
HENRY OKIOGAH,	: Supreme Court of New Jersey
	: Docket No.: 090856
	: APPELLATE DIVISION
Plaintiff/Appellant,	: DOCKET NO.: A-002363-23T4
	:
-vs-	: CIVIL ACTION
	:
NEW JERSEY TRANSIT, NEW	: ON PETITION FOR CERTIFICATION
JERSEY DEPARTMENT OF	: OF APPEAL FROM FINAL JUDGMENT
TRANSPORTATION, STATE OF	: OF THE SUPERIOR COURT OF
NEW JERSEY	: NEW JERSEY, APPELLATE DIVISION
	:
Defendants/Respondents.	: Docket No.: A-002363-23T4
	:
	: Sat Below:
	: Hon. Joseph L. Marczyk
	: Hon. James R. Paganelli
	:
	:

**AMENDED BRIEF OF AMICUS CURIAE
NEW JERSEY ASSOCIATION FOR JUSTICE (NJAJ)**

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PRELIMINARY STATEMENT

The New Jersey Association for Justice (“NJAJ”) respectfully submits this brief as amicus curiae in support of Plaintiff, Henry Okiogah.

The trial court rejected the existence of extraordinary circumstances, and in doing so, abused its discretion and subverted the intent of the exception to the Tort Claims Notice requirement.

This case raises important public concerns because it highlights the tension between the requirements of the Tort Claims Notice provisions and the recognition that an injured person’s primary focus when hospitalized or undergoing inpatient rehabilitation is and should be upon improvement of their health, not legal recourse. This matter also raises concern about the damage to the image of the bar if injured people are expected to call a lawyer and meet with them from their hospital or rehabilitation facility. As an organization of lawyers dedicated to Civil Justice and the integrity of the legal profession NJAJ fears the damage such an expectation would cause to the public trust in lawyers.

The trial courts need guidance as to how to exercise discretion when analyzing a plaintiff’s late Notice of Tort Claim. As such, amicus urges this Court to grant Plaintiff’s Petition for Certification and ultimately to reverse the trial court decision and clarify the analysis that is required in examining extraordinary circumstances as set forth in N.J.S.A. 59:8-9.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

NJAJ will rely on the Facts and Procedural History as recited by Plaintiff.

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO FIND EXTRAORDINARY CIRCUMSTANCES

The determination of whether a notice of claim under N.J.S.A. 59:8-8 has been timely filed requires inquiry into when the claim accrued, whether notice of claim was filed within 90 days and if not, whether extraordinary circumstances existed to justify a late notice. Beauchamp v. Amedio, 164 N.J. 111, 118 (2000). On May 11, 2023, Plaintiff was struck by a NJ Transit Bus. (Pa0002) According to the police report, it was a hit and run. (Pa0001-0002) The Plaintiff was hospitalized from May 11 through May 24, 2023 and transferred for rehabilitation until September 13, 2023.

Plaintiff sought legal counsel 13 days after discharge and filed a notice of claim on October 2, 2023. The trial court trivialized Plaintiff's injuries, failed to adequately assess the lack of prejudice to the Defendant, and failed to consider the impact upon the integrity of the legal profession by requiring patients to consult an attorney as an inpatient.

The trial court failed to provide satisfactory reasons for rejecting the existence of extraordinary circumstances. Judicial “[f]indings about the ‘lack of substantial prejudice and the presence of extraordinary circumstances must be

expressly made in order to comply with the legislative mandate and to justify the entry of an order permitting the filing of a late notice of claim under N.J.S.A. 59:8-9.” Allen v. Krause, 306 N.J. Super. 448, 455-56 (App. Div. 1997), quoted in Leidy v. Ocean, 398 N.J. Super. 449, 456 (App. Div. 2008).

The statute provides in part that:

A claimant who fails to file notice of his claim within 90 days as provided in section 59:8-8 of this act, may, in the discretion of a judge of the Superior Court, be permitted to file such notice at any time within one year after the accrual of his claim provided that the public entity or the public employee has not been substantially prejudiced thereby. Application to the court for permission to file a late notice of claim shall be made upon motion supported by affidavits based upon personal knowledge of the affiant showing sufficient reasons constituting extraordinary circumstances for his failure to file notice of claim within the period of time prescribed by section 59:8-8 of this act or to file a motion seeking leave to file a late notice of claim within a reasonable time thereafter.

N.J.S.A. 59:8-9.

