SHERRI A. AFFRUNTI, Plaintiff-Appellant, v. REED SMITH LLP, Defendant-Appellee.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002477-24T2 CIVIL ACTION ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MERCER COUNTY DOCKET NO: MER-L-2297-20 Sat Below: Hon. R. Brian McLaughlin, J.S.C.

(AMENDED) BRIEF OF PLAINTIFF-APPELLANT SHERRI A. AFFRUNTI

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Plaintiff-Appellant Sherri A. Affrunti ("Plaintiff") respectfully submits this (Amended) Brief in support of her Appeal from the Law Division's November 25, 2024 Omnibus Order wherein the trial court, in a case presenting issues of first impression and substantial importance under the New Jersey Diane B. Allen Equal Pay Act ("NJEPA" or the "Act"), erroneously construed the statute, improperly barred Plaintiff's pay discrimination claims and damages preceding July 1, 2018, and wrongly disallowed full comparator compensation discovery from her former single entity employer, Defendant-Appellee Reed Smith LLP ("Defendant" or the "Firm").

PRELIMINARY STATEMENT

On April 24, 2018, New Jersey's Governor announced he had "signed into law the most sweeping equal pay legislation in America", stating emphatically:

> ***Today, we are sending a beacon far and wide to women across the Garden State and in America - the only factors to determine a worker's wages should be intelligence, experience and capacity to do the job. Pay equity will help us in building a stronger, fairer New Jersey.***
>
> [(Pa0289 (Legislative History Checklist (emphasis added)).]

The NJEPA thereafter went into effect on July 1, 2018, bolstering the Law Against Discrimination ("NJLAD") to provide enhanced remedies for pay discrimination against protected status employees who perform substantially similar work of the same skill, effort and responsibility as those not of a protected class. *Id.*

The NJEPA's Legislative History demonstrates the New Jersey Legislature

intended the Act – including its provisions for enhanced damages through a six-year look back period – to take effect on July 1, 2018 with all of its remedies then fully available to aggrieved employees if at least one act of pay discrimination occurred within the NJLAD's two-year limitations period. *See* (Pa0188-Pa0220 (March 5, 2018 Senate Hearing Transcript)); NJDCR Enforcement Guidance, p.2 (Pa0174).

Indeed, even a cursory review of the Senate Committee's lengthy colloquy during legislative proceedings reveals extensive discussions both favoring and opposing the bill's earlier draft provisions (Pa0188-Pa0220 (March 5, 2018 Senate Hearing Transcript)). These colloquies include discourse over the Act's retroactivity, the extended damages recovery period, the length of the lookback period, the applicable statute of limitations, and the need to bolster the long-standing law against pay discrimination and inequity to empower women and end the long-continuing gender gap in pay (*Id.*).

Most telling, the colloquy discloses the Legislature's rationale for including a start date in the Act so that employers would have time to audit their books and address any pay inequities *before its effective date*. (Pa0203 (Committee Chair noting bill sponsors were working on an amendment to look-back period to provide a time frame other than "unlimited", adding "There's also a start date on the bill that Senator Weinberg could [justify] opening up also trying to give businesses the ability

to audit their own books if it was to become law and clear up some parity.")); *see also* (Pa0218 (Senators' references to amendments)).

Once the amendment to set the July 1, 2018 start date, the 6-year look-back period and other revisions were incorporated into the bill, on March 26, 2018, it passed both houses favorably (Pa0222 (Legislative History Checklist)). At the time of its passage, members of each of the Houses touted the historic achievement for women and their intent to immediately improve the lives of New Jersey citizens. *See*, *e.g.*, (Pa0302 (March 26, 2018 Assembly Vote ("[I]t's our time to vote favorably for women and for the protected class that they matter and that equal pay matters here in New Jersey"))). Commentators, too, hailed the passage of the "landmark bill", reporting "giant step for equal pay", calling it "the nation's strongest effort to cut into salary gap", and touting New Jersey's Act as "the strongest equal-pay law in the nation" (Pa0223 (Legislative History Checklist)).

Contravening the New Jersey Legislature's expressed goal, instead of applying this remedial statute as the bright shining beacon the Legislature intended, here the trial court reduced the Act's effect to that of a dimly-lit candle. In rendering its decision, the trial court committed grave errors in statutory construction and claims dismissal by wholly ignoring the NJEPA's Legislative History as well as the published Enforcement Guidance of the New Jersey Division on Civil Rights

("NJDCR") and, through its acts of reversible error, dismissing all of Plaintiff's claims for pay discrimination predating July 1, 2018 (in essence, finding that no New Jersey plaintiff would receive the full panoply of damages for acts of unlawful disparate pay until the earliest date of July 1, 2024 – six years after the NJEPA's passage) (Pa0003-Pa0012; Pa0018 (Omnibus Order)). The trial court also erred by improperly ignoring the undisputed record that Defendant is a single entity employer and improperly determining that the Act does not require it to produce comparator compensation discovery for FSP comparators who work for its same corporate entity in different states (Pa0013-Pa0018 (Omnibus Order)).

Therefore, for the reasons further discussed herein, Plaintiff respectfully requests that this Court completely reverse the trial court's erroneous findings of statutory construction and claims preclusion, and remand the matter allowing Plaintiff to pursue her full and proper scope of discovery and damages claims.

STATEMENT OF RELEVANT FACTS

Defendant's Single Entity Firm

Defendant is an undisputed single entity, limited liability partnership established in Delaware and headquartered in Pennsylvania (Pa0086, Pa107). It has more than 1,500 lawyers in 30 offices worldwide, including New Jersey (Pa0039,

Pa0062). The Firm operates as one entity and one employer; it has no New Jersey or other U.S.-based subsidiary (Pa108, Pa0084; T1-38).

Defendant's National FSP Employment Class

Defendant employed Plaintiff within its national "class" of "Non-Equity/Fixed Shared Partners" ("FSPs") that included, upon information and belief, approximately 600 partners working across all of the Firm's United States' offices (T1-22, T1-35, T1-36; Pa0081, Pa0084, Pa0094). Defendant's FSPs were routinely and collectively marketed and cross-marketed to service clients both nationally and globally (Pa0082-Pa0083, Pa0103, Pa0107, Pa0108; *see also* Pa0112 at 103:15-103:17 ("Our goal is to have all partners working and having national practices and growing that practice.")).

Defendant collectively established compensation guidelines for all FSPs, collectively communicated business information to FSPs, and annually reviewed and determined compensation for FSPs (including base pay and bonus pay) at one time through one Compensation Committee meeting together in one location (*i.e.*, New York) (Pa0092-Pa0103, Pa0094, Pa0108, Pa0110, Pa0111, Pa0387-Pa0392; T1-35-36, 38).

Defendant regularly distributed to all FSPs quarterly and year-end statistical data which it compiled for its entire Firm-wide FSP class detailing each and every

such partner's file originations, work hours and other income generation data (Pa0084, Pa0388). Defendant told all of its FSPs that, among other things, it reviewed this statistical data annually for comparisons between and among all FSPs in the class when it set compensation (Pa0094, Pa0388).

After each annual Compensation Committee meeting in New York, Defendant announced compensation decisions collectively and individually to all FSPs on the same day under a standardized cover email that also set forth limited "band" and statistical information about pay granted to the entire FSP class (Pa0084, Pa0094-Pa0095, Pa0110-Pa0111, Pa0388).

Defendant's Closed Compensation System

Defendant has a closed compensation system for its FSPs and has admittedly discouraged them from talking to one another about their pay (Pa0087, Pa0113, Pa0336, Pa0351, Pa0368-Pa0369; T1-18, T1-20-21).

Plaintiff's Employment and Work in the Firm as a National FSP

Defendant hired Plaintiff, resident in its New Jersey office, on January 9, 2002 and promoted her to FSP effective January 1, 2006 (Pa0332; T1-21; T1-33).

During Plaintiff's thirteen years as a FSP, she had an assigned office in Philadelphia as well as New Jersey, regularly worked in New York along with several other Firm offices, defended litigation and agency matters in a multitude of

states, worked on complex transactional matters with cross-country teams, and managed other national and international work for multiple and various clients in multiple and various jurisdictions (Pa0082-Pa0083, Pa0087, Pa0095-Pa0103; T1-33, T1-35-36, T1-21-22).

Although Plaintiff annually expressed suspicions that her pay was low compared to male FSPs who performed the same work and that she was not being provided the same opportunities offered to those same male FSPs, the Firm ignored her concerns (Pa0337-Pa0338, Pa0352, Pa0354-Pa0356; T1-18, T1-34-35). Because of the pay and other gender discrimination she experienced unchecked by the Firm throughout her tenure, Plaintiff ultimately resigned on January 11, 2019 (Pa0091, Pa0332, Pa0338; T1-18).

Plaintiff's Final Compensation Payments

Plaintiff was paid her last monthly "salary" installment of her total base compensation by electronic payroll deposit on January 25, 2019 and received her final 2018 "holdback" pay on or about March 26, 2019 (Pa0332).

Plaintiff's Post-Employment Discovery of Grievous Pay Inequities

After her departure from the Firm, Plaintiff first discovered how dramatically underpaid she was compared to male FSPs who performed substantially similar work of the same skill, effort and responsibility during a conversation in May 2020

with one of the Firm's former Equity Partners who had reviewed Firm-wide compensation information (Pa0338; T1-18, T1-24). Specifically, he described her pay as a Firm FSP as "shockingly low" and a mere fraction of what the Firm provided to male FSPs (Pa0338; T1-18, T1-24). Plaintiff additionally discovered that, not only were male FSP comparators being paid at least three to four times the compensation she was provided for substantially similar work, Defendant additionally awarded these same male FSP comparators significant yearly bonuses, which Plaintiff never received (Pa0338).

RELEVANT PROCEDURAL HISTORY

On December 18, 2020, nearly two and a half years after the NJEPA went into effect and wholly within the two-year statute of limitations applicable to NJLAD and NJEPA claims, Plaintiff filed her Complaint including claims for discriminatory pay and pay inequities under the NJEPA and the NJLAD (Pa0038-Pa0062; T1-19, T1-20). Defendant filed its Answer and Affirmative Defenses on January 27, 2021 (Pa0063-Pa0078).

On February 14, 2023, the Law Division entered a Case Management Order which, among other things, compelled Defendant's production of comparator compensation information for a minor subset of 16 New Jersey-based FSPs who were resident in Princeton, New Jersey during the years 2013-2018 (Pa0028; T1-23-

24). The Order, as well as subsequent Orders, preserved Plaintiff's right to later seek full comparator compensation information for the complete national FSP class within which she was employed at the Firm (*e.g.*, Pa0029, Pa0031, Pa033, Pa0037; T1-22-23).

