Superior Court of New Jersey

Appellate Division

Docket No. A-002754-24

ANDRES FLORES-ARTIEDA and NICOLE CORDOVA, *Plaintiffs-Counter-Defendant/Respondent,* vs. CHUBB INSURANCE COMPANY OF NEW JERSEY, *Defendant-Counterclaimant/Appellant.*	CIVIL ACTION ON GRANT OF MOTION FOR LEAVE TO APPEAL FROM INTERLOCUTORY ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, UNION COUNTY DOCKET NO. 001428-22 Sat Below: HON. JOHN G. HUDAK

BRIEF ON BEHALF OF DEFENDANT-COUNTERCLAIMANT-APPELLANT

COZEN O'CONNOR, P.C.
Attorneys for Defendant-Counterclaimant-Appellant
Three World Trade Center
175 Greenwich Street, 55th Floor
New York, New York 10007
(212) 453-3914
pferland@cozen.com
jtumen@cozen.com

On the Brief:
PAUL FERLAND
Attorney ID# 045222005
JOSH TUMEN
Attorney ID# 160042015

Date Submitted: June 13, 2025

CP COUNSEL PRESS (800) 4-APPEAL • (382420)

TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS, ORDERS AND RULINGS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

Appellant Chubb Insurance Company of New Jersey ("Chubb") submits this Memorandum of Law seeking a reversal of the following interlocutory Orders, dated March 21, 2025, which: (i) denied Chubb's motion, pursuant to RPC 3.7, to disqualify Eric Dinnocenzo, Esq. (the "Disqualification Order"); and (ii) quashed the subpoena served on Dinnocenzo (the "Dinnocenzo Subpoena") and entered a protective order preventing Chubb from seeking any discovery from Dinnocenzo or seeking his disqualification (the "Discovery Order") (collectively, the "Orders").

INTRODUCTION

This is a property insurance coverage dispute in which policyholders, Andres Flores-Artieda ("Flores") and Nicole Cordova ("Cordova"), allege (among others things) breach of contract and bad faith in connection with a purported robbery loss claim that seeks at least $772,500, in addition to extra-contractual damages. Chubb's principal defenses are that Flores and Cordova made material misrepresentations, intentionally concealed material facts and circumstances, and engaged in fraudulent conduct throughout the claim.

First, Chubb's motion to disqualify Dinnocenzo, pursuant to RPC 3.7, should be granted because Dinnocenzo is a necessary trial witness. The trial court erred in stating that the testimony he could provide is available elsewhere. Rather, Dinnocenzo is the only person who can testify in support of Cordova's

cause of action asserting Chubb's bad faith conduct and violation of the New Jersey Consumer Fraud Act. All allegations relevant to that claim stem from his recounting of the facts, which is most evident by Dinnocenzo being mentioned in 27 paragraphs of the Complaint (which he drafted). The record makes clear that Cordova had no involvement with, or knowledge of, Chubb's actions that purportedly give rise to that cause of action. There is not a single paragraph in the Complaint or in Cordova's responses to Chubb's discovery demands suggesting she would be a knowledgeable witness. This underscores Dinnocenzo's role as both an advocate and a witness, which creates an unavoidable conflict.

Moreover, despite Cordova's contentions, there is no basis for a waiver argument. Chubb timely moved once it recognized that Dinnocenzo would be a necessary trial witness. For nearly the entirety of this litigation, Chubb has sought to eliminate Cordova's cause of action for bad faith. If successful, Dinnocenzo's testimony would not have been necessary. Yet, Cordova's bad faith claims remain, making his testimony indispensable. Chubb's motion was neither retaliatory, nor a tactical maneuver.

Further, there is no indication that Cordova would suffer substantial hardship if Dinnocenzo were disqualified. Cordova's speculation that she will have difficulty finding substitute counsel is legally and factually insufficient.

Chubb anticipates taking about ten depositions, including all party depositions, and no dispositive motions have been filed (other than a pre-answer motion to dismiss). Accordingly, the most substantial phases of the litigation are still ahead which would allow someone new to implement their own litigation strategy.

Second, mostly for the same reasons, the Dinnocenzo Subpoena should not be quashed, nor should a protective order be issued excusing Dinnocenzo's compliance. Again, only Dinnocenzo can testify regarding Cordova's bad faith cause of action as there are no other witnesses capable of providing relevant support. It would cause irreparable harm should Chubb be shielded from the sole source of the facts purportedly supporting Cordova's bad faith claim. There are also no attorney-client privilege or work product doctrine concerns as Cordova placed all these facts at issue by incorporating them into the Complaint. Chubb only seeks testimony and discovery regarding the facts alleged, not Dinnocenzo's mental impressions or anything else that would ordinarily be protected. In sum, Chubb will be unduly prejudiced and unable to prepare for trial if it is unable to enforce the Dinnocenzo Subpoena.

For these reasons, the Court should reverse the trial court's erroneous rulings.

STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

A. The Claim and Lawsuit

This lawsuit arises out of Chubb's denial of Cordova's insurance claim seeking indemnity under the Policy[2] for stolen jewelry. *See* Da4-34. Dinnocenzo represents Cordova in the litigation and also represented Flores and Cordova in submitting the insurance claim to Chubb pre-suit. After completing its investigation, Chubb denied coverage for the following reasons: (i) Flores and Cordova violated the Policy's "Concealment or fraud" provision by intentionally concealing and misrepresenting material facts; (ii) there was no fortuitous loss because the alleged robbery was staged; (iii) Flores and Cordova violated the Policy's "Your duties after a loss" provision by failing to provide relevant and material documents; and (iv) Flores and Cordova violated the Policy's "Your duties after a loss" provision by failing to provide truthful testimony about the claim during examinations under oath ("EUO") and in their Sworn Statement in Proof of Loss. *Id*., at 152-157.

[1] The factual background and procedural history of the matter are intertwined and, therefore, presented together.

[2] Chubb issued Masterpiece Policy No. XXXX1186-01, effective April 10, 2018 to April 10, 2019, to Flores and Cordova (the "Policy").

B. Dinnocenzo's Connection with the Claim[3]

The Complaint (drafted by Dinnocenzo) contains 27 paragraphs referring to Dinnocenzo. *Id*., 4-34. In relevant part, the fourth cause of action alleged that Chubb engaged in bad faith conduct and violated the New Jersey Consumer Fraud Act. *Id*., 31-32. It is exclusively supported by Dinnocenzo's account of the events that transpired during the claim investigation. *Id*., at 4-29. Below are some of the allegations which will require Dinnocenzo's testimony at trial (by paragraph number):[4]

- 1: This action arises from the refusal of defendants, Chubb Insurance Company of New Jersey and Chubb National Insurance Company (jointly referred to as "Chubb"), to pay a claim for theft under a jewelry insurance policy issued to plaintiffs. Chubb has further acted in bad faith by taking an unreasonably long time with its investigation, ***conducting an onerous, harassing, and unnecessary investigation***, making time-consuming, onerous and unreasonable demands for information, trying to manufacture a failure to cooperate defense, ***using abusive and unethical tactics, unfairly and offensively using the policy's two-year limitations period as a "hammer" against plaintiffs, refusing to honor established case law from the New Jersey Supreme Court, making unethical assertions and threats to disinterested witnesses and seeking to violate attorney-client privilege, not following the policy language and trying to enforce harsher terms against plaintiffs, refusing to grant a reasonable accommodation or even engage in an interactive dialogue, and refusing to even adjust the claim and forcing plaintiffs into litigation***.

[3] Pursuant to Court Order, dated August 20, 2024, Andres Flores-Artieda was dismissed as a plaintiff following his death. *Id*., at 112-113.

[4] All emphasis has been added by Chubb for purposes of this pleading.

- 17: For instance, Chubb took overly extensive, repetitive, and harassing EUOs of the plaintiffs as follows…

- 23: The policy requires plaintiffs to file suit within "two years after a loss occurs." Chubb repeatedly used this clause as a "hammer" against plaintiffs in an effort to get them to give up their rights, and when Chubb agreed to extend it, it was only for a short period of time and often in exchange for plaintiffs following Chubb's wishes.

- 23: The policy requires plaintiffs to file suit within "two years after a loss occurs." Chubb repeatedly used this clause as a "hammer" against plaintiffs in an effort to get them to give up their rights, and when Chubb agreed to extend it, it was only for a short period of time and often in exchange for plaintiffs following Chubb's wishes.

- 26: …In an August 18, 2021 responsive email, Dinnocenzo sent the tax authorizations and wrote: "I can respond to your letter by 8.23.21. However, you need to provide a longer tolling period than 9/30/2021, unless you intend to reach a claim decision by early September. ***Otherwise, you are not providing sufficient time, and I cannot construe the investigation to be in good faith. It is, in fact, bad faith to try and exceed a tolling period with a claim investigation***." The purpose of the tolling agreement is to provide Chubb sufficient time to conduct an investigation AND for Mr. Flores to have sufficient time to respond to a claim denial.

- 27: Throughout the claim investigation, Chubb used the suit limitations period as a "hammer"—threatening to let it run out unless plaintiffs complied with its unreasonable requests. This is a classic example of insurer bad faith.

- 34: ***After much back-and-forth between Dinnocenzo and Bernstiel***, and despite numerous requests for information about why the EUO was needed after three years had passed and when plaintiffs wanted the claim adjusted, Bernstiel would not say why the EUO was needed except that Chubb uncovered evidence that Cordova "is not who she represented herself to be during her prior sworn testimony." She also would never say why this information was acquired over 3 years after the loss.

- 38: ***When Dinnocenzo accused Chubb—as he did repeatedly—of using the limitations period as a "hammer,"*** in a March 24, 2022 letter,

> Bernstiel wrote "each and every time Chubb Insurance has reassured you, with ever increasing specificity, of its agreement to extend the suit limitation period under every possible scenario. Chubb Insurance has also repeatedly assured you, and does so again now, that it has no intention of manipulating the timing and it is not trying to engineer a scenario whereby your clients are 'behind the eight ball' and need to make important decisions like whether or not to file suit at the last minute."

