
Superior Court of New Jersey
Appellate Division

Docket No. A-004036-23

CHRISTOPHER CHENEL,	:	
	:	
	:	CIVIL ACTION
<i>Plaintiff-Appellant,</i>	:	
	:	ON APPEAL FROM A
	:	FINAL ORDER OF THE
vs.	:	SUPERIOR COURT
	:	OF NEW JERSEY,
	:	LAW DIVISION,
	:	PASSAIC COUNTY
ALLSTATE INSURANCE	:	
COMPANY and ABC	:	
CORPORATIONS 1-10, fictitious	:	DOCKET NO. PAS-L-2971-23
names for entities whose identities	:	
are presently unknown,	:	Sat Below:
	:	
	:	HON. BRUNO MONGIARDO, J.S.C.
<i>Defendants-Respondents.</i>	:	
	:	

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

On the Brief:

STEVEN TODD GOLDSTEIN, ESQ.
Attorney ID# 034871992

GOLDSTEIN & HANDWERKER, LLP
Attorneys for Plaintiff-Appellant
1199 Route 22 East
Mountainside, New Jersey 07092
(973) 912-0555
steveng@ghlawnynj.com

Date Submitted: December 27, 2024



TABLE OF CONTENTS

	Page
TABLE OF JUDGMENTS, ORDERS AND RULING BEING APPEALED	ii
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	4
ARGUMENT	6
The lower court's grant of dismissal of the complaint should be reversed because the Statute of Limitations was tolled and Allstate was not prejudiced from the delay. (Pa1)	6
CONCLUSION	16

TABLE OF JUDGMENTS, ORDERS AND RULING BEING APPEALED
Page

Order of the Honorable Bruno Mangiaro granting Defendant’s Motion for
Summary Judgment, dated July 30, 2024Pa1

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Galligan v. Westfield Ctr. Serv., Inc.</i> , 82 N.J. 188, 412 A.2d 122 (1980)	8
<i>Green v. Selective Ins. Co. of America</i> , 144 N.J. 344 (N.J. 1996)	10, 11
<i>Griggs v. Bertram</i> , 88 N.J. 347, 443 A.2d 163 (1982)	9
<i>LesMoise, Inc. v. Rossignol Ski Co.</i> , 122 Wis.2d 51, 361 N.W.2d 653 (1985)	10
<i>Longworth v. Van Houten</i> , 223 N.J. Super. 174, 538 A.2d 414 (App. Div. 1988)	10
<i>Ochs v. Fed. Ins. Co.</i> , 90 N.J. 108, 447 A.2d 163 (1982)	7-8
<i>O'Keeffe v. Snyder</i> , 83 N.J. 478, 416 A.2d 862 (1980)	8
<i>Peloso v. Hartford Fire Ins. Co.</i> , 56 N.J. 514, 267 A.2d 498 (1970)	8
<i>Potomoc Ins. Co. of Illinois v.</i> <i>Pennsylvania Manufacturers Assoc. Ins. Co.</i> , 215 N.J. 409 (2013)	7
<i>Price v. New Jersey Mfrs. Ins. Co.</i> , 182 N.J. 519 (N.J. 2005)	7, 8, 9
<i>Procanik by Procanik v. Cillo</i> , 97 N.J. 339, 478 A.2d (1984)	10
<i>Rutgers Casualty Ins. Co. v. Vassas</i> , 139 N.J. 163, 652 A.2d 162 (1995)	10
<i>Sears Mortgage Corp. v. Rose</i> , 134 N.J. 326, 634 A.2d 74 (1993)	9
<i>W.V. Pangborne Co., Inc. v. New Jersey Dep't of Transp.</i> , 116 N.J. 543, 562 A.2d 222 (1989)	7
<i>Zupo v. CNA Ins. Co.</i> , 98 N.J. 30, 483 A.2d 811 (1984)	11

PRELIMINARY STATEMENT

This action was brought by Plaintiff-Appellant, Christopher Chenel against Defendant-Respondent Allstate Insurance Company after Appellant learned that Allstate disingenuously engaged in settlement negotiations to resolve its Underinsured Motorists Claim which compelled him to file suit against them.

In the court below, Allstate moved to dismiss the complaint in lieu of answering on the ground that Chenel failed to timely file the complaint against Allstate prior to the tolling of the Statute of Limitations pursuant to R. 4:6-2(e). (Pa16). Allstate made this motion knowing full well that its adjusters were negotiating with Chenel to settle the claim without the need to file a complaint. Allstate further was well aware that Chenel timely provided notice of the claim, protected Allstate's subrogation rights and on more than one occasion provided Allstate with documents that were requested since an adjuster retired and seemingly misplaced the documents, all in a concerted effort to negotiate a settlement of the claim that Chenel absolutely relied on to his detriment.

The lower court granted Allstate's motion even though Allstate did not allege prejudice and such grant of the motion effectively permits Allstate to use the limitations period as an instrument of injustice while it took its time deciding on settling Chenel's claim.(Pa1).

PROCEDURAL HISTORY

Chenel appeals from an order of the Superior Court of New Jersey, Law Division, Passaic County (Honorable Bruno Mongiardo J.S.C.) entered on July 30, 2024 which granted Allstate's motion to dismiss the complaint with prejudice.(Pa1).

Chenel commenced this action by filing the complaint on October 30, 2023.(Pa23).

By motion dated February 29, 2024, Allstate filed its motion to dismiss the complaint in lieu of answering. (Pa16). Allstate argued that Chenel's complaint was filed after the six year Statute of Limitations has run against Allstate given the accident occurred on June 16, 2017 and the complaint was filed on October 30, 2023. (Pa22). Allstate further argued that Chenel has not made any showing that equitable principals should bar it from raising a statute of limitations defense and that strict enforcement of the statute of limitations was therefore warranted.(Pa22). Allstate did not argue that it would be prejudiced in any way if the complaint was not dismissed. (Pa22).

By opposition dated April 3, 2024, Chenel pointed out that the statute of limitations was tolled while Allstate was negotiating Chenel's Underinsured Motorists Claim. (Pa35). The evidence presented established that Allstate

was timely notified of the accident, that Chenel complaint with all of Allstate's multiple requests for documents, medical records and protected Allstate's subrogation rights by filing his Summons and Complaint against Lena Ammar, the tortfeasor involved in the motor vehicle accident. (Pa35). Chenel further pointed out that he fully expected Defendant to render a decision on his claim after a review of all of the documents requested of him, not abandon the claim and remain silent for months. (Pa35). Having not receive the benefit of a decision by Allstate, Chenel had no choice but to file suit for bad faith against Allstate. (Pa23).

By reply dated April 19, 2024, Allstate argued that the statute of limitations should not be tolled, once again, leaving out any claim of prejudice if the complaint were not dismissed.