On July 31, 2024, in pursuing mediation, Plaintiff filed a motion to compel the comparator compensation information for the full U.S.-based comparator class for the period of July 1, 2018 through January 11, 2019, while again always preserving her right to pursue additional comparator compensation data for the class (including but not limited to the full statutory look back period) (T1-4, T1-37-38; Pa0003-Pa00018; Pa0081). On the same date, and addressing the same time frame, Defendant filed an "Omnibus Motion for Protective Order to Limit Discovery and Damages" on Plaintiff's NJLAD and NJEPA claims, which motion was, in effect, a motion to dismiss those claims (the "Omnibus Motion") (Pa0002-Pa00017; T1-3).[1]

On August 22, 2024, Plaintiff opposed Defendant's Omnibus Motion and

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[1] On July 31, 2024, Defendant also filed a motion to dismiss Plaintiff's Wage Payment Law ("WPL") claim originally plead at Count Three (Pa0034; Pa0059). Plaintiff opposed this motion as moot because she had previously provided voluntary consent to dismiss that claim after publication of the *Maia* ruling (Pa0034; T1-4-5).

After Oral Argument, the Law Division entered an Order on August 30, 2024 upon Stipulation denying Defendant's WPL motion as moot and dismissing the WPL claim without costs (Pa0034).

cross-moved to compel the production of the full national FSP comparator class compensation information for the entire period of her FSP employment with Defendant due to the continuing pay violations she had experienced (Pa0331). The Law Division held Oral Argument on all of the Motions on August 30, 2024 (T1-3). On November 25, 2024, it entered its Omnibus Order barring Plaintiff from pursuing damages or discovery for her pay discrimination claims before July 1, 2018 and precluding comparator compensation data for the full FSP comparator class within which she had worked at the Firm (Pa0002-Pa0017). Disregarding the undisputed evidence that Defendant is a single entity employer with no U.S. subsidiaries, the trial court wrongly equated the Firm's separate offices as "out of state employers" (Pa0016).

On December 16, 2024, Plaintiff filed a Notice of Motion for Leave to Appeal all matters in the Omnibus Order to this Court, which Defendant opposed on December 23, 2024 (Pa0002). On January 7, 2025, this Court entered an Order denying Plaintiff's Motion (Pa0002).

On January 27, 2025, Plaintiff filed a Notice of Motion for Leave to Appeal with the New Jersey Supreme Court for the claims and discovery preclusion parts of the Omnibus Order arising from statutory construction, which Defendant opposed on February 24, 2025 (Pa0001). A Consent Order was thereafter entered with the

Law Division on February 28, 2025, tolling all deadlines and staying all trial court proceedings pending the determination of Plaintiff's Appeal (Pa0036-Pa0037).

On April 8, 2025, the Supreme Court granted Plaintiff's Motion and summarily remanded this matter to this Court for hearing on the merits (Pa0001).

STANDARD OF APPELLATE REVIEW

The question of retroactivity of a statute, like the dispute here on whether the NJEPA's enhanced remedies should be applied retroactively to Plaintiff's claims, "is a purely legal question of statutory interpretation" subject to plenary review. *Maia v. IEW Constr. Grp.*, 257 N.J. 330, 342 (2024) (finding dispute on application of statutory amendment to New Jersey's Wage Payment and Wage and Hour Laws to be a "purely legal question of statutory interpretation" for *de novo* review); *and see Save Camden Pub. Schs. v. Camden City Bd. Of Educ.*, 454 N.J. Super. 478, 487-88 (App. Div. 2018) (similarly directing that questions of statutory interpretation and statute of limitations are reviewed *de novo*); *W.S. v. Hildreth*, 252 N.J. 506, 518 (2023) (citation omitted) (same).

Discovery rulings based on legal issues, such as whether the NJEPA requires a single entity employer to produce comparator discovery from all of its offices wherever located, are similarly subject to *de novo* review. *Conn v. Rebustillo*, 445 N.J. Super. 349, 353 (App. Div. 2016) (citation omitted).

When an appellate court is charged with interpreting a statute, the Court "owe[s] no deference to the interpretive conclusions reached by the trial court." *See Maeker v. Ross*, 219 N.J. 565, 574-575 (2014); *Save Camden Pub. Schs.*, 454 N.J. Super. at 487-88; *W.S.*, 252 N.J. at 518.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT'S PRECLUSION OF PLAINTIFF'S NJEPA CLAIMS AND BARRING OF THE NJEPA'S ENHANCED REMEDIES FOR DEFENDANT'S PAY DISCRIMINATION PRE-DATING JULY 1, 2018 IS REVERSIBLE ERROR.

(*Raised below: Pa0004-Pa0005, Pa0007-Pa0012; T1 16-21, 28-29, 34, 39*)

In *Maia*, the Supreme Court instructed that the "rule" of statutory construction favoring prospective application of statutes "is not to be applied mechanistically". *Maia*, 257 N.J. at 349 (citation and quotation omitted). The *Maia* Court then laid out the "two-part test" used in New Jersey to determine when a statute should apply retroactively:

> "We must first determine whether the Legislature intended to give the statute retroactive application, and second, whether retroactive application of that statute will result in either an unconstitutional interference with vested rights or a manifest injustice."

[*Id.* (internal quotations and citation omitted).]

Relying on the *Maia* Opinion, the trial court in this case held Plaintiff's NJEPA claims for damages and discovery to be time-barred as an impermissible retroactive application of statutory amendments which came into effect on July 1, 2018[2] (Pa0007-Pa0011; Pa0018). Although the trial court properly recognized the jurisprudence of New Jersey's two-part test for determining retroactive statutory application, the trial judge erred when he found the test was not met simply because the language on the face of the statute promulgated an effective date, *i.e.*, July 1, 2018 (Pa0010).[3]

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[2] Enacted as an amendment to the NJLAD, the NJEPA provides, in relevant part:

> . . . In addition to any other relief authorized by the "Law Against 42 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for discrimination in compensation or in the financial terms or conditions of employment, liability shall accrue and an aggrieved person may obtain relief for back pay for the entire period of time, except not more than six years, in which the violation with regard to discrimination in compensation or in the financial terms or conditions of employment has been continuous, if the violation continues to occur within the statute of limitations. . . . Nothing in this subsection shall prohibit the application of the doctrine of "continuing violation" or the "discovery rule" to any appropriate claim as those doctrines currently exist in New Jersey common law. P.L.1945, c.169 9 (C.10:5-1 et seq.).

[3] The trial court additionally erred in wholly failing to address Plaintiff's arguments that remedies and discovery in the case should be permitted back to her January 1, 2006 FSP promotion under the discovery rule and the continuing violations doctrines. (T1 17-18, 20, 27-29, *cf.* Pa0007-Pa0012) *See Roa v. Roa*, 200

Applying the two-part test properly for statutory construction, it is clear that the NJEPA and all of its enhanced remedies should be granted retroactively where, as here, Defendant's acts of pay discrimination towards Plaintiff continued past the Act's effective date and following through until Plaintiff's resignation from the Firm in January 2019.

A. This Court Should Find That The New Jersey Legislature Intended To Give The NJEPA Retroactive Effect.

(*Raised below: Pa0004-Pa0005, Pa0007-Pa0012; T1 16-21, 28-29, 34, 39*)

The trial court here erred when it ignored the legislative history presented to it and rested its determination that the NJEPA remedies should not be available in this case singularly on the Act's language that it would "take effect on July 1, 2018" (Pa0010). As the New Jersey Supreme Court instructed in *Maia*, the test for determining the propriety of retroactive application for a statute is much more than simply checking the statute's face for an effective date. Instead, "there are *three* circumstances that justify applying a statute retroactively: (1) when the Legislature

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N.J. 555, 571 (2010) (Justice Long) ("At the heart of the discovery rule is the fundamental unfairness of barring claims of which a party is unaware") (internal citations omitted); *and see Roa*, 200 N.J. at 567 (providing 'a series of separate acts that collectively constitute one unlawful employment practice[,]' the entire claim may be timely if filed within two years of 'the date on which the last component act occurred'; *and see* NJDCR Guidance (Pa 0184) ("each paycheck is a separate violation of the [NJEPA]").

explicitly or implicitly expresses an intent that the law be retroactive; (2) when an amendment is ameliorative or curative; or (3) when the parties' expectations warrant retroactive application." *Maia*, 257 N.J. 350 (emphasis added).

Reviewing these circumstances – although only one is needed to be shown – it is clear the New Jersey Legislature expected that an aggrieved employee who suffered acts of pay inequity once the NJEPA became effective on July 1, 2018 would have available the full remedies provided by the law (*see*, *e.g.*, (Pa0289)).

1. The Legislative History shows the Legislature's implicit intent for the NJEPA to be retroactive.

(*Raised below: Pa0010*)

Regarding the Legislature's expression of intent, the *Maia* Court relayed that the Legislature may convey its intent for retroactive application of a statute by expressing it explicitly in the statutory language or implicitly within the pertinent legislative history. 257 N.J. at 350-51.

As discussed above, the relevant New Jersey Legislative History for the NJEPA is replete with evidence demonstrating that the Legislature intended the Act – including its provisions for enhanced damages through a six-year look back period – to go into effect on July 1, 2018 with all of its remedies thereafter immediately

available to aggrieved employees provided that at least one act of discriminatory pay continued within the limitations period (Pa0187-Pa0313).

By way of example but not limitation, a legislative history review shows undeniably that the Senate Labor Committee discussed Senate Labor Bill S 104 extensively at a hearing on March 5, 2018, including both support and objections to the proposed language of the Bill. NJ Legislature (state.nj.us); CSR Transcript of Recording of Senate Labor Committee Hearing of March 5, 2018 (Pa0187-Pa0220). The lengthy colloquy on that date demonstrates the Labor Committee thoroughly discussed the need for the pay equity legislation, received oral testimony, and considered written submissions both supporting and opposing the Bill in an effort to reach a version that would pass the Senate (Pa0187-Pa0220; *and see* Pa0205 (Lutheran Episcopal Advocacy Ministry Director Testimony) ("Jesus . . . said, you're supposed to love your God and love your neighbor. And that's pretty much the whole summation of the law pulled together . . . our neighbors one and all understanding that when all persons in New Jersey receive an equal pay for their hard work, we all do better").