- 40: Again, Chubb wanted to keep using the limitations period as a hammer over plaintiffs' heads. Dinnocenzo explained he represented plaintiffs on a contingent fee basis, and if the "newly acquired" evidence about Cordova was as damming as implied by Chubb, the plaintiffs would need sufficient time to retain a new attorney who would have to take time to review this voluminous file.

- 62: In a May 6, 2022 letter, Dinnocenzo confirmed that he had called Bernstiel by telephone to try and resolve the matter "but you refused to engage with me productively and instructed me that our communications must be in writing."

- 71: Chubb's actions taken in bad faith also extend how it has conducted EUOs. It has taken a series of abusive and harassing EUOs of the plaintiffs in which Bernstiel asks repetitive, irrelevant, and invasive questions, overtalks people including the plaintiffs' counsel, and has sought to push the envelope with the hope that plaintiffs will object and she can manufacture a failure to cooperate defense.

Id., at 4-24.

When asked to elaborate in interrogatories about the assertions contained in the fourth cause of action, Chubb was referred to "the complaint and the numerous letters from Attorney Dinnocenzo to Attorney Bernstiel." *Id*., at 158-164.

C. Chubb's Efforts to Eliminate the Need for Dinnocenzo's Testimony Prior to Moving to Disqualify

Since this lawsuit was commenced, Chubb has sought to dismiss Cordova's fourth cause of action alleging Chubb's bad faith and violation of the

New Jersey Consumer Fraud Act. *Id*., at 343-347. A dismissal would have, in turn, eliminated the need to seek Dinnocenzo's testimony. *Id*. However, to date, Cordova's fourth cause of action remains, thus making Dinnocenzo's testimony necessary. *Id*. The following timeline makes clear that Chubb did not delay in seeking Dinnocenzo's disqualification once Chubb recognized that it would be necessary:

- May 16, 2022: Cordova filed her Complaint. *Id*., at 4-34.
- June 22, 2022: Chubb moved to dismiss the Complaint's fourth cause of action alleging that Chubb engaged in bad faith conduct and violated the New Jersey Consumer Fraud Act. *Id*., at 343-347.
- November 18, 2022: Court denied Chubb's motion to dismiss. *Id*., at 37.
- December 23, 2022: Chubb filed its Answer to the Complaint. *Id*., at 38-67.
- February 10, 2023: Chubb amended its Answer to include a counterclaim for violation of the New Jersey Insurance Fraud Prevention Act. *Id*., at 72-109.
- April 10, 2023: Chubb moved to sever Cordova's bad faith cause of action. *Id*., at 344.
- May 12, 2023: Court denied Chubb's motion to sever. *Id*., at 110.
- June to July 2023: parties engaged in motion practice regarding discovery. *Id*., at 344.
- August 2023: parties agreed to mediate. *Id*.
- October 25, 2023: former Plaintiff, Flores, passed away. *Id*.
- November 13, 2023: mediation was scheduled to take place but was ultimately cancelled due to Flores' death. *Id*.

- December 7, 2023: matter was stayed to allow time for Flores' estate to make an application to the Surrogate's Court for an Administrator to be appointed. *Id*.

- June 6, 2024: parties appeared for a case management conference before Judge Hudak to discuss a path forward given that Flores' estate had not yet retained counsel or appeared. *Id*., at 345.

- June 11, 2024: Court issued an Order requiring Flores' estate to appear within 20 days. *Id*., at 111.

- July 22, 2024: as Flores' estate failed to appear in compliance with the June 11, 2024, Order, Chubb moved to dismiss Flores for lack of standing. *Id*., at 345.

- August 20, 2024: Court granted Chubb's motion to dismiss Flores as a Plaintiff. *Id*., at 112-113.

- September 26, 2024: parties appeared for a conference before Judge Hudak where they were encouraged to discuss settlement. *Id*., at 345.

- October 3, 2024: as instructed during the September 26, 2024 conference, Chubb advised Cordova that it was interested in settlement. *Id*.

- October 8, 2024: Cordova shared a settlement demand with Chubb. *Id*.

- October 19, 2024: Chubb denied Cordova's settlement offer. *Id*.

- November 12, 2024: in continuing settlement discussions, Chubb requested that Cordova withdraw her bad faith cause of action. Alternatively, Chubb advised that it would require Dinnocenzo's testimony as a necessary trial witness; Cordova refused to withdraw her bad faith cause of action. *Id*.

- November 13, 2024: Dinnocenzo requested that Chubb explain the basis for seeking his deposition. *Id*.

- November 21, 2024: Chubb responded to Dinnocenzo with an explanation as to why it requires his testimony; Chubb also asked Dinnocenzo if he would accept service of a subpoena directed to him. *Id*., at 346.

- November 22, 2024: Dinnocenzo refused to accept service and instructed Chubb to proceed with formal service. *Id*.

- December 4, 2024: Chubb served Dinnocenzo with a subpoena (the "Dinnocenzo Subpoena"), which sought his testimony and certain documents; the Dinnocenzo Subpoena instructed that "[p]rivileged [d]ocuments are not sought by these requests but must be identified." *Id*., at 203-11, 346.

- December 20, 2024: the parties appeared for a case management conference. During the conference, Judge Hudak strongly encouraged the parties to revisit mediation, and if those conversations failed, then the parties were instructed to move to disqualify before attempting to compel compliance with or quash the competing attorney subpoenas. *Id*., at 346.

- January 10, 2025: Chubb advised Cordova that it was interested in mediating and proposed the same mediator that the parties agreed to in 2023 prior to Flores' death. *Id*.

- January 25, 2025: Cordova advised Chubb that she was not interested in mediating as the parties could not agree on mediation terms. *Id*.

- January 28, 2025: Chubb advised Cordova that it planned to move to disqualify Dinnocenzo as the parties were not going to proceed with mediation. *Id*.

- February 12, 2025: Chubb filed its motion to disqualify Dinnocenzo. *Id*., at 350-351.

- February 26, 2025: Cordova filed her motion seeking to quash the Dinnocenzo Subpoena, or a protective Order excusing his compliance, and for a protective Order preventing Dinnocenzo's disqualification. *Id*., at 352-353.

- March 21, 2025: the trial court issued the Orders denying the parties' motions filed on February 12, 2025 and February 26, 2025. *Id*., at 1-3.

STANDARD OF REVIEW

"[A] determination of whether counsel should be disqualified is, as an issue of law, subject to de novo plenary appellate review." *See City of Atlantic City v. Trupos*, 201 N.J. 447 (2010); *see also J.G. Ries & Sons, Inc. v.*

Spectraserv, Inc., 384 N.J. Super. 216, 221-222 (App. Div. 2006). Accordingly, a *de novo* standard of review will apply to consideration of the Disqualification Order. However, an abuse of discretion standard will apply to consideration of the Discovery Order. *See Platkin v. Smith & Wesson Sales Co., Inc.*, 474 N.J. Super. 476, 489 (App. Div. 2023).

ARGUMENT

I. Dinnocenzo is a necessary trial witness who should be disqualified as Cordova's counsel (Da1).

The Disqualification Order should be reversed because Dinnocenzo ought to be disqualified, pursuant to RPC 3.7, for being a necessary trial witness given that he is the only person capable of testifying in support of Cordova's fourth cause of action alleging Chubb's bad faith and violation of the New Jersey Consumer Fraud Act. Contrary to Cordova's arguments before the trial court, Chubb timely moved to disqualify, and there is no evidence that Cordova would suffer substantial hardship if Dinnocenzo were disqualified. Allowing Dinnocenzo to proceed as counsel will undoubtedly blur the lines between his role as both an advocate and witness.

a. Dinnocenzo is a necessary trial witness because his testimony is unobtainable elsewhere (Da1).

Dinnocenzo should be disqualified because he is the only person who can testify regarding the allegations contained in Cordova's fourth cause of action. As detailed throughout this submission, relevant testimony is unobtainable

elsewhere. RPC 3.7 "prohibits a lawyer, with certain exceptions, from acting as an advocate at a trial in which the lawyer will likely be a 'necessary witness.'" *Ortiz v. Otis*, 2020 WL 1966544, at *5 (App. Div. 2020) (unreported); *see also* Da188-193. Specifically, the Rule states:

> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
>
> (1) the testimony relates to an uncontested issue;
>
> (2) the testimony relates to the nature and value of legal services rendered in the case; or
>
> (3) disqualification of the lawyer would work substantial hardship on the client.
>
> (b) A lawyer may act as advocate in a trial in which another lawyer's firm is likely to be called as a witness unless precluded from doing so by RPC 1.7 or RPC 1.9.

See RPC 3.7.

"RPC 3.7 is a rule of disqualification designed to prevent prejudice to the client whose lawyer will be required to testify, as well as to reduce the possibility of unfairness to the opposing party in litigation." *Manolis v. Shlakman*, 2006 WL 289112 (2006) (unreported); *see also* Da194-196. "The American Bar Association comment to RPC 3.7, the 'advocate-witness rule,' notes that '[c]ombining the roles of advocate and witness can prejudice the tribunal and opposing party." *Escobar v. Mazie*, 460 N.J. Super. 520, 526-27 (App. Div.

2019).[5] "Because [a] witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others, the jury may not understand whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof." *Id*. at 527. Courts instruct that "[a] 'necessary' witness under Rule 3.7 is one whose testimony is unobtainable elsewhere." *Id*., at 528; *see also Ortiz*, 2020 WL 1966544, at *5 (App. Div. 2020); *Biermann v. Bourquin*, 2012 WL 4008956, at *2 (App. Div. 2012) ("Although RPC 3.7 does not require certainty that an attorney will testify to warrant disqualification,…the requisite 'likelihood' must be that the attorney will be a 'necessary witness,' i.e., that the attorney can provide evidence that is not available through other means.") (unreported); *see also* Da197-199.