By sur reply dated May 16, 2024, Chenel showed the court that negotiations and documents were first sent to a Mr. Pollack, and then a "Carol" who asked for the documents again due to Mr. Pollack retiring which delayed the settlement negotiations.(Pa65). Chenel also showed the court that all other email correspondence were unavailable because they were conducted between Allstate and Laura Kacmarcik, a paralegal from Goldstein & Handwerker who passed away unexpectedly leaving her email correspondence in this case unrecoverable. (Pa65). Chenel also pointed out that Allstate still

had not claimed it would be prejudiced if the complaint was not dismissed.(Pa65).

On July 30, 2024, the Honorable Bruno Mongiardo granted Allstate's motion.(Pa1).

STATEMENT OF FACTS

On June 16, 2017, Chenel suffered an injury as a result of a motor vehicle accident with Lena Ammar.(Pa28).

On July 17, 2017, Chenel notified Allstate of the accident that occurred on June 16, 2017 and provided a no-fault application and asserted a claim under the applicable underinsured/uninsured coverage in his policy with Allstate. (Pa44).

At the time of the accident, Chenel carried an Underinsured Motorist policy with Allstate with limits of \$250,000.(Pa45).

On June 14, 2018, Chenel filed his Summons and Complaint against Lena Ammar to protect Allstate's subrogation rights. (Pa47).

On March 2, 2020 and March 11, 2020, Chenel notified Allstate that he settled the underlying action and requested permission to accept the settlement and proceed with his UIM claim with Allstate. (Pa57).

On March 10, 2020, Allstate acknowledged received of Chenel's claim but rejected it on the ground that it was premature and lacking documentation,

including, but not limited to, the pleadings and settlement offer from the tortfeasor. (Pa59).

On April 21, 2021, Allstate accepted Chenel's settlement of the underlying action and Underinsured Motorist Claim dated March 2, 2020. (Pa60).

On May 25, 2021, Chenel received the settlement check for \$90,000 which partially resolved his Underinsured Motorist Claim. (Pa61).

Between May 25, 2021 and the filing of the Complaint on October 30, 2023, Chenel attempted to negotiate his Underinsured Motorist claim with Allstate.(Pa44-Pa63).

Unfortunately, the bulk of the negotiations are documented in a private email between a former Goldstein & Handwerker paralegal, Laura Kacmarcik, who suddenly passed away on December 19, 2022. (Pa44).

A review of Exhibit 7 containing the email dated April 20, 2022 between Ms. Kacmarcik shows she used her private email address of lkacmarcik2@gmail.com. (Pa63). Goldstein & Handwerker has no access to recover emails from Ms. Kacmarcik's email storage regarding this case. (Pa39).

Ms. Kacmarcik's email to Allstate which shows that she was engaged in conversations with "Carol" from Allstate and formerly with a Mr. Pollack, the prior claims representative who she says "retired" and apparently misplaced or

did not save the documents in the file.(Pa63). In Ms. Kacmarcik’s email, she advises “Carol” that she believed “all the information” was in the file because it was provided to Allstate’s prior claims representative, Mr. Pollack, who retired. (Pa63).

The email shows three attachments were provided to “Carol” and they were documents containing “Chenel Form A and Supplemental Interrogatory Responses Part I, Chenel NY Spine Institute Records and Chenel Dr. Conn Expert Report, all documents Allstate would need to review the file for settlement purposes. (Pa47). The email containing the aforementioned attachments specifically states: “Hello Carol, I am sorry for the confusion. I know we spoke before I thought you had all this information in your file as it was sent to Mr. Pollack before he retired. Thank you!” (Pa63).

Once Chenel realized his Underinsured Motorist claim with Allstate was futile, he filed his complaint against Allstate on October 30, 2023. (Pa23).

ARGUMENT

The lower court’s grant of dismissal of the complaint should be reversed because the Statute of Limitations was tolled and Allstate was not prejudiced from the delay. (Pa1)

It is well-settled that appellate courts reviewing summary judgment determinations exercise de novo plenary review with regard to the lower court’s interpretations of the law and the legal consequences that flow from

established facts. *Potomoc Ins. Co. of Illinois v. Pennsylvania Manufacturers Assoc. Ins. Co.*, 215 N.J. 409, 421 (2013). Lower court's legal conclusions are not entitled to any special deference. *Id.*

Allstate's motion should have been denied as the evidence shows that Allstate was not prejudiced by the delay, nor does Allstate claim they were prejudiced. Moreover, Chenel fulfilled his obligations under the Allstate underinsured motorist policy, timely provided notice of the claim to Allstate, protected Allstate's subrogation rights and was awaiting Allstate's decision on his claim prior to filing the Complaint. The lower court should have permitted discovery on the email communications Allstate had with Chenel's counsel to fully gain an understanding of the negotiations had between the parties before rendering a decision on whether the Statute of Limitations should have been tolled. Defendant Allstate should not be permitted to use the limitations period as an instrument of injustice while it takes its time deciding on settling the claim.

"The primary purpose of the statute of limitations is to provide defendants a fair opportunity to defend and to prevent plaintiffs from litigating stale claims." *Price v New Jersey Mfrs. Ins. Co.*, 182 NJ 519, 524 [NJ 2005] citing *W.V. Pangborne Co., Inc. v. New Jersey Dep't of Transp.*, 116 N.J. 543 , 563, 562 A.2d 222, 232 (1989) (citing *Ochs v. Fed. Ins. Co.*, 90 N.J. 108,

112, 447 A.2d 163, 165 (1982); *O'Keeffe v. Snyder*, 83 N.J. 478, 490-91, 416 A.2d 862, 868-69 (1980)). “Consistent with that purpose, ‘where defendants [insurers] are on notice of the claims, and no significant prejudice results, the policy reasons for upholding a strict statute of limitations recede.’” *Ibid.* “To avoid harsh results from a mechanical application of the statute of limitations, this Court has applied equitable principles to conclude that the statute should yield to other considerations.” *Ibid.* at 524.

The Court in *Price* held that “under varying circumstances we have recognized that tolling of the statute of limitations is the fair and responsible result, because the “[u]nswerving ‘mechanistic’ application of statutes of limitations would at times inflict obvious and unnecessary harm upon individual plaintiffs without advancing [the] legislative purposes.” *Ibid.* citing *Galligan v. Westfield Ctr. Serv., Inc.*, 82 N.J. 188 , 192, 412 A.2d 122, 124 (1980); see also *Peloso v. Hartford Fire Ins. Co.*, 56 N.J. 514 , 521, 267 A.2d 498, 501 (1970) (holding fair resolution of statutory incongruity is to toll period of limitation from time insured gives notice until liability is formally declined by insurer).