In the March 5, 2018 discourse, there was debate and discussion as to retroactivity as well as the extended period for recovery of damages, the statute of limitations to be applied, and many other of the Act's provisions (Pa0187-Pa0220).

The history demonstrates that the Legislature thoroughly considered all of the proposed statutory language (including, in one version of the Bill, *an unlimited* look back period for damages) and worked to agree upon a final version for passage (Pa0187-Pa0220; *and see* Pa0195 ("[O]n the . . . justice piece, I think the central piece of this bill and what's most important . . . is the back pay . . . "); Pa0203 (Committee Chair) ("I'll make a comment on the look back period, I know you're seeking parity with a two-year look back versus unlimited)).

Following the Senate Labor Committee's March 5, 2018 Hearing, amendments were, in fact, made to the then-proposed Bill, S 104 (as evident in the statutory history), including to limit the look back period to six years (subject to application of the continuing violations and the discovery rule doctrines), require the award of treble damages by an aggrieved person, and revise the effective date of the statute to July 1, 2018 in order to allow for employers to self-audit and avoid potential NJEPA claims. Legislative History Compiled by the NJ State Law Library (Pa0222-Pa0289); *see also* Pa0203 (Committee Chair ("There's also a start date on the bill . . . trying to give businesses the ability to audit their own books if it was to become law and clear up some parity.")). The Senate then overwhelmingly voted to pass the Bill on March 13, 2018 (Pa00290-Pa0297, Pa0222-Pa0289).

Upon passage, Senate Bill S 104 moved to the Assembly for vote as identical Bill A1 – a number that Assemblywoman Pamela Lampitt ("Assemblywoman Lampitt") described as indicating the importance of the legislation for the State of New Jersey. CSR Transcript of Recording of Assembly Vote on March 26, 2018 (Pa0298-Pa0313); NJ Legislature (state.nj.us).

In her remarks as Sponsor, Assemblywoman Lampitt hailed the passage of the Act for breaking down barriers for women and other workers in protected statuses, noting particularly that the legal profession is one of the professions in which women are regularly underpaid from their male counterparts (Pa0300-Pa0301). She also proclaimed:

> By extending the look back to six years, New Jersey will be the only state, New Jersey will be the only state to allow the payback that far for the possibility of a financial compensation. This is not a partisan issue.
>
> As we saw last week, many, many of my colleagues in labor and appropriation voted positively for it. Thank you. No matter what this issue is here and it's our time to vote favorably for women and for the protected class that they matter and equal pay matters here in New Jersey.
>
> [(Pa0301 (emphasis in original)).]

Once the Assembly passed the Bill, it moved to the Governor's desk. (Pa0222). It was signed by the Governor into law on April 24, 2018, upon which date the public was immediately notified:

Fulfilling his commitment to fight gender inequity and support equal pay for women in New Jersey, Governor Phil Murphy today signed into law the most sweeping equal pay legislation in America. The Diane B. Allen Equal Pay Act, named for former State Senator Diane Allen who herself was a victim of bias, strengthens protections against employment discrimination and promotes equal pay for all groups protected by the Law Against Discrimination (LAD).

"From our first day in Trenton, we acted swiftly to support equal pay for women in the workplace and begin closing the gender wage gap," said Governor Murphy. "Today, we are sending a beacon far and wide to women across the Garden State and in America -the only factors to determine a worker's wages should be intelligence, experience and capacity to do the job. Pay equity will help us in building a stronger, fairer New Jersey."

The legislation amends the LAD to make it a prohibited employment practice for employers to discriminate against an employee who is a member of a protected class. Employers will not be able to pay rates of compensation, including benefits, less than the rate paid to employees not of the protected class for substantially similar work, when viewed as a composite skill, effort and responsibility.

The bill also prohibits employers from taking reprisals against employees for discussing their pay with others -and provides for three-times the monetary damages for a violation. Furthermore, the aggrieved employee may obtain relief for up to six years of back pay and it allows courts to award treble damages for violations of the law.

In New Jersey, the median salary for women working full-time is just over $50,000, or $11,737 less than the median annual salary for a man. Across all races, women working full-time, on average, earn 82 cents for every dollar earned by a male doing similar work. African-American women earn about 60 cents for every dollar earned by a white male while a Latina earns only 43

> cents. Overall, the economic cost of this disparity totals an estimated $32.5 billion a year in lost wages and economic power.
>
> According to the National Women's Law Center, a 20-year old woman beginning a full-time year round position may lose $418,800 over a 40-year career in comparison to her male colleague. When that male colleague retires at age 60 after 40 years of work, the woman would have to work 10 more years - until age 70, to close this lifetime wage gap.
>
> The Diane B. Allen Equal Pay Act becomes effective July 1, 2018.
>
> [Governor's Press Release, "Equal Pay for Equal Work Now Law in New Jersey" (emphasis added) (Pa0289).]

Therefore, through the NJEPA's Legislative History and the public pronouncements, it is very clear: the New Jersey Legislature fully intended to set in place and make available to pay equity plaintiffs as of the law's effective date the expanded remedies including but not limited to the six-year damages look-back period if, as the plain statutory language and the NJDCR's Guidance sets forth, the discrimination was continuous and the most recent violation occurred, as here, within the two-year statute of limitations. NJDCR Guidance, at p.2 (Pa0185); *and see* NJDCR Guidance, at p.11 (Pa0184) (explaining the NJEPA is violated each time disparate wages (or other compensation) is paid; "each paycheck is a separate violation of the [NJEPA].").

2. The NJEPA is also ameliorative or curative.

(*Raised below: Pa0010-Pa0011*)

Since the NJLAD's enactment in 1945, employers have been prohibited from discriminating against members of protected classes, such as gender, "in compensation or in terms, conditions or privileges of employment." N.J.S.A. 10:5-12(a); *see*, *e.g.*, *Grigoletti v. Ortho Pharmaceutical Corp.*, 118 N.J. 89, 109-10 (1990) (NJLAD prohibits disparate pay based on gender and allows claims for unequal payment of wages). Notwithstanding, when the Senate Committee was considering the NJEPA's terms for the NJLAD amendment, a number of people reiterated the continuing disparate pay statistics for women and minorities despite the existing law, with one noting particularly that the law's loopholes and inadequacies have allowed pay discrimination to persist:

> Federal and state pay discrimination laws have been on the books for several decades, but loopholes and inadequacies have arisen in those laws that have allowed pay discrimination to persist. It's a large reason why we still see these wage gaps. S104 will fix a lot of these inadequacies in the ways that other panelists have already mentioned, and I will give our strong support to all of those different measures.
>
> [(Pa0210 (Testimony of Andrea Johnson of the National Women's Law Center) (emphasis added)).]

Thus, the NJEPA, as an amendment to the NJLAD and as implied in the Legislative History, was intended to be ameliorative or curative of the loopholes and

inadequacies existing for pay equity claims under the preexisting law (Pa210). For this alternative reason, too, the trial court erred in failing to permit retroactive effect to the statute (Pa0009) and instead barring Plaintiff's claims or pursuit of any remedies back beyond July 1, 2018. *Maia*, 257 N.J. 350.

3. Reasonable expectations of the parties favor retroactive effect.

(*Raised below: Pa0011*)

Still, further, another circumstance to warrant retroactive effect is when a party's reasonable expectation is that the controlling law would apply retroactively to the events giving rise to the civil action. As discussed, the Governor, in announcing the law, told the public that, as of July 1, 2018, aggrieved employees may obtain relief for up to six years of back pay and treble damages for pay inequities despite substantially similar work, when viewed as a composite skill, effort and responsibility (Pa0289). Refusing retroactive application would mean that even though the LAD was amended effective July 1, 2018, a plaintiff could not invoke the six-year lookback period until July 1, 2024 – a finding clearly contrary to statements made at the time of each House vote and in the April 2018 public notice provided for the statute (Pa0289), as well as the likely understanding of employees throughout the State. *See Norcia v. New Jersey City Univ.*, Docket No. PAS-L-1972-

19 (Feb. 10, 2020) (rejecting motion argument that a plaintiff could not invoke the enhanced remedies until July 1, 2024) (unpublished) (Pa00315-Pa0330). Such a result simply does not comport with the colloquy of the Act's Sponsors in the Legislative History or the subsequent announcements regarding the Act to the State's citizens.

Moreover, employers like Defendant, too, should have reasonably expected that once the NJEPA went into effect, its provisions for the 6-year look back period and other enhanced remedies would be retroactively applied. Like any other citizens, employers were immediately notified of the Act's passage into law before the statute's implementation, and its impending July 2018 effective date, including the availability of enhanced damages thereafter.[4] Thus, if Defendant failed to seize the opportunity to conduct a pay equity audit to clear up parity during the grace period the Legislature granted between Act's passage and its effective date, and instead ignored those disparities for employees performing substantially similar work, it was assuming this risk.

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[4] While the amendment enhances remedies, the NJLAD has, since 1945, pronounced that pay inequity based upon a protected classification (such as gender) is unlawful. Considering the preexisting controlling law and prior long-standing prohibitions against pay discrimination under the NJLAD, employers have been for decades on notice of prohibitions against discriminatory wages under the NJLAD (DCR Enforcement Guidance, p.1 (Pa1074) ("The [LAD] has long prohibited discrimination in compensation); N.J.S.A. 10:5-12.

B. Retroactive Effect Of The NJEPA Will Not Result In Manifest Injustice.

(*Raised below: Pa0009*)

The trial court, erroneously finding that the first part of the aforementioned "test" was not met, did not reach the second part: "whether retroactive application . . . will result in either an unconstitutional interference with vested rights or a manifest injustice" (Pa0011). *Maia*, 247 N.J. at 350 (citation omitted). This part of the test requires the Court to "look to matters of unfairness and inequity". *Oberhand v. Dir., Div. of Taxation*, 193 N.J. 558, 572 (2008). Although reliance upon existing law by the affected party and unfairness in changing that law are important factors in the analysis, "a court must weigh the public interest in the retroactive application of the statute against the affected party's reliance on previous law." *Id.*

As stated above, the public interest here is for retroactive application, given the Legislature's notice to employers and employees alike that violations in pay equity after July 1, 2018 would be subjected to enhanced remedies and that, as of the NJEPA's effective date, a "beacon far and wide" was being sent to "women across the Garden State and in America [that] the only factors to determine a worker's wages should be intelligence, experience and capacity to do the job" in a "stronger, fairer New Jersey" (Pa0289 (emphasis added)).