Simply put, Dinnocenzo's testimony will be necessary at trial to substantiate the allegations asserted in support of Cordova's cause of action alleging Chubb's bad faith and violation of the New Jersey Consumer Fraud Act. In other words, relevant testimony is unavailable elsewhere because that cause

[5] "The official [American Bar Association] comments to the RPCs can assist in interpreting them." *In re Opinion No. 17-2012 of Advisory Committee on Professional Ethics*, 220 N.J. 468, 478 (2014).

of action is based exclusively on Dinnocenzo's account of the events that took place during Chubb's claim investigation.

Most notably, Dinnocenzo is referenced in 27 paragraphs in the Complaint that he drafted in this lawsuit. In its motion, Chubb focused on eight of those paragraphs (1, 17, 26, 34, 38, 40, 62, and 71) that specifically concerned Dinnocenzo's observations of Chubb's claim handling, and all the circumstances surrounding the basis for claiming that Chubb's usage of the suit limitation period as a "hammer" was bad faith. Regarding the latter issue, in Cordova's opposition to Chubb's motion, she stated: "Just as one example, Chubb does not deny that it kept promising it would extend the shortened limitations period under the policy, then retracted this promise at the last minute hoping the limitations period would expire just before plaintiffs could file an action." This statement is based solely on Dinnocenzo's version of the facts.

Consistent in that regard, in response to Chubb's interrogatories that requested support for several allegations tied to Cordova's fourth cause of action, Chubb was only directed to review the Complaint, and "numerous letters" exchanged between Dinnocenzo and Chubb's coverage counsel, Bernstiel. The record is devoid of any evidence that Cordova has any relevant knowledge about the fourth cause of action.

Moreover, Dinnocenzo's testimony is necessary to fully explore the "back-and-forth" between Dinnocenzo and Bernstiel outside of written letters. Chubb acknowledges that people other than Dinnocenzo were present for EUOs; however, that fact does not undermine the necessity of Dinnocenzo's testimony. It would not be cumulative for multiple witnesses to testify regarding these issues as each has a differing account of the facts, and only Dinnocenzo can testify in support of the allegations in the Complaint. It was improper for the trial court to suggest that other witnesses, including Bernstiel, could provide sufficient testimony when none of those people were involved in crafting the Complaint and are unable shed light on the basis for each relevant paragraph. To be clear, a party has every right to question the witness who makes a substantive allegation in a complaint.

Instructive is *Freeman v. Vicchiarelli* (827 F.Supp. 300 (D.N.J. 1993)), which concerned an action for malicious prosecution where the defendant sought to disqualify the plaintiff's attorney because of his involvement in the underlying case. The plaintiff's case depended heavily on what was said at a pre-hearing conference which took place off the record and was attended by the plaintiff's attorney, the police officer involved, and the prosecutor. In analyzing the likelihood of the plaintiff's attorney as a witness at trial, the court in *Freeman* found "it is more than likely that [the plaintiff's attorney] will be a

necessary trial witness. His testimony…is the primary evidence in this case…As the complaint presently stands, it is hard to imagine how Plaintiff's claim can succeed without [the plaintiff's attorney's] testimony." *Id.*, at 302-303. Therefore, the *Freeman* Court recognized that the attorney's testimony was necessary even though multiple people could have theoretically testified about certain events because the plaintiffs' claim could not succeed without his testimony. Such is the case here, as Dinnocenzo is the only source of testimony in support of Cordova's fourth cause of action.

Similarly, in all relevant briefing thus far, Cordova has incorrectly relied on *J.G. Ries & Sons, Inc. v. Spectraserv, Inc.* (384 N.J.Super. 261 (App. Div. 2006)). There, the plaintiff sought damages from the defendant arising out of alleged noxious odors and fumes generated by the defendant in the course of its business, which the plaintiff contended affected the use of its property. The defendant moved to disqualify the plaintiff's law firm because they would be called as a witness, and relied upon a letter written by the law firm which was directed to the plaintiff's tenant who sought to terminate its lease due to the presence of certain environmental conditions. The Court determined that the attorney who wrote the letter was not a necessary witness at trial and that to the extent the defendant wanted to use the letter to bolster its position that its activities did not affect the plaintiff's property, it was permitted to seek to

introduce the letter through the tenant who received it. However, most significantly, the letter did not reference any additional conversations or the law firm's actions outside of the text of the letter. Here, the circumstances are to the contrary, as Chubb's handling of the subject insurance claim is a central component of the litigation and, the factual allegations of the Complaint relative to Cordova's fourth cause of action are based solely on Dinnocenzo's purported observations and experiences in connection with the handling of the claim. Unlike *Spectraserv*, no document or alternative witness can provide Chubb with what it needs to defend itself at trial regarding these allegations.

Cordova's decision not to affirmatively identify Dinnocenzo as a trial witness is inconsequential. Cordova's choice in that regard does not diminish the importance of Dinnocenzo's unique perspective and firsthand account, which are indispensable for a comprehensive and fair examination of the facts at hand. Chubb should be entitled to explore Dinnocenzo's testimony even if it harms its case, as he is the only possible witness in support of Cordova's bad faith claims.

Thus, it is clear that Dinnocenzo is the most, and indeed only, knowledgeable witness about these issues.

b. Chubb timely moved to disqualify (Da1).

Chubb timely moved to disqualify Dinnocenzo once it recognized that Dinnocenzo would be a necessary trial witness. "Once counsel recognizes that opposing counsel is likely to be a necessary witness, a motion to disqualify opposing counsel should be filed. The right to file such a motion may be waived if it is not exercised in a timely manner." *Biermann*, 2012 WL 4008956, at *3 (App. Div. 2012) (internal citations omitted). Courts consider the following factors in determining whether a party has waived its right to object to the opposing party's counsel: "(1) the length of the delay in bringing the motion to disqualify, (2) when the movant learned of the [grounds for disqualification], (3) whether the movant was represented by counsel during the delay, (4) why the delay occurred and (5) whether disqualification would result in prejudice to the non-moving party." *Id*.

Chubb filed its motion once it became clear that Dinnocenzo would be a necessary trial witness. This is best demonstrated by the procedural history of this litigation. Since the Complaint was filed, Chubb has sought to eliminate Cordova's fourth cause of action, and thus, the need for Dinnocenzo's testimony. In other words, Chubb could not have recognized that Dinnocenzo was a necessary trial witness until there was clarity that the parties would, in fact, litigate that cause of action.

The time that elapsed prior to Chubb filing its motion to disqualify Dinnocenzo did not prejudice Cordova. Over two and a half years were spent on motion practice, Flores' death and resulting stay, settlement discussions, and requests for Cordova to withdraw her bad faith claims. If any of Chubb's efforts to sever, dismiss, or withdraw the bad faith claims were successful, there would not have been any further need for Dinnocenzo's testimony. Despite these efforts, Cordova's fourth cause of action remains, making Dinnocenzo a necessary witness. Previously, there was no basis for Chubb to pursue his testimony or disqualification due to the uncertainty of the claims.

Also, recently, Chubb offered to waive its right to Dinnocenzo's deposition if Cordova agreed to withdraw her fourth cause of action; however, she refused. As such, she has accepted the consequences of moving forward. Contrary to Cordova's contentions, this was not a "threat" to file a disqualification motion. Rather, this was consistent with Chubb's position that Dinnocenzo's testimony is unavoidable as long as Cordova's fourth cause of action continues to exist.

The case law Cordova has previously cited relative to waiver is inapplicable and is not instructive here as each set of circumstances requires a case-by-case, fact-intensive analysis. For example, in *Alexander v. Primerica Holdings, Inc.* (822 F.Supp. 1099, 1116-1118) (D. N.J. 1993)), the court

determined that the movant unreasonably delayed moving for disqualification where the motion was filed four months prior to trial, there was extensive discovery, and the parties had filed summary judgment motions. *Id*. Here, no trial date has been scheduled and the parties are still in the preliminary stages of discovery without a discovery end date.

Therefore, Chubb timely moved to disqualify Dinnocenzo, and did not waive its right to do so.

c. Cordova will not suffer substantial hardship if Dinnocenzo is disqualified (Da1).

Chubb's motion to disqualify should also be granted because Cordova would not suffer substantial hardship as a result. Cordova's primary position, that she would have difficulty finding replacement counsel, is insufficient to deny Chubb's motion. *See Freeman v. Vicchiarelli*, 827 F.Supp. 300, 305 (D.N.J. 1993) ("difficulty in finding alternative counsel does not, in itself, constitute substantial hardship").

First, although Cordova contended that Flores' estate's failure to retain counsel should serve as reflection of what would happen to her, such an argument fails. It is unknown why Flores' estate never hired a new attorney. The estate's failure to retain counsel could have been as simple as that the estate was no longer interested in prosecuting the lawsuit. Regardless, any argument on this point is sheer speculation.

Second, Cordova's argument that she would have difficulty finding a replacement due to the "advanced stage of the litigation" fails as well, as very little discovery has taken place to date. Chubb anticipates that at least ten depositions remain (including all party depositions). Thus, significant discovery lies ahead, which a new attorney could handle to shape the case as they see fit.

Third, similarly, Chubb should not be denied disqualification due to the amount of time Dinnocenzo has served as Cordova's counsel. In Cordova's motion seeking a protective order regarding Dinnocenzo's disqualification, she stated:

> Plaintiff has offered to go straight to trial, even though Chubb has obtained much discovery and she comparatively does not, but it declines because it wants to win a war of attrition instead of drawing out these proceedings with baseless motions and abusive tactics.

Thus, it appears that Dinnocenzo has not reviewed the substantial amount of material produced by Chubb, which consists of over 50,000 pages.

Fourth, Cordova has a contingency relationship with Dinnocenzo, meaning that she is not under any financial pressure regarding the representation.