In *Price*, much like Chenel here, the Court tolled the statute of limitations given plaintiff, insured, notified the insurer of the claim timely, protected the insurer’s interest and provided the necessary documents and

medical records to keep the insurer informed of the claim to evaluate the claim and render a decision. For instance, the Court in *Price* pointed out:

The undisputed facts here support an equitable tolling of the statute of limitations. Plaintiff's attorney first notified NJM on February 12, 1998, that plaintiff "would be presenting an uninsured motorists claim," and on June 29, 1998, he wrote that plaintiff "would like to proceed with [his] uninsured motorist claim[s]." In the latter letter he enclosed various documents to permit NJM "to begin to evaluate this claim." In addition, plaintiff informed NJM that he filed a lawsuit against the tortfeasor to protect the interest of NJM. A NJM claims representative wrote to plaintiff's counsel on October 8, 1998, that she was now handling plaintiff's claim and requested "copies of all medical bills and reports on [plaintiff] as they become available." During the next several years, NJM received various information necessary to evaluate plaintiff's claim, including a medical examination of plaintiff.

Price v New Jersey Mfrs. Ins. Co., 182 NJ at 525.

Every insurance contract contains an implied covenant of good faith and fair dealing. *Price* at 526 citing *Sears Mortgage Corp. v. Rose*, 134 N.J. 326 , 347, 634 A.2d 74, 84 (1993); *Griggs v. Bertram*, 88 N.J. 347, 360-61, 443 A.2d 163, 170 (1982). The insurance company, as the dominant party, has an even greater obligation than the insured to act in good faith and not put "technical encumbrances or hidden pitfalls" in the way of unsophisticated customers that would undermine their "reasonable expectations." *Rose*, *supra*, 134 N.J. at 347, 634 A.2d at 84 (quotation omitted).

The “limitations period ‘should not become an instrument of injustice’” allowing an insurer to obtain discovery while evaluating the claim. *Procanik by Procanik v. Cillo*, 97 NJ 339, 351, 478 A.2d at 762 (1984).

Once an automobile accident victim knows or has reason to know that a "target defendant" is underinsured, the contract permits the accident victim to make a UIM claim under the policy. A cause of action accrues because "there exists a claim capable of present enforcement." *Green v Selective Ins. Co. of America*, 144 NJ 344, 352 [NJ 1996] citing *LesMoise, Inc. v. Rossignol Ski Co.*, 122 Wis.2d 51, 361 N.W.2d 653, 656 (1985); *Longworth v. Van Houten*, 223 N.J. Super. 174 , 538 A.2d 414 (App.Div. 1988). We summarized the *Longworth* requirements as follows:

[W]hen an insured under an automobile insurance policy providing UIM benefits is involved in an accident and undertakes legal action against the tortfeasor, *the insured must notify the UIM insurer of that action*. If, during the pendency of the claim, the tortfeasor's insurance coverage proves insufficient to satisfy the insured's damages, then *the insured should again notify the UIM insurer of that fact*.

See Green v Selective Ins. Co. of America, 144 NJ 344, 348; *Rutgers Casualty Ins. Co. v. Vassas*, 139 N.J. 163, 174, 652 A.2d 162 (1995).

In *Green*, the Court highlighted that the standard automobile insurance policy requires an insured to protect the insurance carrier's subrogation rights against the tortfeasor:

The standard automobile insurance policy does impose specific duties upon policyholders who purchase UIM coverage. These include the obligation to notify the insurance company of the accident, to cooperate with the investigation and defense of any claim, to forward copies of all legal papers if suit is brought, *and to preserve the insurance carrier's subrogation rights against the tortfeasor*. The standard automobile policy does not, however, set forth a period of limitations within which time a claim for UIM coverage must be brought. In contrast, PIP claims are governed by a special statute of limitations. *See Zupo v. CNA Ins. Co.*, 98 N.J. 30 , 483 A.2d 811 (1984).

Green v Selective Ins. Co. of America, 144 NJ at 349.

In this case, Chenel immediately notified Allstate of his underinsured motorist claim on July 17, 2017, just 30 days after the accident on June 16, 2017.(Pa44). Thereafter, Chenel complied with all of Allstate's requests for documents, medical records and even protected Allstate's subrogation rights by filing his Summons and Complaint against Lena Ammar, the tortfeasor involved in the motor vehicle accident.(Pa47).

On March 2, 2020 and March 11, 2020, Chenel notified Allstate that he settled the underlying action and requested permission to accept the settlement and proceed with his UIM claim with Allstate. (Pa57).

On March 10, 2020, Allstate acknowledged receipt of Chenel's claim but rejected it on the ground that it was premature and lacking documentation, including, but not limited to, the pleadings and settlement offer from the tortfeasor. (Pa59).

On April 21, 2021, Allstate accepted Chenel's settlement of the underlying action and Underinsured Motorist Claim dated March 2, 2020. (Pa60).

On May 25, 2021, Chenel received the settlement check for \$90,000 which partially resolved his Underinsured Motorist Claim. (Pa61).

Between May 25, 2021 and the filing of the Complaint on October 30, 2023, Chenel attempted to negotiate with Allstate his Underinsured Motorist claim. (Pa62, Pa63).

On April 20, 2022, Chenel's counsel provided requested medical records and Interrogatories to Allstate in support of his claim. (Pa63).

Unfortunately, the bulk of the negotiations are documented in a private email between a former Goldstein & Handwerker paralegal, Laura Kacmarcik, who suddenly passed away on December 19, 2022. (Pa44).

A review of Exhibit 7 containing the email dated April 20, 2022 between Ms. Kacmarcik shows she used her private email address of lkacmarcik2@gmail.com. (Pa63). Our office has no access to recover emails from Ms. Kacmarcik's email storage regarding this case. However, the Court can see from the evidence before it that issues of fact exist with respect to Allstate's negotiation of Chenel's UIM claim such that the Statute of Limitations should have been tolled.

The Court is urged to take note of the content and names of the attachments on the late Ms. Kacmarcik's email to Allstate which shows that she was engaged in conversations with "Carol" from Allstate and formerly with a Mr. Pollack, the prior claims representative who she says "retired". (Pa63). In Ms. Kacmarcik's email, she advises "Carol" that she believed "all the information" was in the file because it was provided to Allstate's prior claims representative, Mr. Pollack, who retired. (Pa63). Clearly, Mr. Pollock misplaced the documents provided to Allstate thereby delaying this case even more. (Pa63).

The email shows three attachments were provided to "Carol" and they were documents containing "Chenel Form A and Supplemental Interrogatory Responses Part I, Chenel NY Spine Institute Records and Chenel Dr. Conn Expert Report, all documents Allstate would need to review the file for settlement purposes. (Pa47). The email containing the aforementioned attachments specifically states:

Hello Carol, I am sorry for the confusion. I know we spoke before I thought you had all this information in your file as it was sent to Mr. Pollack before he retired. Thank you!