Based on the long-standing prohibitions against discriminatory pay in the NJLAD and the time granted to employers to address pay disparities before the Act's effective date, there would not be any manifest injustice for retroactive application here, because Defendant's only reasonable expectation should have been that its failure to correct pay inequities after July 1, 2018 would invite the pursuit of claims by New Jersey employees, subject it to the law, and permit the imposition of enhanced remedies.

POINT II

THE TRIAL COURT'S PRECLUSION OF MULTI-OFFICE COMPARATOR DISCOVERY FROM A SINGLE ENTITY EMPLOYER IS AN ERROR OF STATUTORY CONSTRUCTION THAT SHOULD BE REVERSED.

(*Raised below: Pa0004-Pa0005, Pa0007, Pa0012-Pa0018; T1 21-24, 28-29, 33-34, 35-36, 39*)

In rendering its Opinion, the trial judge's decision took a left turn – wholly ignoring the cited guidance published by the NJDCR for the NJEPA and, instead, illogically cited to published guidance from the Attorney General's Office concerning discrimination against remote workers – entirely not at issue here (Pa0013-Pa0018). The trial court then went on to state, "[w]ith these principles in mind, it does not follow that comparator data, obtained from out of state employees *working for out of state employers* can be used to find discrimination under a claim

arising under the LAD, and therefore the EPA" erroneously determining Plaintiff is requesting discovery from out of state employers (Pa0017) (emphasis added).

The trial court's decision here wholly disregards the undisputed fact that Defendant is a single entity employer (without state subsidiaries) which constructed its own national FSP class in which Plaintiff worked (Pa0086; Pa107). Plaintiff is not and has never sought discovery from "out of state employers"; what Plaintiff has sought is comparator compensation discovery from Defendant – a single entity employer with an office and employees in New Jersey – of her FSP comparators for the national class of employees that Defendant itself constructed.

Defendant need only have one New Jersey employee to be subject to New Jersey's statutes against discrimination. N.J.S.A. 10:5-12; *see also* NJDCR Enforcement Guidance (Pa0178). In this case, it is undisputed that the Firm does not have a New Jersey or any other US-based subsidiary (T1-38; Pa0086, Pa107). It is also undisputed that the Firm constructed a national class of FSPs working in offices throughout the U.S. who were cross-marketed, expected to work together across the Firm to build national practices, and considered collectively before one Compensation Committee setting annual compensation and bonuses (T1-35-36).

Because Defendant is one single entity, which itself constructed a national FSP partnership class, the trial court's erroneous decision to permit the Firm to

restrict comparator discovery to the single "resident" (or "home based") office against a New Jersey based employee (Plaintiff, here) should be reversed. The NJEPA is clear that "[c]omparisons of wage rates shall be based on wage rates in all of an employer's operations or facilities," wherever located. N.J.S.A. 10:5-12(t);[5] *see also* New Jersey Model Civil Jury Charge 2.24A1 ("In deciding whether the plaintiff was paid less than [a male], you can consider how much the employer paid other employee(s) for substantially similar work even if the comparator employee(s) worked in a different department or a different facility.") (emphasis added).

The published NJDCR Enforcement Guidance for the NJEPA, to which this Court should afford substantial deference but *which was entirely ignored by the trial judge*, directs that wage rate comparisons are to be based on wage rates *in all of an employer's facilities*. NJDCR Enforcement Guidance (Pa0181). *Univ. Cottage Club of Princeton New Jersey Corp. v. NJDEP*, 191 N.J. 38, 48 (2007); *see also Merin v. Maglaki*, 126 N.J. 430, 436-37 (1992) ("We give substantial deference to the interpretation of the agency charged with enforcing an act. The agency's interpretation will prevail provided it is not plainly unreasonable.") .

Indeed, in responding to a Q/A on this very topic, the NJDCR's Guidance sets

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[5] The NJEPA's Legislative History shows the contention to limit discovery to single facilities was discussed and ultimately rejected by the New Jersey Legislature (as is evident from the final statutory language).

forth that a New Jersey employee may bring a claim even if all of her comparators work for the employer outside of the State:

> **Q: When someone makes a claim under the Equal Pay Act, can her wages be compared to the wages of other employees located outside the State of New Jersey?**
>
> Yes. Subsection (t) states that "[c]omparisons of wage rates shall be based on wage rates in all of an employer's operations or facilities." So an employee is not precluded from filing a claim under the Equal Pay Act even if all of her comparators are located outside the State of New Jersey. However, . . . an employer may defend differences in compensation for employees in different geographic locations by showing that those differences are based on differences in cost-of-living or in relevant labor markets in those areas and are not the result of discrimination.
>
> [NJDCR Enforcement Guidance (Pa0181) (emphasis added).]

It follows from this that a plaintiff would be entitled to receive discovery concerning the employees in those other facilities. Thus, national discovery of data for the full comparator class wherever located (inside and outside of New Jersey) is not only wholly appropriate but compelled by the clear statutory language and associated NJDCR Guidance where, as here, Defendant constructed a national FSP class to which it regularly distributed quarterly and annual "firmwide" multi-office statistics, corresponded collectively to the entire FSP class on matters of compensation, and, among other things, had one "Compensation Committee" annually review and render compensation determinations for the whole class on the

same schedule. While Defendant has previously asserted it has "defenses" to comparisons between FSPs in different offices (T1), such defenses, even if ultimately admissible, do not and should not have been held to preclude discovery of the compensation data (T1 29; Pa0181).

CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Honorable Court enter an Order reversing the Law Division's Order, holding that she is not barred from the six-year look back period of the NJEPA for damages or discovery, and finding that Defendant must produce all FSP comparator compensation data regardless of work location in their single entity firm.

Dated: June 10, 2025

Respectfully submitted,

The Law Office of Sherri A. Affrunti, LLC
Attorney for Plaintiff-Appellant / *Pro Se*

s/Sherri A. Affrunti

Sherri A. Affrunti, Esq.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002477-24T2

SHERRI A. AFFRUNTI,

Plaintiff/Appellant,

-vs-

REED SMITH LLP,

Defendant/Respondent.

Civil Action

On Appeal from: Superior Court of New Jersey-Law Division, Mercer County
Docket No. MER-L-2297-20

Sat Below:
Hon. R. Brian McLaughlin, J.S.C.

BRIEF OF DEFENDANT/RESPONDENT REED SMITH LLP IN OPPOSITION TO PLAINTIFF/APPELLANT'S APPEAL

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PRELIMINARY STATEMENT

On May 15, 2024, the New Jersey Supreme Court issued Maia v. IEW Construction Corp., 257 N.J. 330 (2024) which limited recent wage law amendments to prospective application. The holding in Maia dramatically limits Plaintiff Sherri A. Affrunti's ("Plaintiff") claims and damages and, consequently, what would constitute relevant and discoverable information in this matter. As a result of this significant legal development, Defendant Reed Smith (hereinafter referenced as "Defendant", or "Reed Smith") moved for a protective order limiting the scope of discovery and for a declaratory ruling limiting Plaintiff's damages. The trial court granted these motions on November 25, 2024.

By way of factual background, Plaintiff voluntarily resigned from Reed Smith on January 11, 2019, to start her own law firm. Because she did not suffer any adverse action, Plaintiff filed this Complaint asserting various claims under the Diane B. Allen Equal Pay Act (the "Act"), the New Jersey Law Against Discrimination ("NJLAD"), and the New Jersey Wage Payment Law ("WPL") alleging, in large part, that she was not paid equal to her male comparators. In asserting these claims, Plaintiff invoked the Act and the WPL and argued that those statutes permit her to recover damages over a period of six years.

Given the holding in Maia, the trial court ruled that Plaintiff could only recover damages under the Act from July 1, 2018 – January 11, 2019. Not only did

such a finding impact the damages Plaintiff is entitled to recover, it directly impacts the discovery that needs to be completed. Maia confirmed Defendant's prior arguments; namely, the Act is not retroactive and, therefore, any wage information and discovery sought for the time period before July 1, 2018 is not relevant to Plaintiff's claims. Therefore, certain discovery, such asthe comparator evidence, are directly impacted and barred.

Plaintiff's damage claim was wrongly premised on a retroactive statute of limitations argument that would permit Plaintiff to obtain damages dating back to 2013. Now that the Supreme Court has ruled on this issue and confirmed that the statute of limitations is to be applied prospectively, Plaintiff's damages are limited to a six-month time period (July 2018 – January 2019). As such, Defendant sought a declaratory ruling that confirms the limited scope of Plaintiff's damages which was appropriately granted. This ruling necessarily reduced the scope of permitted discovery and what now remains to be completed.

For the reasons discussed more fully below, the trial court's decision should be affirmed.

PROCEDURAL HISTORY

On December 18, 2020, Plaintiff filed a Complaint alleging violations of the Act, the NJLAD and the WPL (Pa0038). Defendant filed its Answer and Affirmative Defenses on January 27, 2021 (Pa0063).

On February 14, 2023, after initial motion discovery practice, the Law Division entered a Case Management Order compelling Reed Smith's production of comparator compensation information from January 1, 2013, through December 31, 2018 limited to the subset of 16-Princeton based FSPs (Pa0026, Pa0417-0418, Pa0421-Pa0422, Pa0428-Pa0430, Pa0442-Pa0443; T1:23-24), as well as certain depositions (Pa0026). On August 14, 2023, a secondary case management order directed the completion of certain agreed-upon fact witness depositions, including that of Michele J. Beilke ("Ms. Beilke") (Pa0028-Pa0029). Defendant then moved for a protective order to quash Ms. Beilke's deposition, and the motion was denied on June 7, 2024 (Pa0032; T1:24-25).

On July 31, 2024, Defendant filed an Omnibus Motion for Protective Order to Limit Discovery and Damages to the same time period, to bar Ms. Bielke's deposition, and to dismiss Plaintiff's WPL claim (Pa0114; T1:3). On the same date, Plaintiff filed a Motion seeking to compel the comparator compensation information for the full national comparator class limited to the period of July 1, 2018 through January 11, 2019 (Pa0080, Pa0088-Pa0089; T1: 4, 37-38). On August 22, 2024,

Plaintiff filed an Opposition Motion and a Cross-Motion, seeking to once again compel the full national class's comparator compensation information for the period of January 1, 2006, through January 11, 2019 (Pa0331, Pa0172-Pa0330, Pa0416-Pa0452). Oral Argument was held on August 30, 2024 (T1:3). On November 25, 2024, the Court entered an Order granting Defendant's Motion to limit Plaintiff's damages to the period of July 1, 2018 through January 11, 2019; granting Defendant's Motion for a Protective Order to limit discovery to the period of July 1, 2018 through January 11, 2019; denying Plaintiff's Motion to Compel discovery from Defendant for the production of nationwide comparator discovery for the period of July 1, 2018 through January 11, 2019; and denying Plaintiff's cross-motion to compel discovery from Defendant for the production of comparator discovery for the period of January 1, 2006 through January 11, 2019 (Pa0001-Pa0016).