Therefore, there is no indication that Cordova would suffer substantial hardship as a result of Dinnocenzo's disqualification.

d. Chubb's motion to disqualify was not premature (Da1).[6]

In contrast to Cordova's assertions, Chubb's motion to disqualify was not premature. To be clear, Judge Hudak instructed the parties to proceed with disqualification motions before engaging in any discovery or pursuing any alternative related relief. Regardless, the record makes clear that Dinnocenzo is a necessary trial witness, thus making the motion at this juncture both proper and judicially efficient prior to the parties moving forward with discovery.

Additionally, in her opposition to Chubb's motion for leave to appeal, Cordova cited case law that failed to support her argument that Chubb's motion was premature. For example, the Court in *Dantinne v. Brown* (2017 U.S. Dist. LEXIS 97906 (D. N.J. 2017)) determined that a motion to disqualify, pursuant to RPC 3.7, was premature because there was not enough support at the time to determine that the attorney would be a necessary trial witness. *Id*., at 13-14 (unreported); Da. 354-359. The court explained that "[t]he discovery process is too fluid and trial too far off for the court to make a final determination on this question at this time." *Id*., at 14. The circumstances in *Dantinne* differ from those here because, here, no further discovery is required to determine

[6] Cordova's contentions that Chubb's motion is both premature and untimely are inherently contradictory.

Dinnocenzo's involvement in the claim investigation, as his experiences and account of the facts form the foundation for an entire cause of action.

In sum, Dinnocenzo should be disqualified as a necessary trial witness. Cordova would not experience substantial hardship if the motion is granted, and Chubb timely moved for this relief.

II. The Dinnocenzo Subpoena should not be quashed and no protective Order should be issued (Da2).

For the reasons stated herein, the trial court erred in quashing the Dinnocenzo Subpoena and issuing a protective Order excusing Dinnocenzo's compliance with it. The subpoena is not unreasonable or oppressive, does not seek privileged information, and most importantly, Dinnocenzo is the only person who can provide support for Cordova's fourth cause of action alleging Chubb's bad faith and violation of the New Jersey Consumer Fraud Act. Chubb will be unable to defend itself at trial without the Dinnocenzo's testimony and documents.

"New Jersey's discovery rules are to be construed liberally in favor of broad pretrial discovery." *Payton v. New Jersey Turnpike Authority*, 148 N.J. 524, 535 (1997). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." R. 4:10-2. "Relevant evidence," although not defined in New Jersey's discovery rules, is defined elsewhere as "evidence having a tendency in reason

to prove or disprove any fact of consequence to the determination of the action." *Payton*, 148 N.J. at 235; N.J.R.E. 401.

A deponent who objects to a deposition may move to quash the deposition or for an equivalent protective Order. *See Horon Holding Corp. v. McKenzie*, 341 N.J. Super. 117, 129 (App. Div. 2001); Rules 1:9-2 and 4:10-3. In relevant part, Rule 1:9-2 states:

> A subpoena or, in a civil action, a notice in lieu of a subpoena as authorized by R. 1:9-2 may require production of books, papers, documents, electronically stored information, or other objects designated therein. The court on motion made promptly may quash or modify the subpoena or notice if compliance would be unreasonable or oppressive and, in a civil action, may condition denial of the motion upon the advancement by the person in whose behalf the subpoena or notice is issued of the reasonable cost of producing the objects subpoenaed.

Moreover, Rule 4:10-3 allows a litigant or the person from whom discovery is sought to obtain relief "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Given the fundamental similarities between a motion to quash and a motion for a protective order, New Jersey courts consider the analysis for both motions to be the same. *See Kerr v. Able Sanitary and Environmental Services, Inc.*, 295 N.J. Super. 147, 155 fn. 4 (App. Div. 1996).

"[A]ny party may take the testimony of any person, including a party, by deposition upon oral examination." Rule 4:14-1. Generally, there is no

prohibition against taking the deposition of opposing counsel. *See Kerr*, 295 N.J. Super. at 155. Nonetheless, the request to depose a party's attorney constitutes presumptive "good cause" for a protective Order under Rule 4:10-3(a). *Id*., at 158. However, that presumption may be overcome by demonstrating a legitimate need for the deposition, and "that the propriety and need for the deposition outweigh the possible disruptive or burdensome effects that the prospective deposition will have on the underlying litigation." *Id*. The presumption of a protective Order can also be overcome "where an attorney's conduct is the basis for a pending claim…or where an attorney is a fact witness in the sense that the attorney has observed or participated in the underlying transaction or occurrence giving rise to the cause of action." *Id*., at 159. In evaluating the propriety and need for an attorney's deposition, courts consider the following factors:

> (1) the relative quality of the information purportedly in the attorney's knowledge, and the extent to which the proponent of the deposition can demonstrate the attorney possesses such information; (2) the availability of the information from other sources that are less intrusive into the adversarial process, *i.e.*, the extent to which all other reasonable alternatives have been pursued to no avail; (3) the extent to which the deposition may invade work product immunity or attorney-client privilege; and (4) the possible harm to the party's representational rights by its attorney if called upon to give deposition testimony, *i.e.*, the extent to which the deposition will affect attorney preparation or participation on behalf of the client.

Id.

a. *Kerr* Factors (1) and (2) (Da2)

Chubb should be permitted to proceed with the Dinnocenzo Subpoena as its need for Dinnocenzo's testimony and unprivileged file exceedingly outweighs any possible disruptive or burdensome effects (which Chubb denies the existence of) that such compliance would have on the litigation. As laid out extensively above, Dinnocenzo's testimony is needed to understand the basis for the allegations supporting Cordova's fourth cause of action because there is no alternative source for this information. Again, he, alone, is referenced in all relevant allegations, and there is no indication that Cordova possesses any relevant knowledge. Similarly, also as discussed above, Dinnocenzo's testimony would not be cumulative of the testimony that any other potential witness might provide because his account of the facts is the sole source of Cordova's fourth cause of action. Neither Chubb's coverage counsel, nor its investigative team, was involved in drafting the Complaint and cannot testify in support of its contents.

The case law Cordova previously cited in support of a protective order as it pertains to *Kerr* factors (1) and (2) is inapposite. For example, in *Johnson v. Takasago Int'l Corp. U.s.a.* (2019 N.J. Super. Unpub. LEXIS 4527 (Law Div. 2019)) (unreported), the plaintiff sought a protective order quashing the defendant's notice for the deposition of his attorney. *See* 215-219. The Court

determined that the defendant failed to demonstrate sufficient need and propriety to overcome the presumptive good cause for issuance of a protective order mostly because the defendant already had knowledge of, and was in possession of, the information sought to be obtained from deposing the attorney. The Court further explained that some additional information was either privileged, already evidenced in a written letter, or was "of no consequence to either party." *Id*., at *12. Even more relevant for the case at hand is that, in *Johnson*, the Court also stated that the defendant had "various avenues available" in order to obtain the information. *Id*., at * 13. Here, that is not the case as Chubb requires Dinnocenzo's testimony regarding each of the above-referenced allegations from the Complaint, none of which can be supported by anyone else. Any written documentation, alone, is insufficient for Chubb to be able to defend itself against all allegations of bad faith.

Accordingly, Dinnocenzo is a necessary trial witness relating to Cordova's fourth cause of action because, without him, Chubb will be unable to obtain alternative relevant testimony.

b. *Kerr* Factor (3) (Da2)

There is also no risk that deposing Dinnocenzo would breach work product immunity or attorney-client privilege, as all requested documents, information, and testimony are factual and pertain to his conduct and

experiences during the claim investigation. The Dinnocenzo Subpoena also instructs that "[p]rivileged [d]ocuments are not sought by these requests but must be identified." In this regard, to the extent Dinnocenzo believes anything should be protected, he can, and should, submit a privilege log. In claiming that Dinnocenzo's testimony should be protected before the trial court, Cordova effectively used privilege as both a sword and a shield. If Chubb is barred from deposing Dinnocenzo – the sole individual capable of providing relevant testimony – Chubb would be entirely unable to defend itself against Cordova's bad faith claims at trial. All testimony sought is factual, as Chubb is only focused on the allegations contained in the Complaint. Conversely, if Cordova maintains that these matters are protected, such an argument must fail because any such protections were waived when Cordova raised them in the Complaint. *See Comprehensive Neurosurgical, P.C. v. Valley Hospital*, 257 N.J. 33, 81 (2024) ("Of course, the privilege is not absolute – a client can waive the attorney-client privilege by placing advice by an attorney 'in issue.'…In other words, when a party places an attorney-client communication which goes to the heart of the claim in controversy as part of their claim or defense, the privilege is waived.") (internal citations omitted); *In re Chevron Corp.*, 633 F.3d 153, 165 (3d Cir. 2011) ("…and it is only in cases in which the material is disclosed in a manner

inconsistent with keeping it from an adversary that the work-product doctrine is waived.").

Relatedly, the trial court stated that Dinnocenzo "can likely face the challenge of having to show his work product" and "client communications," but provided no explanation or reasoning to support that statement. In its motion to disqualify, Chubb highlighted several allegations in the Complaint that are based solely on Dinnocenzo's perspective. The Orders failed to explain how Dinnocenzo's testimony regarding any of the highlighted allegations would breach privilege. Thus, a blanket conclusion that Cordova would be prejudiced in this regard was erroneous. If Chubb is prevented from deposing Dinnocenzo – the only person capable of providing relevant testimony in support of Cordova's fourth cause of action – it would be unable to defend against Cordova's bad faith claims at trial.

Simply put, Chubb seeks necessary, unprivileged discovery without which Chubb will be unduly prejudiced.

c. *Kerr* Factor (4) (Da2)

Dinnocenzo's representation of Cordova would not be harmed because Dinnocenzo's status as a necessary trial witness is something that Cordova should have expected given that his account of the claim investigation process served as the sole basis of Cordova's fourth cause of action. There is not a single

allegation or discovery response suggesting that Cordova is knowledgeable in any capacity regarding those claims. Instead, that cause of action fully requires Dinnocenzo's testimonial support. Chubb respectfully refers the Court to its arguments above for additional analysis relevant to *Kerr* factor (4) as both positions require similar reasoning and reach comparable conclusions.