Neither the Legislature nor the Supreme Court has provided a textual definition of “extraordinary circumstances,” Epstein v. State, 311 N.J. Super. 350, 359 (App. Div.), certif. denied, 155 N.J. 589 (1998), and the phrase remains imprecisely understood with little to guide the courts in interpreting its meaning. Maher v. Cnty. of Mercer, 384 N.J. Super. 182, 189 (App. Div. 2006). Courts conduct case by case determinations to see whether extraordinary circumstances exist. Epstein, 311 N.J. Super. at 359. A “searching argument or analysis” is expected from both plaintiff and the court and a perfunctory analysis of late-notice

applications will no longer suffice. See Blank v. City of Elizabeth, 318 N.J. Super. 106, 110-11 (App. Div.) aff'd as modified, 162 N.J. 150 (1999).

The court failed to follow the Court's directive in Eagan v. Boyarsky, 158 N.J. 632, 642 (1999), and did not focus on the combination of factors that showed extraordinary circumstances. The court ignored the enormity of the Plaintiff's injuries, overlooking the fact that a 4 month inpatient admission alone illustrates the seriousness of the injury endured.

The Plaintiff in this matter was struck by a bus while crossing a street, necessitating 4 months of inpatient admission. In matters with less compelling facts, courts have found extraordinary circumstances. See Beauchamp, 164 N.J. at 122-23 (General confusion among lawyers and judges as to accrual date established extraordinary circumstances in context of plaintiff seeking medical and legal advice to protect her claim); Ventola v. New Jersey Veteran's Mem'l Home, 164 N.J. 74, 82-83 (2000) (extraordinary circumstances where plaintiffs did not sleep on their rights, no prejudice to defendant, and confusion as to status of a veterans' home) Plaintiff's diligence in pursuing his rights after discharge and the lack of any prejudice, warranted a finding of extraordinary circumstances.

This case is inapposite from matters where the court found an absence of extraordinary circumstances. In Zois v. New Jersey Sports & Exposition Auth., 286 N.J. Super. 670, 674 (App. Div. 1996), the sole basis for the late notice was

the misfiling of the file by the attorney's secretary coupled with the attorney's forgetfulness. General claims of ignorance of the law and attorney negligence do not suffice. Bayer v. Twp. of Union, 414 N.J. Super. 238, 261 (App. Div. 2010). This matter bears no resemblance to the facts in Leidy, supra, 398 N.J. Super. at 462, wherein extraordinary circumstances did not exist because plaintiff offered no explanation for the delay other than unawareness as to who controlled the roadway and the risk of substantial prejudice was significant because eight months lapsed between the original notice and the notice of motion to file a late claim against a different county.

In D.D. v. Univ. of Med. and Dentistry of New Jersey, 213 NJ 130, 135 (2013), the Court concluded "that neither inattention nor incompetence of counsel meets the extraordinary circumstances test devised by the Legislature" and that "in the absence of other sufficient evidence of extraordinary circumstances that prevented plaintiff from pursuing a timely tort claim," leave to file a late notice of claim should be denied. The Court described plaintiff's medical and emotional conditions as not severe, debilitating, or uncommon enough to satisfy the standard, but best described as complaints of stress and emotional strain resulting from knowledge that personal information was on the internet. Id. at 150. Recognizing that there was not an abundance of authority defining with precision what medical proofs the Legislature intended, the Court noted that in general "medical

conditions meet the extraordinary circumstances standard if they are severe or debilitating.” Id. at 149. The plaintiff in D.D. was not an inpatient at a hospital and rehabilitation facility for 4 months, while the claim was accruing.

In O’Neill v. City of Newark, 304 N.J. Super. 543, 553 (App. Div. 1997), the plaintiff was hospitalized for about one week, and then able to travel to medical visits, but failed to consult with an attorney during that time. Plaintiff had an “obligation to seek legal advice as to his remedies, as long as he was physically and psychologically capable.” O’Neill v. City of Newark, 304 N.J. Super. 543, 553 (App. Div. 1997). The plaintiff in O’Neill was not an inpatient for 4 months.

In this matter, Plaintiff went directly from hospitalization to inpatient rehabilitation for 3 ½ months. In contrast to the plaintiff’s failure in O’Neill, 304 N.J. Super. at 543, to contact an attorney when physically able, the Plaintiff in this matter promptly retained an attorney after discharge. In Bayer, attorney neglect, coupled with nothing more than unpersuasive reasons explaining the neglect, prompted the court to reject plaintiff’s late claim. Relevant to the court’s decision was the finding that:

[P]laintiff’s desire to obtain a dismissal of the criminal charge before filing a notice of claim and his desire not to aggravate law enforcement officials did not constitute extraordinary circumstances so as to excuse his late filing. This was not a situation where plaintiff was incarcerated, disabled, or otherwise physically incapable of protecting his rights during the ninety-day period following accrual... It is well established that ‘indecision’ or ‘mere ambivalence’ about whether to prosecute a claim do not constitute extraordinary circumstances necessary to create a basis for relief.