On December 16, 2024, Plaintiff filed a motion before the Appellate Division for Leave to Appeal from the November 25, 2024 Omnibus Order and stated that the Court erroneously (i) granted the Firm's Motion to Limit Damages to the period from July 1, 2018 through January 11, 2019; (ii) granted the Firm's Motion for Protective Order to limit comparator discovery to the period from July 1, 2018 through January 11, 2019 and for "home office" employees only (iii) granted the Firm's Motion for Protective Order to bar the deposition of Ms. Beilke (iv) denied

Plaintiff's motion to compel the production of all national comparator compensation…for the period from July 1, 2018 through her final paycheck tendered in March 2020; and (v) denied Plaintiff's Cross-motion to compel the production of all national comparator compensation data…for the period from January 1, 2006 through the last paycheck tendered in March 2020. Defendant opposed the application. The Appellate Division denied Plaintiff's Motion for Leave to Appeal on January 7, 2025 and stated the following:

> Movant has not demonstrated sufficient justification to overcome the strong policies disfavoring piecemeal review of litigation. Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008). In addition, the trial court is afforded substantial deference in its ongoing management of discovery or other pretrial matters. Payton v. N.J. Tpk. Auth., 148 N.J. 524, 559 (1997).

Thereafter, on January 30, 2025, Plaintiff filed a Motion with the Supreme Court for Leave to Appeal the Appellate Division January 7, 2025 Order declining interlocutory review of the November 25, 2024 Omnibus Order. In this appeal, Plaintiff abandoned her request to challenge the trial court's decision barring the deposition of Michele Beilke. This omission is a clear indication that Plaintiff herself recognizes the outlandish nature of her discovery requests and highlights that her demands amount to little more than a fishing expedition.

On April 11, 2025, the Supreme Court issued an Order granting the motion for leave to appeal and remanded the matter to this Court for consideration on the merits. This appeal followed.

STATEMENT OF FACTS

The facts relevant to this application are limited. Plaintiff's narrative in her brief in support of her Appeal from the Law Division's November 25, 2024 Omnibus Order contain superfluous and irrelevant information. The following facts are relevant to this Court's inquiry: (1) the Act went into effect on July 1, 2018 (2) Plaintiff resigned from Reed Smith on January 11, 2019 and (3) Plaintiff filed her complaint on December 18, 2020.

STANDARD OF REVIEW

An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is de novo. See In re Ridgefield Park Bd. Of Educ., 244 N.J. 1, 17 (2020) (agency's interpretation of a statute). It is well-established that appellate review is not an avenue for challenging the mere dissatisfaction with the trial court's ruling but rather for addressing issues of legal injustice. In this case, there is no showing of an injustice – the trial court made its decision based on clear Supreme Court precedent. The trial court's decision to limit Plaintiff's damages and discovery correctly interpreted the Supreme Court's decision in Maia. Interestingly, Plaintiff cites to Maia as the appropriate framework for the standard of review by this court, yet, as set forth below, she presented the arguments set forth in her papers directly to the Supreme Court in Maia and they were rejected by the Supreme Court.

Plaintiff's prior counsel, James Burden, Esq. filed an amicus brief and argued Maia in the Supreme Court of New Jersey[1]. As this Court will see from the oral argument presented by Mr. Burden, he conflates the facts of this case with the facts of Maia. In relying upon an unpublished trial court decision from 2020 (Norcia v New

[1] A video recording of the argument can be found on the Supreme Court's website.

Jersey City University[2], Superior Court of New Jersey, Law Division, Feb. 10, 2020)(Hon. Bruno Mongiardo, J.S.C.), Plaintiff's prior counsel argued that the Supreme Court should adopt the trial court's analysis of the Act and apply it to the Wage Payment Law ("WPL") and New Jersey Wage and Hour Law ("WHL") in Maia. (See Oral Argument at Part 2 at 54:20.) The New Jersey Supreme Court clearly rejected his arguments and any contrary rulings in the Norcia Decision.

During oral argument, Justice Solomon noted that the arguments presented by Mr. Burden on the statute of limitations did not make practical sense. Justice Solomon gave an example of a case being filed one day before and one day after the statute took effect and the dramatic difference there would be in the application of it using Plaintiff's analysis in the Maia case which is also the Plaintiff's argument in the present matter. According to Plaintiff, if she had filed her case one day before the effective date of the statute, the statute of limitations for her matter would be two years meaning her damages would be limited to the time period July 1, 2018 to January 11, 2019 and if she filed her case one day after the statute took effect, her damages would include the time period January 11, 2013 to January 11, 2019. The Supreme Court understood that the Plaintiff was arguing for retroactive application of the statute and disagreed with that analysis and ruled that it would have prospective application only.

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[2] See Pa0314

As such, there has been no misapplication of the law here, the trial court's decision should be affirmed.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY BARRED DAMAGES AND DISCOVERY PREDATING JULY 1, 2018.

A court can limit discovery through an order of protection if the discovery sought is unduly burdensome or overbroad. See James v. Chevron U.S.A., 301 N.J. Super. 512, 546 (App. Div. 1997), *aff'd sub nom.* James v. Bessemer Processing, 155 N.J. 279 (1998); In re Pelvin Mesh/Gynecare Litig., 426 N.J. Super. 167, 196 (App. Div. 2012); Isetts v. Borough of Roseland, 364 N.J. Super. 247, 262 (App. Div. 2003).

Plaintiff argues that the trial court judge erroneously concluded that the two-part test set out in the Maia Opinion was not met "because of the language in the statute promulgating an effective date," (p. 9) i.e., July 1, 2018 (Pa0007-Pa0008). In Maia v. IEW Constr. Grp., 257 N.J. 330 (2024), the Supreme Court of New Jersey sought to determine whether an amendment to a statute is retroactive from its effective date. Here, the trial court simply followed the binding precedent and applied the statutory construction set forth in Maia. The Court in Maia examined the statutory construction of the Wage Payment Act and WHL; however, the construction of the law, the additional damages provided, the timing of the enactment of the law, and the underlying public policies for implementation are

nearly identical to the Act in question here. Specifically, both statutes contain the same "six year look back," additional "legal consequences" such as economic damages, and both use the language "shall take effect immediately." Taking all of the foregoing into consideration, the Maia court found the statute was to apply **prospectively**. 257 N.J. at 351-52. Similar to the Maia court's finding, the Act should apply prospectively limiting Plaintiff's potential damages to the time frame of July 1, 2018 – January 11, 2019.

The trial court agreed and found that because there is no discernable argument for the Act to be applied retroactively, when applying Maia, the Act's effective date of July 1, 2018 precluded Plaintiff from seeking damages and discovery prior to the effective date. Pa0001. Thus, the Court concluded that Plaintiff's scope of damages and discovery should be limited to the effective date of the Act, July 1, 2018, to the date of the Plaintiff's voluntary departure from Reed Smith on January 19, 2019. Pa0001.

A. Nothing Indicates The Act Was Intended To Be Retroactive And The Test In Maia Confirms That.

In Maia, the Court held that an amendment ("Chapter 212") added "substantive rights including new causes of action, defenses and damages to [both] the WPL and WHL, and [extended] the statute of limitation for WHL claims." 257 N.J. at 352. The Court further held that the application of Chapter 212 is to be applied

prospectively from the effective date of enactment, and **not retroactively**. Ibid. Thus, the Maia Court held that claims which accrued before Chapter 212's effective date are not covered by Chapter 212's extension of the statute of limitations. Id. at 351.

Plaintiff submits that the relevant New Jersey Legislative History "is replete with evidence the Legislature intended the NJEPA be retroactive." (Pb at p. 12). However, Plaintiff's focus on the Legislative History of the Act only furthers the Defendant's argument and its reliance on Maia. While the legislative history indicates that there was a discussion about whether the lookback period would apply immediately to a six-year period, when the legislature finalized the Act, it did not explicitly state that the Act would apply retroactively. When legislative intent does not explicitly or implicitly suggest a statute's retroactive application, courts are hesitant to do so. Maia, 257 N.J. at 351-52. The legislature's failure to include such language means that despite all the back and forth cited by Plaintiff in her moving brief, the statute was to take "effect immediately" which carries with it a prospective application. Such an application is borne out by the fact that Plaintiff has failed to cite any precedent which would support her position.

Of relevant issue in Maia was whether there was "clear evidence of [legislative] intent that [the amendment] should apply to cases arising before [the amendment's] enactment." Id. at 349. (quoting Landgraf v. USI Film Products, 511

U.S. 244, 286 (1994)). The Court in Maia used a two-part test to determine if a statute should be applied retroactively; first, whether a retroactive application was intended by the Legislature; and second, whether a retroactive application will "result in either an unconstitutional interference with vested rights or a mangiest injustice." 257 N.J. at 349. Because the test fails without both parts satisfied, one must only look to the first part to find, as the Court in Maia found, that no such retroactive application exists. See Pa0001.

The first part of the Maia test, whether a retroactive application was intended by the Legislature, is divided into three circumstances: (1) when the intent of the Legislature for retroactivity was either explicit in the statute or implied; (2) when an amendment is ameliorative or curative; or (3) when parties' expectations warrant retroactive application. Ibid.

The trial court applied this same inquiry articulated in Maia, to the present action, to find whether the Act's temporal scope of application is either retroactive or prospective. In conclusion, the trial court correctly found that because the legislature has clearly expressed an intent for the Act to take effect on July 1, 2018, there can be no implied retroactivity. See Pa0001.

Plaintiff argues that the trial judge failed to consider the three circumstances that justify applying a statute retroactively. Plaintiff further argues that the New Jersey Legislature intended to be given retroactive effect. (Pb at p. 11). However,

not only did the trial judge apply and conduct an analysis of the three circumstances, but came to the conclusion that retroactive effect was not intended by the Act and that Defendant's Motion for a protective order to limit the scope of comparator discovery and the motion to limit Plaintiff's damages to a particular period should be granted because the three circumstances to find legislative intent for retroactivity do not apply to the Act. See Pa0001.