(Pa63).

The above email shows an effort by both parties to resolve the case without the need for court intervention. Chenel reasonably relied on Allstate's

good faith in evaluating his claim and provided all documents requested of Allstate, more than once. Chenel fully expected Allstate to render a decision on his claim after a review of all of the documents requested of him, not abandon the claim and remain silent for months. At the very least, an issue of fact existed with respect to the negotiations and Allstate should have been compelled to produce discovery on the issue given it is in sole possession of the evidence related to the negotiations with Ms. Kacmarcik.

In fact, in granting Allstate's motion, the lower court pointed out the gap in evidence between Ms. Kacmarcik's email on April 20, 2022 and the filing of the Complaint on October 30, 2023. However, the lower court seems to have misunderstood the fact that Chenel did not have access to any communications that Allstate may have sent to the late Ms. Kacmarcik - Allstate alone has those emails. Chenel requested that Allstate's motion be denied and discovery proceed solely on this issue given Allstate was in sole possession of the communication which may explain the gap in timing of the Complaint. More importantly, the evidence could reveal further evidence to support Chenel's position that Allstate was seeking to settle his uninsured motorist claim without the need for filing a complaint.

Once again, Allstate made its motion to dismiss knowing full well that its adjusters were negotiation with Chenel to settle the claim without the need to

file a complaint. Allstate further was well aware that Chenel timely provided notice of the claim, protected Allstate's subrogation rights and on more than one occasion provided Allstate with documents that were requested since an adjuster retired and seemingly misplaced the documents, all in a concerted effort to negotiate a settlement of the claim that Chenel absolutely relied on to his detriment.

As stated by Allstate, it is a waste of judicial resources to adjudicate two separate claims arising out of the same operative facts. Additionally, nowhere in Allstate's motion papers does it allege prejudice resulting from Chenel's late filing of the complaint which should have been fatal to their motion.

CONCLUSION

For the aforementioned reason, Chenel respectfully requests that this Court reverse the order of the Law Division entered on and remand the matter for further proceedings.

Respectfully submitted,

By: /s/Steven Goldstein
Steven Goldstein, ESQ.
NJ Registration #: 034871992

GOLDSTEIN & HANDWERKER,
LLP
Attorneys for Plaintiff, Appellant

Dated: December 27, 2024

CHRISTOPHER CHENEL, Plaintiff, vs. ALLSTATE INSURANCE COMPANY and ABC CORPORATIONS 1-10, fictitious names for entities whose identities are presently unknown, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: PASSAIC COUNTY DOCKET NO. A-004036-23 Civil Action Submitted on: January 28, 2025 On Appeal from: Superior Court of New Jersey Law Division: Passaic County Docket No. PAS-L-2971-23 Sat Below: Hon. Bruno Mongiardo, J.S.C.
---	--

**AMENDED BRIEF ON BEHALF OF DEFENDANT/RESPONDENT,
ALLSTATE NEW JERSEY INSURANCE COMPANY**

**CHASAN LAMPARELLO MALLON &
CAPPUZZO, PC
300 Lighting Way, Suite 200
Secaucus, NJ 07094
(201) 348-6000
Attorneys for Defendant, Allstate New Jersey
Insurance Company**

JOHN V. MALLON – 016071994
jvmallon@chasanlaw.com
Of Counsel and On The Brief

Thomas R. Lloyd – 412482024
tlloyd@chasanlaw.com
On The Brief

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF CONTENTS OF APPENDIX.....	iii
TABLE OF AUTHORITIES	iv
PRELIMINARY STATEMENT.....	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	3
LEGAL ARGUMENT	5
POINT I	
PLAINTIFF’S COMPLAINT IS TIME-BARRED BECAUSE HE FILED IT MORE THAN SIX YEARS AFTER THE DATE OF THE SUBJECT AUTO ACCIDENT. (Raised below: 1T 3:19-14:9).....	5
POINT II	
IT IS INAPPROPRIATE TO APPLY EQUITTABLE ESTOPPEL BECAUSE ALLSTATE DID NOT LULL PLAINTIFF INTO BELIEVING IT WAS UNNECESSARY TO FILE A COMPLAINT (Raised below: 1T 3:19-14:9).....	5

POINT III

ALLSTATE WOULD BE PREJUDICED IN
DEFENDING PLAINTIFF’S CLAIMS, WHICH IS
SUFFICIENT TO SUPPORT A STATUTE OF
LIMITATIONS DEFENSE
(Issue was not raised below) 12

a. Plaintiff’s instant argument as to prejudice was not
sufficiently raised below.
(Not Raised Below)..... 12

b. Even if plaintiff sufficiently raised the prejudice
argument below, it fails because Allstate would be
prejudiced in defending the late-filed claim.
(Not Raised Below) 13

CONCLUSION..... 15

TABLE OF CONTENTS OF APPENDIX

	<u>Page</u>
Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment ¹ Filed April 3, 2024	
Docket No. PAS-L-002971-23	Da1

¹ This brief is included to demonstrate that plaintiff did not raise the issue of prejudice below.

TABLE OF CITATIONS

<u>Cases</u>	<u>Pages</u>
<u>Brock v. Pub. Serv. Elec. & Gas Co.,</u> 149 N.J. 378, 391 (1997)	12
<u>Cnty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C.,</u> 381 N.J. Super. 119, 127 (App. Div. 2005)	12
<u>Docteroff v. Barra Corp.,</u> 282 N.J. Super. 230, 237 (App. Div. 1995)	12
<u>Galligan v. Westfield Centre Service, Inc.,</u> 82 N.J. 188, 192 (1980)	14
<u>Green v. Selective Ins. Co. of Am.,</u> 144 N.J. 344, 354 (1996)	5, 6
<u>Price v. N.J. Mfrs. Ins. Co.,</u> 182 N.J. 519 (2005)	5, 6
<u>Selective Ins. Co. of America v. Rothman,</u> 208 N.J. 580, 586 (2012)	13
<u>Templo Fuente v. Nat. Union Fire,</u> 224 N.J. 189, 199 (2016)	8
<u>Troum v. Newark Beth Israel Med. Ctr.,</u> 338 N.J. Super. 1, 22–23 (App. Div. 2001)	14

Statutes

N.J.S.A. 2A:14-1 5

Rules of Court

R. 4:6-2(e) 2

R. 4:46..... 2

PRELIMINARY STATEMENT

Allstate provided an insurance policy to plaintiff that included uninsured motorist (“UM”) and underinsured motorist (“UIM”) benefits on the date of the subject accident. Plaintiff filed his Complaint for UIM benefits in this action over three months after the statute of limitations ran, over eighteen months after his last communication with Allstate, and over two years and five months after he received his settlement check in his action against the underlying tortfeasor. Although plaintiff has argued that plaintiff and Allstate were engaged in settlement negotiations, plaintiff has provided no support for that allegation. At best, plaintiff had provided some documentation regarding the plaintiff’s claim for Allstate’s consideration over a year before the statute ran.