Thus, the trial court committed error by quashing the Dinnocenzo Subpoena and entering a protective order excusing Dinnocenzo's compliance.

III. A protective order should not be issued to prevent Dinnocenzo's disqualification because he is a necessary trial witness (Da2).

The Court is respectfully requested to consider all information and arguments presented above as they are all integral to Chubb's argument that a protective order should not have been ordered to prevent Dinnocenzo's disqualification. For brevity, Chubb did not include everything here again. In sum, Chubb's motion to disqualify should be granted because Dinnocenzo is a necessary trial witness who is the sole source of significant testimony and evidence concerning Cordova's fourth cause of action. Moreover, Chubb timely filed its motion once it recognized that Dinnocenzo would be a necessary trial witness. There is also no indication that Cordova will suffer substantial hardship if Dinnocenzo is disqualified. As a result, there was no basis to enter a protective order preventing Dinnocenzo's disqualification.

CONCLUSION

In light of the foregoing, Chubb respectfully requests a reversal of the trial court's Orders.

Respectfully submitted,

COZEN O'CONNOR

By: _____

Paul Ferland, Esq.
Josh Tumen, Esq.
3 WTC
175 Greenwich Street, 55th Floor
New York, New York 10007
T: (212) 453-3914
F: (646) 461-2092
pferland@cozen.com
jtumen@cozen.com
Attorney for Chubb Insurance Company of New Jersey

Dated: June 13, 2025

Superior Court of New Jersey

Appellate Division

Docket No. A-002754-24

ANDRES FLORES-ARTIEDA and NICOLE CORDOVA, *Plaintiffs-Counter-Defendant/Respondent,* vs. CHUBB INSURANCE COMPANY OF NEW JERSEY, *Defendant-Counterclaimant/Appellant.*	:	CIVIL ACTION ON GRANT OF MOTION FOR LEAVE TO APPEAL FROM INTERLOCUTORY ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, UNION COUNTY DOCKET NO. 001428-22 Sat Below: HON. JOHN G. HUDAK

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT

LAW OFFICES OF ERIC DINNOCENZO
Attorneys for Plaintiff-Respondent
469 Seventh Avenue, 12th Floor
New York, New York 10018
(212) 933-1675
eric@dinnocenzolaw.com

On the Brief:
ERIC DINNOCENZO
Attorney ID# 027542006

Date Submitted: June 24, 2025

Table of Contents

Table of Judgments, Orders, and Rulings

Table of Authorities

CASES

OTHER AUTHORITIES

INTRODUCTION

Purely seeking a tactical advantage in this lawsuit, defendant-appellant Chubb Insurance Company of New Jersey ("Chubb") has pursued this appeal after unsuccessfully moving to disqualify plaintiff's counsel, Eric Dinnocenzo, on the grounds that he is a necessary witness. But, as Judge Hudak found, Dinnocenzo is anything but—he merely represented his clients during an insurance claim investigation by accompanying them to examinations under oath and exchanging letters with Chubb's attorney. That is all.

The disqualification effort began after plaintiff Andres Flores-Artieda's untimely death at age 40, when his claims were subsequently dismissed after his estate was unable to secure new counsel, likely because he was a key witness and Chubb has produced over 50,000 pages of documents in discovery that would have to be reviewed. Cunningly, after the estate was dismissed, Chubb moved quickly to disqualify Dinnocenzo as counsel for the remaining plaintiff, Nicole Cordova, in the hope that she likewise will be unable to find substitute counsel and the entire case will be dismissed.

Chubb concedes that it is motivated by tactical advantage, but for a different reason. After being served with the complaint, Chubb had a laser-like focus on getting the dismissal of the plaintiffs' bad faith and Consumer Fraud Act claims. After it filed a motion to dismiss that was denied, it next sought to

sever these two causes of action from the breach of contract claim, and when that failed, too, Chubb next threatened to disqualify Dinnocenzo if Cordova did not voluntarily dismiss the two claims. In its brief, Chubb admits that if either of its two earlier motions had been successful, "there would not have been any further need for Dinnocenzo's testimony" and hence no need to seek his disqualification. But the case law holds that it is improper to file a motion to disqualify for tactical reasons.

There are several legal grounds that *each independently* support the trial court decision rejecting disqualification. First, an attorney is only a necessary witness when relevant information cannot be obtained through other means. As will be shown, Chubb's outside counsel who conducted the claim investigation, Cynthia Bernstiel, and Chubb investigator Donald Waltz, were witnesses to every fact that Dinnocenzo was—after all, the bad faith claims are solely based on their conduct during the investigation. Further, Dinnocenzo has stipulated he will not testify at trial, yet Chubb oddly keeps insisting that he *must* testify so that plaintiff Cordova can succeed on the bad faith and CFA violations. Chubb seemingly wants to commandeer how plaintiff will try her case. Plaintiff, however, believes she can prove bad faith and CFA violations without her attorney testifying and is willing to assume the risk that she may or may not succeed. She should be permitted to have her choice of counsel and

control of her own litigation strategy, rather than having it dictated by opposing counsel.

Second, the appeal is premature because an attorney, even one who is a necessary witness, may continue to litigate a case during pre-trial discovery. In this case, trial is a long way off.

Third, Chubb has waived its right to seek disqualification because it waited almost three years to file its motion. It is undisputed that, when it was served with the complaint more than three years ago, Chubb had knowledge of the grounds it relies on here in support of disqualification.

Fourth, the case law holds that a party may not call opposing counsel as a witness simply with the goal of having him disqualified, especially when his testimony would not prejudice his own client. Chubb has not said it intends to subpoena Dinnocenzo to testify at trial, but even it did, Dinnocenzo's testimony would only help and certainly would not harm Cordova, and so he cannot be disqualified.

Fifth, a disqualification of Dinnocenzo would be a hardship to Cordova who would have difficulty finding substitute counsel on a contingent fee basis given that the other plaintiff, Andres Flores-Artieda, is deceased and because of the enormous size of the record.

PROCEDURAL HISTORY AND NATURE OF THE PROCEEDINGS

The relevant procedural history is:

May 16, 2022: Cordova filed her Complaint. (Da4-34).

June 22, 2022: Chubb moved to dismiss the Complaint's fourth cause of action alleging that Chubb engaged in bad faith conduct and violated the CFA. (Da343-347).

November 18, 2022: denial of Chubb's motion to dismiss. (Da37).

April 10, 2023: Chubb moved to sever Cordova's bad faith and CFA causes of action. (Da344).

May 12, 2023: Court denied Chubb's motion to sever. (Da110).

October 25, 2023: Plaintiff Flores-Artieda died. (Da344).

August 20, 2024: Court granted Chubb's motion to dismiss Flores-Artieda as a plaintiff. (Da112-13).

September 26, 2024: the parties appeared for a conference before Judge Hudak where they were encouraged to discuss settlement. (Da345).

October 19, 2024: Chubb rejected plaintiff's settlement demand. (Da345).

November 12, 2024: Chubb requested that Cordova withdraw her bad faith cause of action or it would require Dinnocenzo's testimony as a necessary trial witness; Cordova refused to comply. (Da345).

On February 12, 2025, Chubb filed a motion to disqualify Dinnocenzo. (Da350).

February 26, 2025: Cordova filed a motion to quash the Dinnocenzo and for a protective order shielding him from discovery. (Da352).

March 12, 2025: the trial court denied the motion to disqualify Dinnocenzo and enforced the protective order. (Da1-3).

LEGAL ARGUMENT

A. Dinnocenzo's testimony would be cumulative of Bernstiel and Waltz (Da1, Tr.15)

"Disqualification of counsel is a harsh discretionary remedy which must be used sparingly." *Dental Health Assocs. S. Jersey, P.A. v. RRI Gibbsboro, LLC,* 471 N.J. Super. 184, 192, 272 A.3d 406 (App. Div. 2022) quoting *Cavallaro v. Jamco Prop. Mgmt.*, 334 N.J. Super. 557, 572, 760 A.2d 353 (App. Div. 2000). Motions to disqualify are generally disfavored because they can have "such drastic consequences." *Rohm & Haas Co. v. American Cyanamid Co.*, 187 F. Supp. 2d 221, 226 (D.N.J. 2001). "Such disfavor results from the reality that motions to disqualify are sometimes made solely for 'tactical reasons,' and that even when they are made in good faith, motions to disqualify cause inevitable delay in the underlying proceedings and create additional hardships to the opposing party." *Prudential Ins. Co. of Am. v. Chelchowski*, 2017 WL 1549466, at *3 (D.N.J. Apr. 28, 2017) citing *Carlyle Towers Condo Assoc., Inc. v. Crossland Savings, FSB*, 944 F. Supp. 341, 345 (D.N.J. 1996).

In *Escobar v. Mazie*, 460 N.J. Super. 520, 528, 217 A.3d 163 (App. Div. 2019) (internal quotations omitted), it was observed that, "The ABA annotated comments to RPC 3.7 instruct 'a necessary witness under Rule 3.7 is one whose testimony is unobtainable elsewhere.'" Citing *Finkel v. Frattarelli*

Bros., Inc., 740 F. Supp. 2d 368, 375 (E.D.N.Y. 2010) ("Where counsel's testimony would be merely cumulative of testimony provided by others, disqualification is not appropriate."); *Dantinne v. Brown*, 2017 U.S. Dist. LEXIS 97906, 2017 WL 2766167, at *4 (D.N.J. June 23, 2017) ("[A]n attorney is a necessary witness where the information provided cannot be obtained through any other means, including through alternative witnesses."). Further, "the burden of establishing disqualification is on the movant." *See Escobar*, 460 N.J. Super. at 529.

To begin, some of the bad faith acts were not even witnessed by Dinnocenzo. For example, plaintiff alleges that Chubb sent an investigator to Flores-Artieda's boss's home, prompting the boss's attorney to write to Bernstiel that the visit was "invasive and jarring." (Da9). Dinnocenzo cannot testify about this matter because he was not present for it.