For circumstance (1), an express or implied retroactive application, the Legislature explicitly promulgated an effective date for the Act. See P.L. 2018, c. 9, § 6 ("This act shall take effect on July 1, 2018."). Per the Supreme Court in Maia, "New Jersey courts have repeatedly construed language stating that a provision is to be 'effective immediately' or 'effective immediately on a given date,' to signal **prospective** applicative because it '[bespeaks] an intent contrary to, and not supportive of, retroactive application.'" 257 N.J. at 352 (quoting Pisack v. B&C Towing, 240 N.J. 360, 371 (2020); Cruz v. Cent. Jersey Landscaping, 195 N.J. 33, 48 (2008) (emphasis in original). See also State v. Lane, 251 N.J. 84, 96 (2022).

In her brief, Plaintiff argues that the Act was (2) "as expressed in the Legislative history, intended to be ameliorative or curative." (Pb at p. 15). Plaintiff's argument is based upon her own conjecture and this argument was rejected by Judge Soloman at the Maia oral argument when raised by her former counsel. The test to determine whether or not an amendment to a statute is ameliorative or curative looks

at whether the amendment is curing a perceived imperfection or misapplication of a statute; not, whether the amendment is changing the intended scope or purposes of an original act. Maia, 257 at 351 (citing Nelson v. Bd. Of Educ., 148 N.J. 358, 370 (1997)). In the instant matter, the Act is not clarifying an existing statute, but rather, "[adding] substantive rights including new causes of action, defenses, [damages,] and [extending the statute of limitations for claims]." Id. at 352. Thus, the Act is neither ameliorative nor curative to existing law but is substantive in nature.

The last circumstance (3) examines the reasonable expectations of the parties as they pertain to the controlling law at the relevant time. Id. at 351. Although Plaintiff makes an unsubstantiated argument that "the reasonable expectation of employers (like Reed Smith) …should be for retroactive application," there is no factual support for such a position. (Pb at p. 16). If there was a reasonable expectation that the controlling law applied retroactively at the time of events giving rise to an action, then a retrospective application may be warranted. Ibid. However, there is nothing in the Act to signal that a retrospective application be warranted and therefore this prong (3) of the test is inapplicable.

B. The Supreme Court's Holding In Maia Confirms That The Act Is To Be Applied Prospectively, And Plaintiff Is Therefore Only Potentially Permitted To Recover Damages And Discovery Under A Limited Time Frame.

The holding in Maia mandates that Plaintiff's damages, and therefore

discovery, is limited in time[3]. With respect to Count One (a violation of the Act), even if Plaintiff can establish liability– which there is no evidence for at this stage – Plaintiff is only permitted to recover damages under the Act for a very limited time frame of July 1, 2018 – January 11, 2019. Plaintiff's damages claim is wrongly premised on the amendment to the Act that would permit Plaintiff to obtain damages dating back to 2013. Now that this legal and factual theory has been rejected by the Maia decision, Plaintiff's damages, even if she can state a claim, are extremely limited in time.

And if damages are limited, it must follow that Plaintiff's discovery requests must be likewise limited. While discovery is broad, it is not unlimited and should be circumscribed when appropriate. Serrano v. Underground Utilities Corp., 407 N.J. Super. 253, 268 (App. Div. 2009). "While the standard of relevancy is a liberal one, it is not so liberal as to allow a party to roam in shadow zones of relevancy and to explore matter which does not appear germane merely on the theory that it might become so." Justiano v. G4S Secure Solutions, Inc. 291, F.R.D. 80, 83 (D.N.K. 2013). Although permitted pre-trial discovery is broad, it is not "unlimited." Berrie v. Berrie, 188 N.J. Super. 274, 282 (Ch. Div. 1983). Indeed, "[m]eandering expeditions which seek irrelevant, duplicative, oppressive or burdensome discovery

[3] The implication regarding the NJLAD claim is set forth in more detail in Point I(D), supra.

are not permitted." HD Supply Waterworks Group v. Director, Div. of Taxation, 29 N.J. Tax 573, 583 (2017). These limitations on pre-trial discovery exist "to avoid placing undue burdens upon litigants or imposing unfair conditions upon access to relevant information." Id. at 584.

Although the issue of time limitations was already analyzed in Maia as applied to the Act, Plaintiff argues that the trial court erred in denying the damages and discovery without discussion of the argument that Plaintiff was unaware that she was being discriminated against and should therefore allow for her pursuit of discovery and damages to begin in January 2006. Without any evidence, Plaintiff argues that she was being discriminated against for the entirety of her time at Reed Smith and seeks salary discovery dating back to 2006. Plaintiff is requesting permission to undergo a fishing expedition for information that is not relevant to her limited claim. The trial court correctly denied Plaintiff's discovery requests and preserved a reasonable pursuit of discovery and damages.

C. Because There Is No Retroactive Effect Of The Act – The Question Of Manifest Injustice Is Irrelevant.

The second part of the Maia test asks "whether retroactive application…will result in either an unconstitutional interference with vested rights or a manifest injustice." (Pa0009). Because the trial court found that the first part of the Maia test was not met, there is no need to apply this question. In the instant matter, Plaintiff

argues that this finding was erroneous and that the retroactive effect of the Act would not result in any manifest injustice. Again, Plaintiff fails to rely this argument on anything substantive and simply states that "the public interest here is for retroactive application." (Pb at p. 17). The first portion of the two-question prong in Maia was reviewed and concluded here repeatedly. The Legislature did not intend to give the statute retroactive application and therefore the question of manifest injustice is a moot point.

POINT II

THE TRIAL COURT CORRECTLY FOUND THAT REED SMITH IS NOT CONSIDERED A NEW JERSEY EMPLOYER SUBJECT TO PRODUCTION OF MULTI-OFFICE COMPARATOR DISCOVERY.

Plaintiff submits that the trial court's limitation of comparator compensation discovery to the New Jersey office is erroneous because "wage rate comparison are to be based on wage rates in all of an employer's facilities." (Pb at p. 23) Univ. Cottage Club of Princeton New Jersey Corp. v. NJDEP, 191 N.J. 38, 48 (2007); see also Merin v. Maglaki, 126 N.J. 430, 436-37 (1992). However, this argument is misplaced and completely discounts what is and is not considered relevant evidence.

"[All]" relevant evidence is admissible, except as otherwise provided by the Rules of Evidence or by law." See Hrymoc v. Ethicon, 254 N.J. 446, 464 (2023) (citing N.J.R.E. 402). "Relevant evidence' means evidence having a tendency in

reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. Conversely, irrelevant evidence does not, "have any sufficient relationship to any material fact actually in issue in [a] case." State v. Jones, 346 N.J. Super. 391, 405 (App. Div. 2002) (citing N.J.R.E. 401). Whether a fact is material, "looks to the relation between the propositions for which the evidence is offered and the issues in the case." See State v. Higgs, 253 N.J. 333, 358 (2023); State v. Hutchins, 241 N.J. Super. 353, 359 (App. Div. 1990); State v. Allison, 208 N.J. Super. 9, 17 (App. Div. 1985), *certif. den.*, 102 N.J. 370 (1985).

In the instant matter, the discovery of comparator compensation data as it relates to Plaintiff's unequal pay claim has already been completed. The discovery provided was appropriately limited to comparators with the same partnership status at the same location in which Plaintiff was an employee, at Defendant's Princeton, New Jersey location. Plaintiff seeks additional comparator discovery for total compensation and gender data for all FSPs at every Reed Smith office throughout the United States over the course of nearly 15 years.

Under the Act (and thus the LAD), an employer cannot pay an employee, "who is a member of a protected class at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for *substantially similar work, when viewed as a composite of skill, effort and responsibility.*" N.J.S.A. 10:5-12(t) (emphasis added). The Act

further states that, "[comparisons] of wage rates shall be based on wage rates in all of an employer's operations or facilities." Id. The statute is unclear as to whether the Legislature intended for the operations or facilities to include those either only in New Jersey, globally, or both if the employer is New-Jersey based, See N.J.S.A. 10:5-1 (LAD "Findings Declarations"). To add, there is no case law interpreting whether wage and gender data from an out-of-state employer whose worksite is located outside of the State of New Jersey, can be used as comparator evidence in an Act-based claim. As the Act is ambiguous as to the scope of comparator data, and the intent of the Legislature is unclear from a reading of the plain language of the statute, extrinsic evidence can be used to interpret the statute. See Parsons v. Mullica Twp. Bd. Of Educ., 226 N.J. 297, 308 (2016); Lippman v. Ethicon, 222 N.J. 362, 380-81 (2015); Donelson v. Dupont Chambers Works, 206 N.J. 243, 246 (2011); Richardson v. Bd. Of Trs. Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007).

The trial court correctly pointed out that recent development in the LAD, the statutory scheme which the Act amends, provide relevant guidance as to the use of non-New Jersey employer comparator data. In Calabotta v. Phibro Animal Health 460 N.J. Super. 38 (App. Div. 2019), the Appellate Division held that a remote employee working for a New Jersey-based employer was protected under the LAD. The Appellate Division further found that "[the] LAD protects litigants who work or reside out-of-state, so long as the, [discriminating act] is made or centered in New

Jersey [,]" or if it is the expectation of the parties that New Jersey law will apply. Id. 460 N.J. Super. 73-74. As the employer in Calabotta was New Jersey-based, and the position for which the out-of-state plaintiff was denied was located in New Jersey (thus giving rise to the alleged discrimination), the court found that New Jersey law must govern the claim. Id. 460 N.J. Super 70.

Relying upon this law, the trial court correctly concluded that Plaintiff's compactors for purposes of the Act are limited only to her colleagues in the Princeton office. Since that information has already been provided (Defendant previously provided this information over a period of six years), there is no need to order additional information provided given the prospective application of the Act.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision issued on November 25, 2025 (i) Granting Defendant's Motion to Limit Plaintiff's damages to the period of July 1, 2018 through January 11, 2019; (ii) Granting Defendant's Motion for a Protective Order to Limit Discovery to the period of July 1, 2018 through January 11, 2019; (iii) Denying Plaintiff's Motion to Compel Discovery from Defendant for the Production of Nationwide Comparator Discovery for the period of July 1, 2018 through January 11, 2019; (iv) and Denying Plaintiff's Cross-Motion to Compel Discovery from Defendant for the Production of Comparator Discovery for the period of January 1, 2006 through January 11, 2019.

Respectfully submitted,

CARMAGNOLA & RITARDI, LLC
Attorney for Defendant/Respondent
Reed Smith LLP

By: */s/ Sean P. Joyce*
SEAN P. JOYCE

Dated: July 16, 2025

SHERRI A. AFFRUNTI, Plaintiff-Appellant, v. REED SMITH LLP, Defendant-Appellee.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002477-24T2 CIVIL ACTION ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MERCER COUNTY DOCKET NO: MER-L-2297-20 Sat Below: Hon. R. Brian McLaughlin, J.S.C.

