025 orders.

LAW OFFICE OF ALPHONSO H. IBRAHIM
Attorney for Respondents

/s/ *Nishi Patel*

_____
Nishi Patel, Esq.

Dated: July 24, 2025

ROBERT MAGEE, *PLAINTIFF/APPELLANT* v. BARBARA OBREZA; JOHN OBREZA; JOHN DOE #1-10 (fictitious names designating the owner and/or operator); ABC CORP. #1-10 (fictitious corporations designated as owners and/or operators) *DEFENDANTS/RESPONDENTS*	§ SUPERIOR COURT OF NEW JERSEY § APPELLATE DIVISION § § CIVIL ACTION § § APPEAL FROM FINAL JUDGMENT § OF THE SUPERIOR COURT OF § NEW JERSEY, CAMDEN COUNTY § DOCKET NO. CAM-L-0613-23 § § APPELLATE § DOCKET NO. A-002264-24 § § SAT BELOW: § THE HON. DONALD J. STEIN, J.S.C. § § SUBMITTED: AUGUST 11, 2025 §

APPELLANT'S REPLY BRIEF IN SUPPORT OF APPEAL FROM FINAL JUDGMENT, SUMMARY JUDGMENT ORDER OF FEBRUARY 28, 2025, DENIAL OF RECONSIDERATION MARCH 28, 2025, THE HON. DONALD J. STEIN, J.S.C., PRESIDING

ON THE BRIEF:
Jeremy M. Weitz, Esquire
jweitz@injuryline.com
ID# 018842009
SPEAR, GREENFIELD, RICHMAN, WEITZ & TAGGART, P.C.
10,000 Lincoln Drive East
One Greentree Centre, Suite 201
Marlton, New Jersey 08053
(856) 985-4663
Attorney for Plaintiff/Appellant, Robert Magee

APPELLANT'S REPLY BRIEF

Respondents' brief relies upon two (2) unpublished Appellate Division cases in support of their position seeking to affirm Summary Judgment granted by the trial Court: Thomas v. Bobadilla, No. A-1834-15T4, 2017 WL 3400814, at *1 (N.J. Super. Ct. App. Div. Aug. 9, 2017); and Bell v. Hardy, No. A-1954-23, 2025 WL 37362, at *1 (N.J. Super. Ct. App. Div. Jan. 7, 2025). These citations are not only differentiable from the factual record and circumstances at bar; they also provide a roadmap as to how to pursue the affirmative defense of *No-Pay, No Play* and how in the matter-at-bar, Respondent is seeking to both shift the burden of proof and turn the summary judgment standard on its head.

Thomas v. Bobadilla was a case where the claimant was seeking first-party benefits from the insurer, in the form of uninsured motorist benefits **statutorily required** pursuant to the Deemer Statute. In Thomas, the insurer sought to disclaim coverage that would have ordinarily triggered pursuant to the Deemer Statute, based upon evidence garnered in the record, which established that the claimant had separated from her spouse, moved to New Jersey where she had been living with vehicle for seven (7) months at the time of incident; and that she had failed to re-register and update her insurance to reflect her move to New Jersey.

Likewise, Bell v. Hardy involved a first-party **Denial** of PIP coverage conversion pursuant to the Deemer Statute. In Bell, the first-party insurer "…denied plaintiff's claim for PIP benefits since it concluded plaintiff made a material misrepresentation on his policy application." Bell, No. A-1954-23, 2025 WL 37362, at *4 (N.J. Super. Ct. App. Div. Jan. 7, 2025). In said matter, there was factually established evidence that the claimant had applied for a policy of insurance indicating residence and garaging in North Carolina; never identifying a second address in New Jersey. The insurer in Bell even acknowledged via deposition testimony that 'dual residency' is sometimes recognized by the carrier, but that such dual residency had never been represented by the claimant. Bell, No. A-1954-23, 2025 WL 37362, at *3 (N.J. Super. Ct. App. Div. Jan. 7, 2025). The insurer was able additionally establish objective evidence as to the subject vehicle's location, via electronic detection, that the vehicle had been confirmed operated in New Jersey on five (5) occasions, in the year leading-up to the incident. Moreover, the claimant had changed his mailing address with the insurer to New Jersey, prior to the subject incident; but never updated his vehicle registration or insurance to indicate the New Jersey address. The evidence relied upon in support of the ultimate dismissal in Bell, was provided by the claimant's insurer; who again, denied the claim for PIP benefits.

The most glaring difference between the two (2) unpublished matters relied upon by Respondent and the matter-at-bar, is that Appellant herein was afforded **New Jersey PIP coverage** by his insurer Allstate (the same insurer who denied coverage in the Thomas case). Accordingly, Appellant reiterates he was not culpably uninsured on the date of incident and as such, the *No-Pay, No Play* statute is inapplicable.

Moreover, the evidentiary records in both Thomas and Bell were sufficient for the Court to make a determination based upon objective evidence, that the subject vehicles were either principally garaged or *should-have-been* registered, based upon established residency, in the State of New Jersey. In Thomas, it was an admission by the claimant that she had **moved** to New Jersey following a marital separation and had lived in New Jersey for seven (7) months, prior to the incident. In Bell, there was objective evidence that the subject vehicle had been operated on multiple occasions in New Jersey within the year prior to the incident, as well as the claimant's changing of mailing address to New Jersey, prior to the incident's occurrence. More importantly, Bell involved a disclaimer of insurance coverage due to material misrepresentation and fraud; thereby leaving the claimant uninsured and therefore making the *No-Pay, No Play* statute applicable.

In the instant matter, the evidence relied upon by Respondent in support of Summary Judgment establishes nothing more than that Appellant was a dual resident between New Jersey and Florida, for nearly two (2) decades prior to the subject incident. Respondent has established only that the subject vehicle was operated in New Jersey on the date of incident. In fact, Appellant's supplemental certification with regard to vehicle usage provides the only evidence beyond the *day-of*, relative to operation/garaging of the subject vehicle; and establishes that the vehicle was kept more in Florida than in New Jersey. Finally, Appellant was not uninsured and/or culpably uninsured, having been afforded *Deemer* benefits by Allstate; who did not themselves disclaim coverage for any material misrepresentation or fraud.

Summary Judgment was incorrectly granted in this matter. First, the Court misapplied the applicable law relative to New Jersey's *No-Pay, No Play* statute and sanctioned an insured individual. Second, the Court drew inferences and conclusions based upon the facts presented, which were favorable to the moving party as opposed to viewing the evidence in the light most favorable to the non-moving party. Reading the Thomas and Bell opinions only highlights how devoid the evidentiary record in this matter is, relative to the facts necessary to establish the *No-Pay, No Play* affirmative defense.

CONCLUSION

Based upon the foregoing, Appellant, Robert Magee, respectfully requests that this Honorable Court reverse Summary Judgment granted to Respondents on February 28, 2025, remanding this matter for trial; and Granting Appellant's Cross-Motion for Costs and Fees against the Respondents.

Respectfully submitted,

SPEAR, GREENFIELD
RICHMAN, WEITZ & TAGGART, P.C.

/s/ Jeremy M. Weitz

JEREMY M. WEITZ, ESQUIRE

Dated: August 11, 2025