Regarding other parts of the claim investigation, either Bernstiel or Donald Waltz of the Chubb Special Investigations Unit were witnesses which would cause any testimony from Dinnocenzo to be cumulative.[1] To reiterate,

[1] Although Bernstiel is an attorney, she was not acting as counsel, but instead was conducting a claim investigation which is the normal business activity of an insurance company. *See Payton v. N.J. Tpk. Auth.*, 148 N.J. 524, 550-51 (1997) (citations and quotations omitted) ("when an attorney conducts an investigation not for the purpose of preparing for litigation or providing legal advice, but rather for some other purpose, the privilege is inapplicable. That result obtains even where litigation may eventually arise from the subject of the attorney's activities."); *National Union Fire Ins. Co. of Pittsburgh v. TransCanada*, 119 A.D.3d 492 (N.Y. App. Div. 2014) ("the record shows that counsel were

Dinnocenzo only witnessed the examinations under oath and exchanged letters with Bernstiel. Plaintiff has produced the pages from examinations under oath transcripts that note appearances from Bernstiel, Dinnocenzo, and Waltz. (Da322-6). Bernstiel conducted each examination under oath. Dinnocenzo simply accompanied his clients during the examinations, just like an attorney who defends a deposition. Judge Hudak correctly summarized Dinnocenzo's role as: "[h]e was doing essentially what an attorney does." (Tr.14). Bernstiel and Waltz are available witness who would make Dinnocenzo's testimony cumulative.

Further, there is no need for Dinnocenzo to testify about the examinations under oath seeing that transcripts of the testimony exist. If for some improbable reason witness testimony is required, Bernstiel and Waltz can fill that gap, but the reason why attorneys pay for court reporters and transcripts is so testimony will be recorded and not depend on the independent recollection of the attendees. Dinnocenzo is not a special cipher who is needed to interpret the transcripts.[2]

---

primarily engaged in claims handling — an ordinary business activity for an insurance company. Documents prepared in the ordinary course of an insurer's investigation of whether to pay or deny a claim are not privileged, and do not become so merely because the investigation was conducted by an attorney.").

[2] If Dinnocenzo is disqualified because he accompanied his clients to examinations under oath, it would open the door to attorneys routinely being disqualified because they represented a client at a deposition.

Nevertheless, Chubb blithely asserts that Bernstiel's and Waltz's presence "does not undermine the necessity of Dinnocenzo's testimony" because each witness "has a differing account of the facts." (Chubb Brief, p. 15). This is plainly a false statement. Chubb has not demonstrated any dispute about the content of the examination under oath transcripts. There are not two truths about what the transcripts say.

As stated, letters were exchanged between Dinnocenzo and Bernstiel during the claim investigation. Chubb stubbornly refuses to acknowledge under Appellate Division precedent that if Dinnocenzo and Bernstiel exchanged a piece of correspondence, Bernstiel can testify to it, making Dinnocenzo a cumulative witness. *See J.G. Ries & Sons, Inc. v. Specatraserv, Inc.*, 384 N.J. Super 216, 231, 894 A.2d 681 (App. Div. 2006) (a lawyer's testimony regarding a letter he wrote deemed not necessary as it could be introduced through the recipient). Indeed, Judge Hudak correctly observed that, "[a]s the plaintiff points out, there are other witnesses who can provide testimony such as Bernstiel, the claims investigator of the defendant."[3] (Tr.15).

[3] Courts have routinely held that attorneys should not be deposed or disqualified simply because they made a writing on behalf of their client. *See e.g.*, *Liberty Mutual Insurance Company v. Day to Day Imports, Inc.*, 2024 U.S. Dist. LEXIS 42460 *9-10; 2024 WL 1054918 (S.D.N.Y. Mar. 11, 2024) (not allowing a deposition of an attorney who drafted a coverage denial letter and instead holding that the insured could depose the claims adjuster); *Weisgarber v. New Jersey Dep't of Cmty. Affairs*, 2009 N.J. Super. Unpub. LEXIS 2441, at

Chubb speciously makes it seem like it is highly concerned that, if Dinnocenzo does not testify at trial, Cordova may fail in her effort to prove it engaged in bad faith. This is obviously a subterfuge to hide that disqualification is being sought for tactical reasons. In reality, if a litigant believes an opposing party will have difficulty proving its case, it does not file a motion aimed at enhancing its ability to do so. This proves that Chubb is dissembling before this Court.

In addition, Chubb's argument is circular in nature, painting Dinnocenzo as a necessary witness, yet recognizing that the breach of contract claim can proceed without the bad faith and CFA claims. In other words, Chubb says Dinnocenzo is a necessary witness because he "is the only person capable of testifying in support of Cordova's fourth cause of action," yet Chubb also tried to get Cordova to drop those claims, understanding they are not necessary parts of her lawsuit. (Chubb Brief p.11; Da345). To put it differently, Chubb takes the position that Dinnocenzo is a necessary witness to claims that are not strictly "necessary" for this lawsuit to proceed.

Further, Chubb neglects to mention that the letters between Dinnocenzo and Bernstiel are all part of its business record. For example, a May 6, 2022

---

*18, 2009 WL 3170438 (App. Div. Oct. 2, 2009) (an attorney could not be questioned about the meaning of terms in an agreement he prepared because "the plain language of the agreement speaks for itself" and the questioning would invade his work product).

letter from Dinnocenzo to Bernstiel contained in the appendix has a Chubb bate-stamp number. (Da328). This means Chubb has the letter in its files. In fact, all the letters exchanged between Bernstiel and Dinnocenzo were produced by Chubb in discovery with a bate-stamp number. Ultimately, the trial judge will determine what documents are admissible in evidence.[4] Disqualification should not be sought based on speculation as to what information will and will not be admitted into evidence at the time of trial, especially when no party depositions have even occurred. Further, it is odd that Chubb predicates disqualification on its prediction, without citing any supporting case law, that letters that are part of its business record will be kept out of evidence.

It bears repeating that Chubb lacks standing to disqualify Dinnocenzo. Chubb says it is impossible for Cordova to prove bad faith without Dinnocenzo taking the witness stand. But this is a baseless speculation. Again, plaintiff reinforces that she has the right to choose her own litigation strategy. She believes that it will involve keeping Dinnocenzo as trial counsel and proving

[4] This case was investigated by the Chubb Special Investigations Unit (SIU). Its business records are admissible into evidence. *See McDowell v. USAA Gen. Indem. Co*, 2017 U.S. Dist. LEXIS 101978, 2017 WL 282965 (D.N.J. June 30, 2017) ("The Court finds that the SIU files would be admissible under the business records exception of Fed. R Evid. 803(6), as the files are supported by a certification from Osmond McMahon, the custodian of records at Defendant's special investigations vendor.").

bad faith through Bernstiel, Waltz, and Chubb's business records. She asks that Chubb not be permitted to commandeer her choice of counsel and her litigation strategy. *See Twenty-First Cent. Rail Corp. v. N.J. Transit Corp.*, 210 N.J. 264, 279 (2012) ("We recognize that a client's right to be represented by counsel of its choosing is an important one to be both cherished and protected."). Further, if it turns out that she ultimately cannot prove bad faith, this is a risk she will bear.

Chubb asserts that the bad faith claims are based on "Dinnocenzo's observations of Chubb's claim handling." (Chubb Brief p. 14). This is simply not true. The bad faith allegations are based on Chubb's documented actions in the correspondence between Dinnocenzo and Bernstiel and in the examination under oath transcripts. In the next section, plaintiff will provide an example of this which undermines Chubb's position that somehow Dinnocenzo is the linchpin to proving its bad faith during the claim investigation.

It cannot be emphasized strongly enough that Chubb filed this motion to disqualify Dinnocenzo only as a tactical measure. *See Escobar*, 460 N.J. Super. at 526 ("disqualification motions are, nevertheless, viewed skeptically in light of their potential abuse to secure tactical advantage, …"); *Delaney v. Dykstra Assocs.*, 2020 N.J. Super. Unpub. LEXIS 1355, at *16, 2020 WL

3864976 (App. Div. Jul. 9, 2020) citing and quoting *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 436 (1985) (expressing a concern for the "tactical use of disqualification motions to harass opposing counsel); *Murray v. Metro. Life Ins. Co.*, 583 F.3d 173, 178 (2d Cir. 2009) ("Because courts must guard against the tactical use of motions to disqualify counsel, they are subject to fairly strict scrutiny, particularly motions under the witness-advocate rule.").

At page 7 of its brief, Chubb acknowledges that it is acting tactically. It states, "[s]ince this lawsuit was commenced, Chubb has sought to dismiss Cordova's fourth cause of action alleging Chubb's bad faith and violation of the New Jersey Consumer Fraud Act. A dismissal would have, in turn, eliminated the need to seek Dinnocenzo's testimony." If Chubb had an actual concern that brought about the need for disqualification, it would have filed its motion three years ago upon being served with the complaint.

In the procedural history set forth in its brief, Chubb sets forth the timing of events that shows disqualification is a tactical maneuver, a mere pretext to get a dismissal of the entire case, or at least the bad faith and CFA claims. It filed a motion to dismiss the bad faith and CFA claims that was denied on November 18, 2022, followed by a motion to sever those claims from the breach of contract claim which was also denied on May 12, 2023. (Chubb Brief p. 7; Da37, 110). Plaintiff Flores-Artieda died on October 25,

2023 and the case was stayed until August 20, 2024 when the estate was dismissed for failure to obtain new counsel. (Chubb Brief, pp. 7-8; Da111-2). Settlement discussions ensued until November 12, 2024, when, Chubb says, it "requested that Cordova withdraw her bad faith cause of action. Alternatively, Chubb advised that it would require Dinnocenzo's testimony as a necessary witness; Cordova refused to withdraw her bad faith cause of action." (Chubb Brief, p. 8). Chubb admits it tried to leverage Cordova into dismissing her bad faith claims by manufacturing a false conflict between her and Dinnocenzo.