(AMENDED) REPLY BRIEF OF PLAINTIFF-APPELLANT SHERRI A. AFFRUNTI

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Plaintiff-Appellant Sherri A. Affrunti ("Plaintiff") respectfully submits this (Amended)[1] Reply Brief in further support of her Appeal and response to the Opposition of Defendant-Appellee Reed Smith LLP ("Defendant" or "Reed Smith").

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD HOLD THAT THE NJEPA'S FULL REMEDIES ARE RETROACTIVE FOR ALL ACTS OF PAY INEQUITY OCCURRING ON OR AFTER JULY 1, 2018.

(*Raised below: Pa0004-Pa0005, Pa0007-Pa0012; T1 16-21, 28-29, 34, 39*)

While Reed Smith contends (by pointing to arguments in *Maia* by Plaintiff's former counsel), that Plaintiff is conflating the facts of *Maia* with the facts of this case, nothing could be further than the truth.[2] No one conflates the facts of this case with the facts of the Supreme Court's *Maia* Opinion other than Defendant. Despite Reed Smith's red herring fallacy, the statutes involved in these two separate cases,

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[1] This Reply Brief was amended to remove internet hyperlinks.

[2] Statements in Defendant's Brief purport to contend that Plaintiff argued and/or was a party to the *Maia* litigation (Pb8). This is untrue. Plaintiff was not a party to the *Maia* case and did not participate as counsel in any way in that matter. Moreover, former counsel was dismissed from this matter on July 17, 2024 and did not take part in any of the motion practice at the trial court or appellate levels in this case. *See* (Pa0079 (substitution of attorney)). Whatever former counsel argued in a completely different and unrelated case analyzing the retroactivity of a completely different statute is wholly irrelevant here.

as well as the legislative history and other pertinent facts relevant to the test for retroactivity, are factually distinguishable.

Moreover, although Defendant and Plaintiff both submit to this Court that the *Maia* retroactivity test as restated in *Maia* *is* relevant in this matter, Defendant misunderstands and mischaracterizes Plaintiff's arguments under *Maia*. Plaintiff does not submit (as was submitted by other counsel in the *Maia* case and Defendant erroneously claims here) that the occurrence of discriminatory pay post July 1, 2018 ends the analysis; rather, Plaintiff has repeatedly submitted that the factors for retroactive application under the *Maia* test must be analyzed to determine if Plaintiff – who continued to suffer pay discrimination with each paycheck from Reed Smith after July 1, 2018 through her final compensation payment in March 2019 (Pb7; Pa0332) – may pursue discovery and recover all available remedies under the NJEPA here. Once properly analyzed, as Plaintiff has briefed, this Court should find the legislature intended for the NJEPA and *all* of its enhanced remedies to be fully available for all NJEPA violations occurring July 1, 2018 or after, and the opinion of the trial judge below (erroneously limiting both damages and discovery) should be completely reversed. (Pb1-4; Pb14-25).[3]

[3] As set forth in Plaintiff's moving Brief and unopposed by Defendant, the trial court additionally erred and should be reversed for having wholly failed to address Plaintiff's arguments that remedies and discovery in the case should be permitted

Although Reed Smith points to similarities in the language on the face of the Wage Payment Law (at issue in *Maia*) and the NJEPA (at issue here) for their respective effective dates as if the relevant analysis for statutory construction were similar to a child's card game of "match", the proper review here is not so simplistic. While the statutory language is to be considered, as Plaintiff has pointed out, the "rule" of statutory construction favoring prospective application of statutes "*is not to be applied mechanistically*". *Maia*, 257 N.J. at 349 (citation and quotation omitted). Where, as here, a statute's plain language is ambiguous or subject to multiple interpretations, this Court "may consider extrinsic evidence including legislative history and committee reports." *Parsons v. Mullica Twsp. Bd. Of Educ.*, 226 N.J. 297, 308 (2016) (citations omitted); *see also Deaney v. Linen Thread Co.*, 19 N.J. 578 (1955) (noting constraints upon the interpretative process have given way in favor of approach to the use of introductor's statements).

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back to her January 1, 2006 FSP promotion under the discovery rule and the continuing violations doctrines. (T1 17-18, 20, 27-29, *cf.* Pa0007-Pa0012). *See Roa v. Roa*, 200 N.J. 555, 571 (2010) (Justice Long) ("At the heart of the discovery rule is the fundamental unfairness of barring claims of which a party is unaware") (internal citations omitted); *and see Roa*, 200 N.J. at 567 (providing 'a series of separate acts that collectively constitute one unlawful employment practice[,]' the entire claim may be timely if filed within two years of 'the date on which the last component act occurred'; *and see* NJDCR Guidance (Pa 0184) ("each paycheck is a separate violation of the [NJEPA]").

When considering the statutory history for the NJEPA, it is without doubt that the legislature intended the NJEPA – including all of its enhanced remedies and other provisions to go into effect on July 1, 2018 and be immediately available to aggrieved employees provided that at least one act of discriminatory pay occurred on or after the statute's effective date (Pa0187-Pa0313; Pb 14-20). Indeed, this intent is shown clearly through the legislative history, committee colloquies, Sponsor statements and Governor's press release previously cited. (Pb 14-20). *See, e.g., Hubner v. Spring Valley Equestrian Ctr.*, 203 N.J. 184 (2010) (using sponsor's statement explaining the purpose of a bill and a committee statement accompanying the bill after it left committee following amendments to determine the legislature's intention to broaden the scope of the statute in question in the case.); *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 15 (1994) (considering Governor's press release in determining legislative intent); *Panzino v. Cont'l Can Co.*, 71 N.J. 298, 301-02 (1976) ("Of the various materials that may reveal legislative intent, one of the most instructive is a statement by the sponsor of the act"); *St. v. Garretson*, 313 N.J. Super. 348, 358 (App. Div.) ("Our understanding of the statute is furthered by reference to [the Governor's] Press Release, which is instructive, because it reflects his view of the applicability of this statute …"), *cert. denied*, 156 N.J. 428 (1998); *Toogood v. St. Andrews Condo. Assn.*, 313 N.J. Super. 418, 425 (App. Div. 1998) ("A legislative

committee's statement of the purpose of a proposed bill, including the nature and effect of the measure, is a highly persuasive indicator of legislative intent.") (citations omitted).

Beyond the abundance of evidence previously shown in the legislative history and submitted in this matter, the celebration and speeches of the Governor, Legislative Sponsors, Committee Members and others at the time the NJEPA was signed into law on April 24, 2018 is telling, too, that the legislature's intent was, upon the effective date of the Act (not six years later!), New Jersey employers would provide equal pay to women or face *all* of the enhanced consequences under the statute. *See* New Jersey Office of the Governor, "Governor Signs Equal Pay Legislation" (April 24, 2018) (Governor Phil Murphy Statement) (stating for too long equal pay has "only been an aspiration", and proclaiming, "but today, we're making it the law in New Jersey"; also stating, "Let there be no doubt, New Jersey … is once again leading the way … *for those who thought they could get away with paying a woman less just because they could, today is your wake up call; . . . New Jersey is sending a clear message to the nation that our wage gap will be closed,* ***and we're not going to wait around****."*) (emphasis added); (Assemblywoman Pamela Lampitt Statement) (declaring the legislature had met its promise that "*New Jersey will make a difference, New Jersey will set the new standard, New Jersey will be the*

*place where women and families want to come to … **with extending the years to six year lookback, we've arrived**.*") (emphasis added); (Senator Steve Sweeney Statement) (describing NJEPA as "one of the most meaningful bills we have done" and "a great day for New Jersey [to "make a difference in people's lives"]"); (Assembly Speaker Craig Coughlin Statement) (describing the "historic legislation" and exclaiming, "Today really is a great day … New Jersey is leading the way … and we send a clear and unequivocal message, equal pay for equal work ALWAYS!")<youtube. com/watch?v=3g85CqZI-pk>.

Given the legislative pronouncements, immediately upon the passage of the Act, employees throughout the State – like Plaintiff – would have reasonable expectations that employers would comply with the law and pay women equitably. Similarly, all employers in New Jersey should have reasonably expected that if they did not correct their pay inequities by July 1, 2018 and instead continued them, they would be subject to the very real risk of lawsuits and demands or judgments for treble pay damages over a six year lookback period. In point of fact, numerous law firms and other commentators warned employers to immediately take action to audit their pay records to assess and address any pay inequities in order to avoid the consequences of the new law. Roi-NJ.com, "Don't delay on equal pay: Lawyers say firms must act fast to comply with Allen Act", Meg Fry (May 7, 2018) (noting

numerous lawyers shared advice of need to "move quickly" to understand new law, including recommendation for internal audits "prior to the July 1, 2018 effective date")<roi-nj.com/2018/05/07/law/dont-delay-on-equal-pay-lawyers-say-firms-need-to-act-quickly-to-comply-with-allen-act/>; Flaster Greenberg, Client Alert (April 25, 2018) ("Effective July 1, 2018, New Jersey will be on the forefront of equalizing pay through the [NJEPA].")<flastergreenberg.com/newsroom-alerts-Substantially_Similar_Work_Requires__Equal_Pay.html>; Winston & Strawn, LLP, Client Alert (April 26, 2018) (recommending employers "begin conducting a pay equity review to ensure their compliance with the [NJEPA] well in advance of the July 1, 2018 effective date")<winston.com/en/insights-news/new-jersey-enacts-most-rigorous-pay-equity-legislation-yet>; GoldbergSegalla, Client Alert (April 3, 2018) (providing recommendations for how NJ employers may prepare for the NJEPA "[p]rior to the Allen Act's effective date of July 1, 2018") <goldbergsegalla.com/news-and-knowledge/news/new-equal-pay-law-in-new-jersey-will-expand-employee-protections>; JDSupra, Genova Burns LLC, Client Alert (April 25, 2018) (detailing provisions and remedies of the NJEPA, and recommending that employers carefully analyze pay practices to assure compliance before the effective date of July 1, 2018)<jdsupra.com/legalnews/new-jersey-takes-the-lead-in-equal-pay-66661/>; Sanford, Heisler, Sharp & McKnight, Client Alert

(April 30, 2018) ("The [NJEPA] takes effect on July 1, 2018, giving New Jersey one of the strongest equal pay laws in the country and permitting plaintiffs in employment discrimination cases to recover substantial damages.") <sanfordheisler.com/blog/2018/04/new-jersey-s-equal-pay-act-is-one-of-the-strong/>; Duane Morris, Alerts and Updates (May 7, 2018) (discussing, inter alia, expanded remedies under NJEPA and cautioning "[w]ith the effective date of July 1, 2018, employers should not delay in engaging in privileged reviews of compensation structures and implementing policies and procedures needed to reduce or avoid the risks associated with noncompliance with the Allen Act") <duanemorris.com/alerts/pay_equity_protection_new_jersey_then_now_call_for_prompt_action_0518.html>; Hoagland Longo, Client Alert (June 15, 2018) ("[The NJEPA] contains serious penalty provisions for any business found in violation. Employees may seek compensation for violations that occurred up to six years earlier.")<hoaglandlongo.com/blog/new-jersey-equal-pay-act-to-take-effect-on-july-1>; Saiber, Client Alert (July 2, 2018) ("The new law goes into effect July 1, 2018, and all New Jersey employers should be prepared for this sweeping reform.") <saiber.com/insights/publications/Preparing-for-New-Jerseys-Equal-Pay-Act-What-Employers-Need-to-Know>. As a law firm itself, certainly capable of reading

statutes and assessing risk, Reed Smith's reasonable expectation should have been no different.