Allstate moved for, and was granted, summary judgment on statute of limitations grounds. In a well-reasoned decision, Judge Mongiardo noted that there was no explanation by plaintiff why he could not have filed the Complaint within the statute of limitations. The Court rejected the notion that equitable tolling should apply absent a showing of intentional inducement or trickery by Allstate. Further, the Court found no injustice to plaintiff when he had more than enough time to file his Complaint before the statute ran. For the same reasons, this Court should affirm the decision of the Trial Court.

PROCEDURAL HISTORY

Plaintiff appeals from the Trial Court's July 30, 2024 Order granting summary judgment in favor of defendant.² (Pa4). The car accident that forms the basis of this litigation occurred on June 16, 2017. (Pb 4). Plaintiff filed a Complaint against the tortfeasor on June 14, 2018. (Pb 4). On April 21, 2021, plaintiff settled that action. (Pb 5). On October 30, 2023, plaintiff filed a Complaint against defendant. (Pb 6).

Defendant filed the subject motion for summary judgment on February 29, 2024. The parties filed their opposition and reply briefs on April 3, 2024 and April 19, 2024 respectively. The Court held oral argument on June 7, 2024.³ At that argument, the Court allowed plaintiff to submit another certification, which he filed the same day. The Court held another hearing on July 30, 2024, where it delivered its oral opinion granting defendant's motion for summary judgment. This appeal followed, for which plaintiff filed a Notice of Appeal on August 22, 2024.

² For the sake of clarity, the order that plaintiff is appealing is one for summary judgment pursuant to R. 4:46. Defendant initially filed the motion as one to dismiss for failure to state a claim pursuant to R. 4:6-2(e). The Court converted it into a motion for summary judgment on March 1, 2024, which the Court acknowledged in its oral decision of July 30, 2024. (1T 4:9-10). Plaintiff's appellate brief mistakenly labels the motion as one to dismiss pursuant to R. 4:6-2(e). (Pb 1-2).

³ The transcript of the oral argument has not been submitted to this Court.

STATEMENT OF FACTS

On June 16, 2017, plaintiff was involved in a car accident. (Pb 4). On July 17, 2017, he notified Allstate by letter of the accident. That same letter first asserted a claim for UM/UIM benefits. (Pa 44). On June 14, 2018, plaintiff filed suit against the tortfeasor in the underlying action. (Pb 4). He notified Allstate on March 2, 2020 that he and the tortfeasor agreed to settlement terms, and he asked Allstate for permission to accept those terms. (Pb 4). On March 10, 2020, Allstate rejected plaintiff's request because plaintiff did not attach sufficient documentation. (Pa 59). After some time, during which the plaintiff presumably corrected the deficiencies, Allstate authorized plaintiff to accept the settlement on April 21, 2021. (Pa 60). On May 25, 2021, plaintiff received the settlement check for \$99,000.⁴ (Pa 61).

The only communication between the parties after April 21, 2021 in the record is an email from plaintiff's counsel's paralegal, Laura Kacmarcik. (Pa 63-64). The email is dated April 20, 2022. This email was sent to Allstate, and by copy, to plaintiff's counsel. (Pa 63). It contains the following message: "Hello Carol. I am sorry for the confusion. I know we spoke before I thought you had all this information in your file as it was sent to Mr. Pollack before he

⁴ Plaintiff's brief indicates that the check was in the amount of \$90,000. (Pb 5). The documents provided by plaintiff, including the letter of March 2, 2020 (Pa 58), and the settlement check dated May 25, 2021 (Pa 62), indicate that plaintiff and the tortfeasor settled for \$99,000.

retired. Thank you!” (Pa 63). The email also contains three attachments, which appear to be plaintiff’s interrogatory responses and two sets of medical records. (Pa 64). Unfortunately, Ms. Kacmarcik passed away on December 19, 2022. (Pa 69).

Other than the email dated April 20, 2022, plaintiff provides no evidence as to any other communications between the parties, from April 21, 2021 to the date of the Complaint. There are no other emails between the paralegal’s personal email account and Allstate, or any document—an office memorandum, an email from the paralegal’s work email account, an email from plaintiff’s counsel’s own email account, a text message, a phone call log, a handwritten note, a calendar entry, or any other indicia whatsoever—to show that plaintiff or his counsel communicated with Allstate regarding his UIM claim before plaintiff filed his Complaint. Against this backdrop, the Trial Court entered an order granting summary judgment in favor of Allstate, which plaintiff now appeals.

LEGAL ARGUMENT

Point I

**PLAINTIFF'S COMPLAINT IS TIME-BARRED
BECAUSE HE FILED IT MORE THAN SIX
YEARS AFTER THE DATE OF THE SUBJECT
AUTO ACCIDENT.**

(Raised below: 1T 3:19-14:9)

The six-year statute of limitations provided by N.J.S.A. 2A:14-1 applies to claims for UIM benefits. Green v. Selective Ins. Co. of Am., 144 N.J. 344, 354 (1996). Specifically, the statute of limitations begins to run on the date of the accident. Ibid. Here, the subject accident occurred on June 16, 2017. Accordingly, plaintiff needed to file any complaint against Allstate by June 16, 2023. He failed to do so, and his late-filed Complaint is time-barred.

Point II

**IT IS INAPPROPRIATE TO APPLY EQUITTABLE
ESTOPPEL BECAUSE ALLSTATE DID NOT LULL
PLAINTIFF INTO BELIEVING IT WAS
UNNECESSARY TO FILE A COMPLAINT**

(Raised below: 1T 3:19-14:9)

The facts of this case provide no reason to upset the rule that UIM claims must be filed within six years of the date of the accident. Plaintiff provides two cases—Green and Price v. N.J. Mfrs. Ins. Co., 182 N.J. 519 (2005)—as the foundation of his argument to the contrary. Indeed, four consecutive pages of

plaintiff's brief recites those two cases almost verbatim. But neither one provides support for plaintiff's position.

In Green, the Court addressed two narrow questions: whether the statute of limitations on a claim for UIM benefits begins to run on the date of accident or the date of alleged breach of the insurance contract, and whether the plaintiff in that case properly gave notice to his insurance carrier. 144 N.J. at 346. As to the first point, the Court held that the statute of limitations begins to run on the date of the accident. Id. at 354. As to the second point, the Court held that the Green plaintiff had given proper notice and could proceed with his claim. Id. at 357. Here, neither party disputes that plaintiff (1) filed suit more than six years after the accident and (2) gave notice to defendant. But plaintiff's argument does not hinge on those issues—it hinges on whether Allstate lulled him into failing to file his complaint in time. And the answer to that question, as discussed below, is no.