414 N.J. Super. at 260.

In this matter, Plaintiff's inability to file his claim was not due to attorney neglect, indecision, or sitting on his rights. Rather, he was seriously hurt after being hit by a bus and was focused solely on becoming well enough for discharge. Once discharged, he pursued his claim by meeting with counsel 2 weeks later.

In R.L. v. State-Operated Sch. Dist., 387 N.J. Super. 331, 341 (App. Div. 2006), the court allowed the late filing of a claim 66 days after the expiration of the 90-day period, in the context of an individual suffering from HIV. Relevant to the court's decision was its knowledge that it had to address each case individually, there was no prejudice, plaintiff was shy of his 19th birthday when he learned he had HIV, his condition could lead to death, and carried a stigma which received recognition in state and federal courts. Id. The Appellate Court upheld the lower court's finding of extraordinary circumstances, noting that "[w]hile we have held that similar reasons, when offered individually, were inadequate, a judge must consider the collective impact of the circumstances offered as reasons for the delay." Id. The decision is instructive because the court did not mandate the existence of a particular set of facts to find extraordinary circumstances but required that each case be evaluated on its own merits. Id. at 331. Whereas not one particular factor constituted sufficient reasons prior to the amendment, not any one

particular scenario will constitute extraordinary circumstances since the amendment. Eagen v. Boyarsky, 158 N.J. 632, 642 (1999).

The combination of facts in this matter demands a finding of extraordinary circumstances. Plaintiff suffered debilitating injuries, evidenced by the fact that he remained as an inpatient for 4 months. Unlike cases in which the court has rejected the finding of extraordinary circumstances based on indecision or mere ambivalence about whether to prosecute a claim, Bayer, 414 N.J. Super. at 260, this Plaintiff filed his notice of claim shortly after discharge.

Disregarding the seriousness of Plaintiff's injuries, the trial court ruled that the injuries were not substantial enough to warrant a finding of extraordinary circumstances. The trial court correctly noted that "any doubts as to whether extraordinary circumstances exist should be resolved in favor of the application, Lowe v. Zarghami, 158 N.J. 606, 629 (1999)" but it failed to follow that approach in this instance. (Pa0031) Rejecting the existence of extraordinary circumstances because of medical entries that Plaintiff was alert and oriented and visited by his girlfriend, the trial court failed to appreciate the totality of the circumstances, as it was required to do upon motion for leave to file a late notice of claim. The trial court overlooked the magnitude of the physical and emotional harm thrust upon the Plaintiff and the fact that he spent 4 months as an inpatient, relearning basic skills to walk again because he was struck by a bus.

Selectively parsing the record, the trial court concluded that Plaintiff was capable of contacting an attorney. The trial court noted that he may have been in a weakened state while hospitalized, but determined that the rehabilitation record did not show he was too incapacitated to contact an attorney or ask his girlfriend to do so. (Pa0033) The trial court abused its discretion by finding that Plaintiff did not show extraordinary circumstances because the administrator of the facility stated that patients had access to wi-fi, the internet, and telephones. Access to technology is irrelevant in the context of a patient admitted for 4 months, whose focus was relearning the skills which would enable discharge. The court should have appreciated that the Plaintiff suffered tremendous physical injuries and should not have been charged with the responsibility of identifying an attorney, contacting an attorney, communicating with an attorney, and retaining an attorney, as an inpatient.

The trial court imposed the perspective of an attorney upon a lay person patient. Had the court approached the analysis from the injured patient's perspective, it would have recognized that the Plaintiff's focus was appropriately centered on his health. The selective parsing of the record and disregard of the Plaintiff's physical and mental challenges led the court to ignore the obvious evidence which is that the medical professionals deemed the Plaintiff unfit for discharge during the time his claim was accruing.

Under the trial court's analysis, only the most egregious of circumstances would qualify for a late filing of a notice of claim, such as comatose patients or those who are wholly incapable of communicating during their inpatient admission to a facility. There is nothing in the statute that mandates that extraordinary circumstances be elevated to a level nearly impossible to meet. The court abused its discretion by ignoring the totality of the circumstances and second guessing the Plaintiff's ability to contact an attorney during his admission.