Nine days later, on November 21, 2024, Chubb drafted a subpoena to take Dinnocenzo's deposition and for him to provide all his communications with his client. (Da203). This was followed by the motion to disqualify. Clearly, the motion was filed not based on a concern that Dinnocenzo is a necessary witness, but instead to get a dismissal of the entire case or at least the bad faith and CFA claims. It is abundantly clear that the motion to disqualify is the most recent link in the chain of events to dismiss the bad faith and CFA claims. In fact, Chubb had additional motivation to seek disqualification of Dinnocenzo after it just recently witnessed that the estate was unable to secure new counsel and was dismissed.

B. An example of how Chubb's bad faith does not require Dinnocenzo's testimony (Da1)

Cordova will discuss one example out of many that demonstrates how Chubb's bad faith is well-documented and that Dinnocenzo is not a necessary witness. Of note, Chubb has the burden of proof on the issue of disqualification, but has given only sweeping generalizations, and not concrete examples, of how Cordova will be unable to prove bad faith without her attorney testifying at trial.

The particular example below concerns how Chubb refused to take a virtual examination under oath of Cordova, tried to force her to give up rights in advance of her examination under oath, and despite prior representations, refused to extend the suit limitations period in the policy causing her to have to file suit literally at the last minute.

The insurance policy contained a shortened two-year limitations period. (Da5). Plaintiff alleged in paragraph 23 of the complaint that Chubb used it as leverage against her to make concessions during the claim investigation: "Chubb repeatedly used this clause as a "hammer" against plaintiffs in an effort to get them to give up their rights, and when Chubb agreed to extend it, it was only for a short period of time and often in exchange for plaintiffs following Chubb's wishes." (Da9). This is legal argument and what attorneys do when they represent a client. It does not make Dinnocenzo a witness.

Paragraph 38 of the complaint refers to how Bernstiel wrote in a March 25, 2022 letter to Dinnocenzo that Chubb would never leave him unfairly trapped by the shortened limitations period: "each and every time Chubb Insurance has reassured you, with ever increasing specificity, of its agreement to extend the suit limitation period under every possible scenario … it is not trying to engineer a scenario whereby your clients are 'behind the eight ball' and need to make important decisions like whether or not to file suit at the last minute." (Da13-14). Chubb admitted in its Answer to the quoted portions of this letter. (Da44). Consequently, the letter speaks for itself and is uncontested.

Soon, however, Chubb would disavow this letter to try to trap plaintiffs with the limitations period.

In 2022, Chubb wanted to take another examination under oath of Cordova—already there had been 6 examinations of her and Flores-Artieda spanning over one thousand pages of testimony. (Da8). Bernstiel further demanded in an April 21, 2022 email that Cordova commit in advance "to answer questions during her EUO that **Chubb Insurance determines** are relevant and material …" (Da17). The insurance policy does not require an insured to agree in advance to answer each question asked at an examination under oath, seeing that she can reserve objections due to relevance, privilege,

work product and on other grounds, yet Chubb insisted that plaintiff acquiesce to this demand. Chubb's Answer admits that Bernstiel wrote this email. (Da46). This means no witness is required.

Another dispute about the examination under oath is that Cordova wanted it to be conducted virtually because a COVID-19 mask mandate was in effect. According to paragraph 66 of the complaint, in a May 15, 2022 letter, one day before the limitations period expired, Dinnocenzo asked Bernstiel "will you consider an accommodation and trying to reach an agreement wherein we can at least try a virtual EUO?" (Da22). Chubb admits that the letter was received by it and would not agree to a virtual examination under oath. (Da49).

Earlier, in paragraph 62 of the complaint, Cordova alleged that Dinnocenzo pointed out in a May 6, 2022 letter to Bernstiel that the policy did not have an in-person requirement for examinations under oath and that he had provided to Bernstiel "medical documents showing [Cordova] is at heightened risk for COVID and worse effects. Those documents included total thyroid removal after thyroid cancer and prior fluid surrounding and compressing the heart. In fact, Cordova had previously underwent heart surgery and had been in Intensive Care." (Da21). The May 6, 2022 letter is contained in the appendix with a Chubb bate-stamp indicating it is a business record. (Da328).

In its Answer Chubb admitted that the medical records were provided and that Dinnocenzo raised that there was no in-person requirement. (Da48). Again, there is no fact dispute here, and, even if a witness was required, it could be Bernstiel.

Chubb refused to accommodate Cordova, despite her medical concerns, and so the examination did not go forward—there is no dispute about this. Paragraph 68 of the complaint alleges that, on May 15, 2022, just one day before the limitations period was set to expire, and contrary to her earlier promise not to leave Cordova "behind the eight ball," Bernstiel wrote Dinnocenzo an email in which she refused to provide even one more week for plaintiffs to file a complaint. (Da23). In its Answer Chubb wrote that it "admits Bernstiel wrote to Dinnocenzo refusing to extend the limitations period in the May 15, 2022 email …" (Da49). This is not in dispute.

Cordova has demonstrated with particularity one example of how Dinnocenzo's testimony is not necessary to prove bad faith. At the least, she should be given the opportunity to take depositions of Bernstiel and Waltz before a determination is made that they will be inadequate witnesses and before she is deprived of executing her litigation strategy. It is inappropriately paternalistic for Chubb to dictate how Cordova should try her case. Once more, too, Cordova is willing to take on any risk, though she believes there is

none, that having Dinnocenzo remain as her trial counsel could impair her ability to succeed on her bad faith and CFA claims.[5]

C. Chubb seeks work product (Da1,Tr.16)

This appeal is a disguised effort by Chubb to obtain attorney work product. As stated, it carries this out by conflating a fact witness with the role of an attorney in litigation.

For example, Chubb alleges at page 2 of its brief that Dinnocenzo should be disqualified because he was "involved in crafting the Complaint" and that "a party has every right to question the witness who makes a substantive allegation in a complaint." To the contrary, a litigant does not get to depose opposing counsel because he drafted a pleading. This statement indicates that Chubb does not want to depose Dinnocenzo about the facts of the case so much as to ask him about how and why he used those facts to draft bad faith and CFA claims in the complaint.[6]

[5] It is important to understand, too, that a claim investigation is well documented. This is the entire reason Chubb has produced 50,000 pages of discovery. As such, it will not be so much the facts, but instead the conclusions drawn from them, that will be in dispute at the time of trial.

[6] By analogy, if a plaintiff's attorney in an automobile accident case visits the scene of the accident and then drafts a complaint alleging that the defendant driver was careless and negligent, it does not give defense counsel the right to take his deposition because he was "involved in crafting the Complaint" and made "substantive allegations in the complaint."

At pages 5 to 7 of its brief, Chubb continues in this vein by reproducing allegations in the complaint with emphasis that it believes show Dinnocenzo to be a necessary witness, such as those accusing Chubb of "***conducting an onerous, harassing, and unnecessary investigation,*" "*unfairly and offensively using the policy's two-year limitations period as a 'hammer' against plaintiffs,*" and "*making unethical assertions and threats to disinterested witnesses and seeking to violate attorney-client privilege.*"** These passages are the work product of an attorney who is characterizing the facts to persuasively establish his client's claims. Quite simply, this is what attorneys do.

Additional proof that Chubb seeks work product from Dinnocenzo is at page 2 of its brief where it states, "[t]hose on behalf of Chubb lack knowledge about the rationale behind the relevant allegations and, therefore, cannot provide testimony in support." The "rationale" behind why the complaint alleges bad faith and CFA claims is protected work product. *Jenkins v. Rainner*, 69 N.J. 50, 55, 350 A.2d 473 (1976) (the work product doctrine "protects from disclosure an attorney's mental impressions, conclusions, opinions or legal theories of an attorney or other representative of the party concerning the litigation."). To be clear, Chubb does not want facts from Dinnocenzo, but instead it wants to understand his thought process –-his

"rationale" for why he asserted bad faith and CFA claims on behalf of his client.

Similarly, at page 23 of its brief, referring to the bad faith and CFA claims, Chubb states that "Dinnocenzo's testimony is needed to understand the basis for the allegations supporting Cordova's fourth cause of action because there is no alternative source for this information." When Chubb uses the word "basis," it means the reasons for the bad faith and CFA causes of action. Chubb has and will be able to obtain full discovery of the facts in this matter. What it should not get in discovery, however, is the right to ask counsel about the "basis" for why he decided to allege bad faith and CFA claims.[7]

D. An interlocutory appeal is premature (Da1)

Chubb's motion to disqualify is based on RPC 3.7. "RPC 3.7(a) is a prohibition only against acting as an 'advocate at a trial.'" *Main Events Prods. v. Lacy*, 220 F. Supp. 2d 353, 356 (D.N.J. 2002). "[C]ounsel would not be disqualified pursuant to RPC 3.7(a) from participating in pretrial proceedings,

[7] By analogy, Chubb has alleged a counterclaim against Cordova under the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17a:33-1. (Da101). Under Chubb's rationale, Cordova should be allowed to take the deposition of its attorney, Paul Ferland, to understand the "basis" for this counterclaim because, likewise, "there is no alternative source for this information." Of course, this would be nonsense, which is why Cordova does not raise it in a cross-appeal.

and Plaintiffs' motion to disqualify is therefore, at best, premature." *Dantinne*, 2017 U.S. Dist. LEXIS 97906, at *24.

Just recently, the Appellate Division cited to a federal court decision holding that "RPC 3.7(a) is a prohibition only against acting as an advocate at a trial" and which "reverse[d] as premature a magistrate judge's order immediately disqualifying the plaintiff's attorney." *See Fountain Plaza, LLC v. Petrock's Liquors, Inc.*, A-1522-23, 2024 N.J. Super. Unpub. LEXIS 2882, at *11 (App. Div. Nov. 19, 2024) citing *Main Events Productions*, 220 F. Supp. 2d 353 (D.N.J. 2002).