In Price, the Court carefully recited the long history of contact between the insurer and the insured. The Court discussed twenty-two communications between the parties, including sixteen before the statute of limitations had expired. 182 N.J. at 522-24. Among the communications were the insurer's requests, and the insured's provision, of medical records, worker's compensation lien records, underlying tort claim information, and information

regarding the insured's employer. Moreover, the insurer scheduled, and the insured attended, an independent medical exam ("IME"). Following the IME, the parties even had a dispute in which the insured's attorney threatened to bar admission of the IME at trial. Id. at 522-23.

In finding that the insurer lulled the insured into failing to file a claim, the Court stated that "[i]t was not reasonable for [the insurer] to sit back, request and receive various documents over a three and one-half year period, and then deny plaintiff's claim because he failed to file a complaint . . . prior to the running of the six-year statute of limitations." Id. at 526. Notably, the Court identified, in particular, that "nine days before the expiration of the statute of limitations . . . [the insurer] asked for the complete workers' compensation file, plaintiff's employer's 'policy language regarding their UM limits and exposure to his loss,' and the original MRI films." Id. at 525-26.

The facts of this case are readily distinguishable from those in Price. Here, plaintiff asserts five contacts between his counsel and Allstate over the course of six years. Only one of those contacts occurred between plaintiff's acceptance of the settlement check from the underlying action in 2021 and the date the statute of limitations ran in 2023. Plaintiff has alleged that there were ongoing negotiations between plaintiff's counsel and Allstate (Pb 12; Pa 38, 39) but has provided no evidence to support that allegation. The last documented

correspondence occurred on April 20, 2022. (Pa 63). Although plaintiff has attempted to attach great significance to the paralegal's use of a personal email account, significantly, that correspondence was sent by copy to her attorney's email. (Pa 63). There has been no other such email revealed. Nor has there been any other document—an office memorandum, an email from the paralegal's work email account, an email from plaintiff's counsel's own email account, a text message, a phone call log, a handwritten note, a calendar entry, or any other indicia whatsoever—to show that he or his counsel was communicating with Allstate. In sum, plaintiff's purported reliance on his contacts with defendant was not “reasonabl[e],” as articulated by the Court in Price. 182 N.J. at 527.

While the standard of review here is de novo,⁵ plaintiff takes particular issue with the Trial Court's understanding of the facts. Contrary to the contentions in plaintiff's brief, it is apparent the Trial Court did not misunderstand the facts relating to the communication between plaintiff's counsel's paralegal and defendant. (Pb 14). In fact, when the Court concluded that plaintiff “voluntarily slept on [his] rights and permitted the customary period of limitations to expire,” it reasoned that “the last communication cited by plaintiff in counsel's certification was April 3rd [sic 20th] of 2022, long before

⁵ The standard of review for an appeal from a grant of a motion for summary judgment is de novo. Templo Fuente v. Nat. Union Fire, 224 N.J. 189, 199 (2016).

the running of the statute.” (1T at 12:21-23, 13:18-21). That statement was not ignorant of the facts. To the contrary, the Court carefully weighed the facts as submitted by plaintiff and found as follows:

The last communication, as per the motion record, between Paralegal Kacmarcik and an Allstate representative appears to have occurred on April 20th of 2022. The record is silent [as] to anything after that date.

Then, of course, there was the untimely death of Ms. Kacmarcik in December of 2022. There is not even a representation that she was working together with an attorney from the firm or that there was any attorney oversight.

(1T at 10:15-24)

Even if one were to give plaintiff the benefit of the doubt that the paralegal had further communications with Allstate after April 20, 2022, it is beyond dispute that no further communications occurred after the passing of the paralegal, which happened nearly six months before the statute of limitations ran. This fact was not lost on Judge Mongiardo, who observed:

Other than providing Allstate with documents, there is no indication in the motion record that any attorney was negotiating on behalf of plaintiff. There is no indication of a settlement demand or an offer to settle. At the very least, it appears once Ms. Kacmarcik passed away, a full six months before the statute ran, nothing of any substance was happening on the file. Certainly, one can argue that the claim had become stale.

(1T at 11:7-15).

To be clear, the Court below did not misunderstand the facts. As a reminder, in addition to the original briefing, the Court allowed plaintiff to file an extra certification. Moreover, the Court held oral argument before reserving its decision, reviewing plaintiff's extra certification, and delivering its oral opinion at a separate time. This case does not have a voluminous factual record. The Court's thorough consideration produced, among others, two findings: (1) after April 20, 2022, plaintiff has no records of any communications between him and Allstate, and (2) even if the paralegal was communicating with Allstate, plaintiff had no communications with Allstate for the final six months of the statute of limitations period. The Court applied those facts to the law and concluded that plaintiff's Complaint should be dismissed as untimely.

Plaintiff has argued for the equitable tolling of the statute of limitations. However, Judge Mongiardo recognized:

“absent a showing of intentional inducement or trickery by a defendant, equitable tolling should be applied sparingly and only in the rare situation where it is demanded by sound legal principles and in the interest of justice. See Binder v. Price Waterhouse Company, 393 N.J. Super. 304, at Page 313, Appellate Division 2007. ‘Equitable tolling, which affords relief from inflexible, harsh, or unfair application of a statute of limitations, does not excuse claimants from exercising the reasonable insight and diligence required to pursue their claims.’ See Freeman v. State, 347 N.J. Super. 11, at Page 32, Appellate Division 2002.”

(1T, 11:22-12:11).

Likewise, the Trial Court's decision does not allow Allstate to use the statute of limitations as an instrument of injustice. (Pb 7). Judge Mongiardo arrived at the opposite conclusion:

There is no injustice to plaintiff when plaintiff had more than enough time to decide whether to file his complaint. Plaintiff had not alleged that he unjustly relied on communications from Allstate in deciding not to file a complaint before the running of the statute. There is no allegation of intentional misconduct or trickery on the part of Allstate.
(1T, 13:8-14).

Plaintiff was aware of his UIM claim almost immediately after this accident. He first notified Allstate of the claim by letter dated July 17, 2017. The UIM claim came to the forefront again in 2020 and 2021 when he was settling with the underlying tortfeasor. Yet, very little occurred after the settlement with the tortfeasor.

Plaintiff alleges that the attempts to settle ultimately became futile. However, as the Trial Court observed:

There is nothing in the motion record, however, to explain why this sense of futility was not reached before June or what would have prevented the filing of the complaint until after the statute of limitations had run.
(1T, 10:9-14).

Specifically, Judge Mongiardo found the fact that there was an inexplicable lack of action after December 19, 2022, “devastating” to plaintiff’s argument. (1T, 14:4-6).