POINT II

REED SMITH FAILS TO ARTICULATE ANY UNFAIRNESS OR OTHER MANIFEST INJUSTICE IN APPLYING THE FULL NJEPA REMEDIES RETROACTIVELY, BECAUSE NONE EXIST.

(*Raised below: Pa0009*)

The trial court, after erroneously concluding the first part of the *Maia* test, did not "reach" the second part to in any way determine whether retroactive application of the full NJEPA remedies would result in manifest injustice. (Pb24; Pa0011). Reed Smith, similarly, avoids this discussion, which requires the Court to "look to matters of unfairness and inequity". *Oberhand v. Dir., Div. of Taxation*, 193 N.J. 558, 572 (2008).

Given the long-standing prohibitions against discriminatory pay in the NJLAD, the numerous years the legislature was seeking to pass curative equal pay legislation, and the time granted to employers to address pay disparities before the NJEPA's effective date, Reed Smith did not because they could not in any way articulate any manifest injustice whatsoever that would befall employers like itself "*who thought they could get away with paying a woman less just because they could*"

if the full remedies of the Act (including treble damages and the six year lookback period) are retroactively applied. New Jersey Office of the Governor, "Governor Signs Equal Pay Legislation" (April 24, 2018) (Lieutenant Governor Sheila Oliver Statement) (noting triumph for women in that equal pay bill was introduced "year after year" during her 14 years serving in the Assembly without earlier success)<youtube.com/watch?v=3g85CqZI-pk>. *See also* discussion, *supra*, regarding law firm publication warnings; *and see* New Jersey Office of the Governor, "Governor Signs Equal Pay Legislation" (April 24, 2018) (Governor Phil Murphy Statement) ("*[F]or those who thought they could get away with paying a woman less just because they could, today is your wake up call, . . . and we're not going to wait around."*) (emphasis added)<youtube.com/watch?v= 3g85CqZI-pk>. In contrast, tremendous unfairness would befall employees like Plaintiff if employers – long subject to pay equity requirements before the passage of the NJEPA and provided time to assess pay practices and implement parity – are able to circumvent the statute's remedies despite having continued pay inequities in violation of the law upon its effective date.

POINT III

REED SMITH DOES NOT – BECAUSE THEY CANNOT – DEMONSTRATE THE NJEPA'S STATUTORY GUIDANCE COMPELLING FIRM-

WIDE COMPARATOR DISCOVERY IS PLAINLY UNREASONABLE.

(*Raised Below: Pa0012-Pa0018; T1 21-22, 33-34*)

Rather than address the statutory construction issue at hand regarding the production of comparator evidence, Reed Smith contends nonsensically that the production of any additional FSP comparator compensation discovery in this case is somehow "irrelevant" (Db 18-19).[4] However, Reed Smith's bald contentions of irrelevance that it continually parrots in this case simply do not, in fact, make the requests in any way irrelevant particularly where, as here, Reed Smith has not disputed *inter alia*: (i) it is a single entity employer in the United States which constructed its own *national* FSP class in which Plaintiff worked (Pa0086; Pa107) and (ii) all of its FSPs throughout the United States were cross-marketed, expected to work together across the Firm to build national practices, *and considered collectively* before one Compensation Committee setting annual compensation and bonuses (including Plaintiff) (T1-35-36).

Although Reed Smith *does* admit in its Opposition Brief that extrinsic

[4] While Reed Smith also states baldly that "the discovery of comparator compensation data . . . has already been completed" (Db19), this statement too is false. Indeed, the trial court proceedings are stayed and discovery remains incomplete (Pa0036).

evidence is necessary to interpret the meaning of the statutory section compelling comparisons of "wage rates in all of an employer's operations or facilities", N.J.S.A. 10:5-12(t), it (like the trial court below) wholly ignores *any* discussion of the published NJDCR Enforcement Guidance for the NJEPA (Db20-21).[5] Reed Smith's ignorance notwithstanding, this Court should find the trial court erred in failing to consider and give substantial deference to this Guidance. *Univ. Cottage Club of Princeton New Jersey Corp. v. NJDEP*, 191 N.J. 38, 48 (2007); *see also Merin v. Maglaki*, 126 N.J. 430, 436-37 (1992) ("We give substantial deference to the interpretation of the agency charged with enforcing an act. The agency's interpretation will prevail provided it is not plainly unreasonable.").

To this end, the NJDCR's Guidance is very clear, premised on the statutory language, and resting upon the plain language of the NJEPA for comparisons in "all of an employer's operations or facilities", N.J.S.A. 10:5-12(t); *cf. Ardan v. Bd. of Review*, 231 N.J. 589, 604-05 (2018) ("To apply the 'plainly unreasonable' standard, [this Court] first consider[s] the words of the statute [or regulation], affording to those words 'their ordinary and commonsense meaning."). Applying the "ordinary

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[5] The trial court's reference to the *Calabotta v. Phibro Animal Health*, 460 N.J. Super. 38 (App. Div. 2019) decision – to which Reed Smith clings – is wholly misplaced and irrelevant here, where Plaintiff was always based in New Jersey (Pa0015-Pa0016; Db 20-21; *see also* T1-33). *Calabotta* is, thus, totally inapposite in this case.

meaning" of the word "*all*", the Guidance properly instructs that the comparisons of pay data extends to *every* member of the comparator group and is not limited merely to employees who work in same New Jersey office where, as here, the employees performing "substantially similar work" were based throughout the employer's multiple offices across the country:

> **Q: If an employee makes a claim under the [NJEPA], to whom are [her] wages compared?**
> An employee's wages are compared *to those of employees performing substantially similar work in any of an employer's operations or facilities*.
>
> **Q: When someone makes a claim under the Equal Pay Act, can her wages be compared to the wages of other employees located outside the State of New Jersey?**
> Yes. Subsection (t) states that "[c]omparisons of wage rates shall be based on wage rates in all of an employer's operations or facilities." *So an employee is not precluded from filing a claim under the Equal Pay Act even if all of her comparators are located outside the State of New Jersey*.
>
> [NJDCR Enforcement Guidance (Pa0181) (emphasis added); *see* Merriam Webster, *Dictionary*, "All" (n.d.) (defining "all" to mean, *inter alia*, "the whole amount, quantity or extent of", "*every member or individual component of*", "the whole number or sum of", and "*every*") (emphasis added) <merriam-webster.com/dictionary/all>; *and see* New Jersey Model Civil Jury Charge 2.24A1 ("In deciding whether the plaintiff was paid less than [a male], you can consider how much the employer paid other employee(s) for substantially similar work *even if the comparator employee(s) worked in a different department or a different facility*.") (emphasis added).]

Accordingly, providing the appropriate deference to the interpretive guidance of the enforcing agency for the statute (*i.e.*, the NJDCR), in consideration of the plain meaning of the word "all", this Court should find that the trial court judge erred in not ordering the production of *all* FSP comparator compensation discovery for Defendant's entire national FSP class in all offices but instead improperly limiting Plaintiff to the discovery of a mere 16 attorneys of Defendant's 361 member national FSP comparator class. *Cf. Calabotta*, 460 N.J. Super. at 61 (discussing that remedial legislation, such as the NJLAD, is to be liberally construed); *and see* ALM Media, "Reed Smith Grows Revenue and Profits, Citing Strong Demand" (February 20, 2019) (announcing 5 percent revenue increase for the firm in 2018 to $1.175 BILLION and stating FSP headcount for 2018 at 361)<bing.com /search?q+<+Reed+Smith+Grows+Revenue+and+Profits%2C+Citing+Strong+De mand>.

While Reed Smith also alleges in its Opposition Brief that Plaintiff is "[w]ithout any evidence" and "requesting permission to undergo a fishing expedition" (Db17), these statements are a sheer misrepresentation of the record in which Plaintiff has already identified support for having been paid *five to six times less in total compensation than her male FSP comparators*. (*See* T24 (citing trial court to record evidence of Princeton male FSP who earned five times more than

Plaintiff)); Pa0338 (citing testimony to existence of NY male comparator earning over 6 times Plaintiff's total compensation); Pa0338 (certifying to Plaintiff's discovery in or about May 2020 that her compensation was "shockingly low" compared to male FSPs during her tenure performing substantially similar work, to whom Defendant also paid substantial bonuses); *and see* (Pa0398; Pa0418-0419; Pa0442-0443; Pa0450; Pa0452).[6]

CONCLUSION

For all of the foregoing reasons, along with all of the reasons set forth in Plaintiff's initial Brief supporting this Appeal, Plaintiff respectfully requests that this Honorable Court enter an Order reversing the trial court's Order, holding she may pursue discovery and damages for the NJEPA's six-year look back period and any further period of continuing violations, and finding Reed Smith must immediately produce all comparator compensation data for its entire FSP class in which Plaintiff worked for at least the full period of the six year lookback, properly calculated.

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[6] Similarly, Defendant's contention as to any fishing expedition for discovery depositions – for which Plaintiff had initially received a Court Order to take – is false. Those discovery requests have not been abandoned and will be appealed after trial along with other trial court errors. (Pb10) (noting motion for leave to appeal to Supreme Court was sought for claims and discovery preclusion parts of trial court order arising from statutory construction).

Dated: July 25, 2025

Respectfully submitted,

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Attorney for Plaintiff-Appellant / *Pro Se*

s/Sherri A. Affrunti

Sherri A. Affrunti, Esq.