To be clear, even if Dinnocenzo is a necessary witness, *which he is not*, there is no trial scheduled. RPC 3.7 does not prohibit an attorney who is a witness from participating in pretrial proceedings. If Dinnocenzo planned to testify, *which he does not*—again, he has stipulated he will not testify—in theory he could remain as counsel of record up until trial. To rule in favor of Chubb will eviscerate the holding that RPC 3.7 only prohibits an attorney who is a necessary witness from representing a party at trial and not during discovery. Not only is Chubb wrong on the law, but its position demonstrates an implicit lack of faith that the trial judge will be able to properly address evidentiary and witness issues.

E. Waiver (Tr.6)

"Waiver is a valid basis for the denial of a motion to disqualify." *Delaney*, 2020 N.J. Super. Unpub. LEXIS 1355, at *14, quoting *Alexander v. Primerica Holdings, Inc.*, 822 F. Supp. 1099, 1115 (D.N.J. 1993). In *Biermann v. Bourquin*, 2012 N.J. Super. Unpub. LEXIS 2117, at *7-8, 2020 WL 4008956 (App. Div. Sept. 13, 2012) it was stated that:

> Once counsel recognizes that opposing counsel is likely to be a necessary witness, a motion to disqualify opposing counsel should be filed. The right to file such a motion may be waived if it is not exercised in a timely manner. The factors to be considered in determining whether a moving party has waived its right to object to the opposing party's counsel include (1) the length of the delay in bringing the motion to disqualify, (2) when the movant learned of the [grounds for disqualification], (3) whether the movant was represented by counsel during the delay, (4) why the delay occurred and (5) whether disqualification would result in prejudice to the non-moving party.[8]

Chubb was served with the complaint on May 18, 2022. (Da304). A month later, on June 22, 2022, it filed a motion to dismiss the bad faith and CFA causes of action. (*Id.*). Because it had knowledge at that time of the facts it relies on here to seek Dinnocenzo's disqualification—since each fact it relies on is contained in the complaint—it could have moved to disqualify him back then. In other words, Chubb has not discovered any information after being

[8] In discussing these factors, the Appellate Division observed that of particular importance is "whether the movant appeared to be using the motion [to disqualify] as a technical maneuver." *Delaney*, 2020 N.J. Super. Unpub. LEXIS 1355, at *15, 2020 WL 3864976 (App. Div. July 9, 2020) (citation omitted).

served with the complaint three years ago that has informed its motion to disqualify and justified its delay.

Case law warrants a finding of waiver based on lesser delays in seeking disqualification. *See Law Off. Of Eugene D. Roth v. Slabakis*, 2024 N.J. Super. Unpub. LEXIS 2021 *7-8; 2024 WL 3912672 (App. Div. Aug. 23, 2024) ("defendant delayed in filing the disqualification motion, resulting in his waiver of the right to pursue such relief" because it "waited to file the disqualification motion until … nearly one year after" the attorney filed the lawsuit); *Rohm & Haas Co.*, 187 F. Supp. 2d at 230 (the filing of the motion disqualify after two years and five months was an undue delay that constituted a waiver); *see also Alexander*, 822 F. Supp. at 1120 ("the unreasonable three year delay in raising these issues, as well as the significant prejudice to Primerica that would follow from the disqualification of Dewey Ballantine, compel denial of the disqualification motion.").

Chubb explains its delay is because it was trying to dismiss the bad faith and CFA causes of action, and "[i]f successful, Dinnocenzo's testimony would not have been necessary." (Chubb Brief p. 2). This is an admission by Chubb that the motion to disqualify has been brought in an opportunistic and tactical manner. In other words, disqualification is a mere subterfuge for getting a dismissal of the bad faith and CFA claims.

Ignored by Chubb, too, is that, when it filed the motion to dismiss three years ago on June 22, 2022, if it had been serious in its belief that Dinnocenzo is a necessary witness, it could have moved for disqualification *in the alternative*. It bears the consequences of this failure which amounts to a waiver. It is patently unfair to Cordova (and Dinnocenzo) that Chubb waited nearly three years to file the motion. If it is granted, Cordova will have been deprived of obtaining new counsel during that three-year period, and Dinnocenzo will have spent three years working on the case when he should not have been.

Importantly, even if Dinnocenzo is a necessary witness, *which he is not*, this appeal should be denied on grounds of waiver *alone.*

F. A party cannot call opposing counsel as a witness with the aim of disqualifying him (Da1,Tr.7)

A defendant cannot seek disqualification of a plaintiff's attorney on the basis that it will call the attorney as a witness at trial, and when the attorney's testimony would not be prejudicial to the plaintiff. In *Garza v. McKelvey*, 1991 U.S. Dist. LEXIS 311, at *8, 1991 WL 3302 (D.N.J. 1991) (citation omitted) it was stated:

> Plaintiffs have stated that David Garza need not testify to prove their case and this court agrees. When an attorney's testimony is unnecessary and only defendant seeks to have him testify, he will only be precluded from doing so if his testimony would be prejudicial to his

> client. Further, the rule was not designed to permit a lawyer to call opposing counsel as a witness and thereby disqualify him as counsel.

Again, Dinnocenzo has stipulated he will not testify at trial. Chubb apparently seeks to force Cordova to call him as a witness. Although he stipulated in the underlying motion that he would not testify, Chubb pursues this appeal and insists that he must. It lacks standing to force him to do so.

For its part, Chubb does not say it intends to call Dinnocenzo as a witness. Even if it did, Dinnocenzo could only be disqualified under *Garza* if his testimony prejudiced Cordova. Chubb does not meet its burden of proof to show that it would. Rather, Dinnocenzo would reiterate the allegations in the complaint that Chubb acted in a deceptive and underhanded manner throughout the entire investigation.

G. Hardship to Cordova (Da1,Tr.16)

RPC 3.7(a)(3) provides that disqualification should not be ordered if it "would work substantial hardship on the client."

Bernstiel produced 44,852 pages of documents, Chubb has produced 6,232 pages of documents, and there are 1,140 pages of EUO testimony. (Da304). Dinnocenzo has put many hours into this case, as is shown by the court docket. One plaintiff has died. It would be very difficult for Cordova to obtain substitute counsel on a contingent fee basis under these circumstances and the disqualification of Dinnocenzo would be a hardship to her. *Delaney*,

2020 N.J. Super. Unpub. LEXIS 1355, at *16 ("To disqualify [attorneys] at this stage would prejudice the [] defendants — strategically and financially — as they have relied upon their counsel throughout their various legal skirmishes with [plaintiff], without his objection.").

Further, Chubb's position inherently suggests that an insured should retain separate counsel for both the claim investigation and subsequent litigation. As a multi-billion-dollar company, Chubb has the resources for this, and so it hired Bernstiel to conduct the investigation and the firm of Cozen O'Connor to represent it in this action. Most insurance policyholders do not have the resources to hire multiple attorneys, much less a single attorney. There was a value to keeping Dinnocenzo as counsel for both the claim investigation and this lawsuit due to his familiarity with the case. If this Court rules in favor of Chubb, it will have the effect of making it much more difficult for insureds to have representation during both a claim investigation and the ensuing lawsuit, simply because most people do not have the resources to have separate attorneys represent them at different stages of a dispute.

H. The protective order should remain in place (Da1,Tr.11)

The Court should uphold the protective order and the quashing of the subpoena of Dinnocenzo.

"[T]he request to depose a party's attorney itself constitutes presumptive 'good cause' for a protective order under R. 4:10-3(a)." *See Kerr v. Able Sanitary and Environmental Services, Inc.*, 295 N.J. Super 147, 684 A.2d 961, 967 (App. Div. 1996). New Jersey courts disfavor attorney depositions, which "frequently interfere with the adversarial process by inviting delay, disruption, harassment, and perhaps even disqualification of the attorney from further representation of the client in the underlying litigation." *Id.* at 965. "[T]he party requesting the deposition [of an attorney] must show that the information sought is relevant to the underlying action and is unlikely to be available by other less oppressive means." *Id.* at 967. "[A]n attorney's deposition should be precluded when there are other persons available to testify as to the same information or if interrogatories are available." *See Alcon Labs., Inc. Pharmacia Corp.*, 225 F. Supp. 2d 340, 343 (S.D.N.Y. 2002); *Biermann v. Bourquin*, 2012 N.J. Super. Unpub. LEXIS 2117 *6, 2012 WL 4008956 (App. Div. Sept. 13, 2012) (disqualification only arises when "the attorney will be a necessary witness, i.e., that the attorney can provide evidence that is not available through other means."). For the reasons stated above, a protective order should be in place so Dinnocenzo is not subpoenaed again during this action. To reiterate, Dinnocenzo never witnessed any part of the claim

investigation that Bernstiel did not also witness. Chubb can rely on her testimony, rather than depriving Cordova of her choice of counsel.

New Jersey courts "vigorously" protect the attorney-client privilege. *Weingarten v. Weingarten*, 234 N.J. Super. 318, 324, 560 A.2d 1243 (App. Div. 1989); *see Dougherty v. Gellenthin*, 99 N.J. Super. 283, 288, 239 A.2d 280 (App. Div. 1968) (quotation and citation omitted) ("the private files of an attorney should be preserved from invasion by opposing counsel."). Chubb has no basis to seek Dinnocenzo's client communications which was highly inappropriate.

The quashing of the subpoena and the protective order should remain in place or else Chubb will continue to act aggressively by serving subpoenas on Dinnocenzo for his testimony and client communications and harassing him and Cordova with motions to disqualify.

WHEREFORE, Plaintiffs respectfully requests that the Court deny the appeal and grant all other relief that is just and proper.

Dated: June 24, 2025

Respectfully Submitted,

s/Eric Dinnocenzo
Eric Dinnocenzo, Esq.
NJ Attorney ID Number: 027542006
469 Seventh Avenue, Suite 1215
New York, NY 10018
(212) 933-1675
Attorney for Plaintiff-Respondent