Point III

ALLSTATE WOULD BE PREJUDICED IN DEFENDING PLAINTIFF’S CLAIMS, WHICH IS SUFFICIENT TO SUPPORT A STATUTE OF LIMITATIONS DEFENSE

(Issue was not raised below)

a. Plaintiff’s instant argument as to prejudice was not sufficiently raised below.

As a threshold matter, this Court should not consider plaintiff’s argument that Allstate would not be prejudiced in defending the late-filed claim because it was not adequately raised below. “Issues not raised below will ordinarily not be considered on appeal unless they are jurisdictional or implicate a substantial public interest.” Cnty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 381 N.J. Super. 119, 127 (App. Div. 2005) (citing Brock v. Pub. Serv. Elec. & Gas Co., 149 N.J. 378, 391 (1997)). To be considered on appeal, an issue must have been presented to the trial judge in a manner that allowed the judge to fairly consider it. See Docteroff v. Barra Corp., 282 N.J. Super. 230, 237 (App. Div. 1995) (considering a new legal theory that was not raised below to support an argument that was raised below). It follows,

for example, that an argument advanced for the first time at oral argument will not be considered on appeal. Selective Ins. Co. of America v. Rothman, 208 N.J. 580, 586 (2012).

Here, plaintiff did not sufficiently raise the issue of prejudice at the trial court level. In his brief in opposition to Allstate's Motion for Summary Judgment, plaintiff mentioned the word "prejudice" one time, which came by way of a paragraph-long quotation of the Price decision. (Da 4). Only after plaintiff filed its reply brief, and after the court held oral argument, did plaintiff argue that defendant would suffer no prejudice in defending the late-filed suit. (Pa 39). Simply put, prejudice was not at issue at the trial court level and this Court should not consider it on appeal.

b. Even if plaintiff sufficiently raised the prejudice argument below, it fails because Allstate would be prejudiced in defending the late-filed claim.

At the outset, it is notable that the case law regarding tolling of the UIM statute of limitations makes small mention of prejudice to defendants. That makes sense, as prejudice is implicit in late-filed claims. Indeed, "[o]nce memories fade, witnesses become unavailable, and evidence is lost, courts no longer possess the capacity to distinguish valid claims from those which are frivolous and vexatious." Troum v. Newark Beth Israel Med. Ctr., 338 N.J.

Super. 1, 22–23 (App. Div. 2001) (quoting Galligan v. Westfield Centre Service, Inc., 82 N.J. 188, 192 (1980)).

Nonetheless, plaintiff asserts that the statute of limitations defense fails here because Allstate was not prejudiced by plaintiff's delay in filing suit. To support that proposition, plaintiff cites Price, which states in relevant part as follows: where “no significant prejudice results . . . the policy reasons for upholding a strict statute of limitations recede.” 182 N.J. at 524. The Court in Price mentions prejudice just one other time to state that the issue was conceded by the insurer in that matter. Id. at 527. Such concession makes sense. As already stated, the insurer and insured in Price had a back-and-forth dialogue for years that extended to just nine days before the statute of limitations ran. The insurer could not reasonably argue that it was prejudiced in a case where it was actively litigating the claim right up until the last minute.

To the contrary, Allstate was not actively litigating or negotiating this matter. As already stated, there is scarce evidence of any negotiations, and no evidence whatsoever of any communications between the parties in the final six months of the statute of limitations period. As such, the prejudice implicit in any late-filed claim would be realized here if plaintiff would be allowed to proceed. At the time of the filing of this brief, the subject accident happened over seven and a half years ago. Inevitably, memories, witnesses, and evidence

are lost. Moreover, plaintiff's claim hinges in part on bodily injuries. Analysis of such injuries is confused over time, in part due to either their healing or other unrelated injuries. In sum, the very risks contemplated in the statutory and common law discussion of statutes of limitations would be realized if plaintiff were allowed to proceed with his claim. Such a scenario would destroy the purpose of the statute of limitations altogether.

CONCLUSION

In sum, plaintiff and defendant were not communicating in such a way as for plaintiff to reasonably rely on those communications in failing to file a timely complaint. The communications were sparse at best, and nonexistent for at least the final six months of the statute of limitations period. For that reason, this Court should affirm the decision of the Trial Court in granting defendant's motion for summary judgment.

Respectfully submitted,

CHASAN LAMPARELLO MALLON & CAPPUZZO, PC
Attorneys for Defendant/Respondent

By:  _____

John V. Mallon

Dated: January 27, 2025

(800) 4-APPEAL • (369673)

TABLE OF CONTENTS

	Page
TABLE OF JUDGMENTS, ORDERS AND RULING BEING APPEALED ...	ii
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT.....	1
PROCEDURAL HISTORY AND STATEMENT OF FACTS.....	1
ARGUMENT	2
I. The lower court’s grant of dismissal of the complaint should be reversed because evidence to support that the parties were negotiating was in the sole possession of Allstate. (Pa1).....	2
II. Allstate did not claim prejudice to the lower court so it was not preserved for appeal. (Pa1)	6
CONCLUSION.....	7

TABLE OF JUDGMENTS, ORDERS AND RULING BEING APPEALED
Page

Order of the Honorable Bruno Mangiarlo granting Defendant’s Motion for
Summary Judgment, dated July 30, 2024Pa1

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Ochs v. Fed. Ins. Co.</i> , 90 N.J. 108, 447 A.2d 163 (1982)	5
<i>O’Keeffe v. Snyder</i> , 83 N.J. 478, 416 A.2d 862 (1980)	5
<i>Price v New Jersey Mfrs. Ins. Co.</i> , 182 N.J. 519 (N.J. 2005)	5
<i>Procanik by Procanik v. Cillo</i> , 97 NJ 339, 478 A.2d (1984)	6
<i>Sears Mortgage Corp. v. Rose</i> , 134 N.J. 326 , 347, 634 A.2d 74, 84 (1993)	6
<i>W.V. Pangborne Co.,Inc. v. New Jersey Dep’t of Transp.</i> , 116 N.J. 543, 562 A.2d 222 (1989)	5

PRELIMINARY STATEMENT

Plaintiff-Appellant, Christopher Chenel should have had an opportunity to engage in discovery with Defendant-Respondent Allstate Insurance Company given Allstate was in sole possession of the emails and potential communications between the parties after Ms. Laura Kacmarcik's email. Moreover, Allstate did not argue that the late filing was prejudicial so that issue was not preserved for appeal.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

By sur reply dated May 16, 2024, Chenel showed the court that negotiations and documents were first sent to a Mr. Pollack, and then a "Carol" who asked for the documents again due to Mr. Pollack retiring which delayed the settlement negotiations.(Pa65). Chenel also showed the court that all other email correspondence were unavailable because they were conducted between Allstate and Laura Kacmarcik, a paralegal from Goldstein & Handwerker who passed away unexpectedly leaving her email correspondence in this case unrecoverable. (Pa65).

Once again, the last email from Ms. Kacmarcik to Allstate shows that she was engaged in conversations with "Carol" from Allstate and formerly with a Mr. Pollack, the prior claims representative who she says "retired" and apparently misplaced or did not save the documents in the file.(Pa63). The email

shows three attachments were provided to “Carol” and they were documents containing “Chenel Form A and Supplemental Interrogatory Responses Part I, Chenel NY Spine Institute Records and Chenel Dr. Conn Expert Report, all documents Allstate would need to review the file for settlement purposes. (Pa47). The email containing the aforementioned attachments specifically states: “Hello Carol, I am sorry for the confusion. I know we spoke before I thought you had all this information in your file as it was sent to Mr. Pollack before he retired. Thank you!” (Pa63).

Once Chenel realized his Underinsured Motorist claim with Allstate was futile, he filed his complaint against Allstate on October 30, 2023. (Pa23).

By sur reply dated May 16, 2024, Chenel also pointed out that Allstate still had not claimed it would be prejudiced if the complaint was not dismissed.(Pa65).

ARGUMENT

I. The lower court’s grant of dismissal of the complaint should be reversed because evidence to support that the parties were negotiating was in the sole possession of Allstate. (Pa1)

Allstate misses the point that evidence to support Chenel’s position that the parties were negotiating was in the sole possession of Allstate. The lower court should have permitted discovery on the email communications Allstate had with Chenel’s counsel to fully gain an understanding of the negotiations had

between the parties before rendering a decision on whether the Statute of Limitations should have been tolled.

Allstate points out that in *Price* the court only mentions prejudice once which made sense given the parties had a “back-and-forth dialogue for years that extended to just nine days before the statute of limitations ran.” The difference between *Price* and this case is that Chenel does not have the benefit of any “back-and-forth dialogue” that could have occurred with Allstate because Allstate is in sole possession of that evidence-hence the request for denial and/or reservation in deciding Allstate’s motion.

As a reminder, on April 20, 2022, Chenel’s counsel (paralegal Laura Kacmarcik) provided requested medical records and Interrogatories to Allstate in support of his claim. (Pa63). Chenel’s counsel had no access to recover emails from Ms. Kacmarcik’s email storage to determine if she was engaging in a “back-and-forth” with Allstate which is why Chenel’s counsel argued for further discovery on the issue of the Statute of Limitations defense prior to rendering a decision on the motion.

The Court is urged to take note of the content and names of the attachments on the late Ms. Kacmarcik’s email to Allstate which shows that she was engaged in conversations with “Carol” from Allstate and formerly with a Mr. Pollack, the prior claims representative who she says “retired”. (Pa63). In

Ms. Kacmarcik's email, she advises "Carol" that she believed "all the information" was in the file because it was provided to Allstate's prior claims representative, Mr. Pollack, who retired. (Pa63). Clearly, Mr. Pollock misplaced the documents provided to Allstate thereby delaying this case even more. (Pa63).

The email also shows three attachments were provided to "Carol" and they were documents containing "Chenel Form A and Supplemental Interrogatory Responses Part I, Chenel NY Spine Institute Records and Chenel Dr. Conn Expert Report, all documents Allstate would need to review the file for settlement purposes. (Pa47). The email containing the aforementioned attachments specifically states:

Hello Carol, I am sorry for the confusion. I know we spoke before I thought you had all this information in your file as it was sent to Mr. Pollack before he retired. Thank you!

(Pa63).

The above email shows an effort by both parties to resolve the case without the need for court intervention. Chenel reasonably relied on Allstate's good faith in evaluating his claim and provided all documents requested of Allstate, more than once. Chenel fully expected Allstate to render a decision on his claim after a review of all of the documents requested of him, not abandon the claim and remain silent for months. At the very least, an issue of fact existed

with respect to the negotiations and Allstate should have been compelled to produce discovery on the issue given it is in sole possession of the evidence related to the negotiations with Ms. Kacmarcik.

In fact, in granting Allstate's motion, the lower court pointed out the gap in evidence between Ms. Kacmarcik's email on April 20, 2022 and the filing of the Complaint on October 30, 2023. Even though the lower court acknowledged this gap in evidence, it still granted Allstate's motion. This was error as the evidence could reveal further requests from Allstate to support Chenel's position that Allstate was seeking to settle his uninsured motorist claim without the need for filing a complaint.

"The primary purpose of the statute of limitations is to provide defendants a fair opportunity to defend and to prevent plaintiffs from litigating stale claims." *Price v New Jersey Mfrs. Ins. Co.*, 182 NJ 519, 524 [NJ 2005] citing *W.V. Pangborne Co., Inc. v. New Jersey Dep't of Transp.*, 116 N.J. 543, 563, 562 A.2d 222, 232 (1989) (citing *Ochs v. Fed. Ins. Co.*, 90 N.J. 108, 112, 447 A.2d 163, 165 (1982); *O'Keeffe v. Snyder*, 83 N.J. 478, 490-91, 416 A.2d 862, 868-69 (1980)). "Consistent with that purpose, 'where defendants [insurers] are on notice of the claims, and no significant prejudice results, the policy reasons for upholding a strict statute of limitations recede.'" *Ibid.* "To avoid harsh results [which is clearly the result here for Chenel] from a

mechanical application of the statute of limitations, this Court has applied equitable principles to conclude that the statute should yield to other considerations.” *Ibid.* at 524.

This high court could avoid the harsh result of dismissing Chenel’s claim without allowing the case to be decided on the merits. With this in mind, Chenel respectfully requests that the lower court’s decision be reversed.

The insurance company, as the dominant party, has an even greater obligation than the insured to act in good faith and not put “technical encumbrances or hidden pitfalls” in the way of unsophisticated customers that would undermine their “reasonable expectations.” *Sears Mortgage Corp. v. Rose*, 134 N.J. 326 , 347, 634 A.2d 74, 84 (1993) (quotation omitted). Indeed, the “limitations period ‘should not become an instrument of injustice’”. *Procanik by Procanik v. Cillo*, 97 NJ 339, 351, 478 A.2d at 762 (1984).

II. Allstate did not claim prejudice to the lower court so it was not preserved for appeal. (Pa1)

As argued in Chenel’s Appellate brief, Allstate’s motion should have been denied as the evidence shows that Allstate was not prejudiced by the delay, nor did Allstate claim they were prejudiced. Allstate’s claim of prejudice was not before the lower court.

CONCLUSION

For the aforementioned reason, Chenel respectfully requests that this Court reverse the order of the Law Division entered on and remand the matter for further proceedings.

Respectfully submitted,

By: Steven Goldstein
Steven Goldstein, ESQ.
NJ Registration #: 034871992

GOLDSTEIN & HANDWERKER,
LLP
Attorneys for Plaintiff, Appellant

Dated: February 10, 2025