The trial court's findings were more akin to the trial court in Jeffrey v. State, 468 N.J. Super. 52, 57 (App. Div. 2021), which was criticized for "grossly misapprehend[ing] the magnitude of plaintiff's injuries." The trial court in Jeffrey stated that there was:

[I]nsufficient evidence in the record to show that plaintiff was not able to file a timely claim due to the severity of his injuries and the medical care he received following the accident. While the [c]ourt notes that plaintiff was hospitalized for a period of time and being treated by in-patient rehab, he was soon released to outpatient rehab. There is nothing to indicate that plaintiff, either through a family member, friend, or individual, was prevented from contacting or retaining legal counsel.

Id.

The Appellate Court noted that upon discharge, the record showed plaintiff had "no motor or sensory function," "no rectal tone," and requires a "Foley catheter in place for [a] neurogenic bladder." Id. at 58. Recognizing the inherently imprecise nature of what constitutes extraordinary circumstances and its obligation

to examine more carefully decisions denying the filing of a late notice of claim, the Appellate Court stated that:

After completing two months of inpatient rehabilitation, a judge does not require psychiatric testimony to infer that plaintiff's emotional state was, at the very least, extremely delicate and highly fragile. It would thus be beyond insensitive to impose a duty on plaintiff to seek legal advice through surrogates composed of family members or friends, during this life-altering adjustment period. We are certain the Legislature did not intend for the judiciary to construe the term "accrual" in N.J.S.A. 59:8-8 in a manner that abandons all vestiges of basic human empathy.

Id.

The same observations by the Appellate Court in Jeffrey, supra, are applicable here, as both plaintiffs suffered substantial injuries requiring lengthy admission in a hospital and rehabilitation facility. Like the plaintiff in Jeffrey, Plaintiff's focus was not on seeking legal advice, but on getting better. The Appellate Court astutely noted that "[i]t is self-evident that seeking an attorney to investigate the legal intricacies of a potential lawsuit was not among plaintiff's most pressing concerns during these emotionally difficult times." Id. at 59. Similar to the trial court in Jeffrey, the court in this matter showed an insensitivity to Plaintiff's condition, most telling by the trial court's expectation that Plaintiff should have sought legal advice through a friend or by borrowing a phone.

The show of extraordinary circumstances, coupled with the absence of any prejudice, satisfies the standard set forth in N.J.S.A. 59:8-9. Considering the facts

unique to this case, the trial court abused its discretion when it rejected the finding of extraordinary circumstances.

The trial court's failure to recognize the complete absence of prejudice to the Defendant led to an abuse of discretion by failing to find extraordinary circumstances in a meritorious case not deserving of dismissal.

Courts have observed that there is nothing in the Tort Claim Act that evinces a legislative intent that governmental entities, whether intentionally or unintentionally, should be able to “impale a diligent claimant on the Act’s technical requirements for notification.” Newberry v. Twp. of Pemberton, 319 N.J. Super. 671, 676 (App. Div. 1999).

The court has discretion to allow the filing of a late notice where the claimant’s affidavit shows sufficient reasons constituting extraordinary circumstances for the delay and no substantial prejudice to the public entity. Leidy, 398 N.J. Super. at 456; Lamb v. Glob. Landfill Reclaiming, 111 N.J. 134, 146 (1988). Cases in which permission to file a late claim has been denied need to be examined by the reviewing court more carefully than in those cases in which it has been granted. Wherever possible, cases should be heard on their merits and any doubts which may exist should be resolved in favor of the application. Lowe, 158 N.J. at 629; Feinberg v. New Jersey Dep’t of Env’tl. Prot., 137 N.J. 126, 134-35 (1994); S.E.W. Friel Co. v. N.J. Tpk. Auth., 73 N.J. 107, 122 (1977); Eagan, 158 N.J. at 642.

The notice provisions were not intended as a trap for the unwary. Lowe, 158 N.J. at 629; Murray v Brown, 259 N.J. Super. 360, 365 (Law Div. 1991); Eagan, 158 N.J. at 642. According to the Appellate Division in Blank, 318 N.J. Super. at 114:

We do not believe that the 1994 amendment of N.J.S.A. 59:8-9 diminishes the vitality of that principle. The amendment prescribes a substantive standard for decision that binds the court – namely, extraordinary circumstances. . . We do not regard it as a deviation from the legislative intention that motivated the amendment or us to continue to apply to the prescribed substantive standard for the guiding procedural principle of according litigants their day in court.

Where there is no evidence in the record of prejudice to the public entity occasioned by the delay in filing the claim and extraordinary circumstances are shown, granting leave to file a late notice is appropriate as it allows cases to be heard on their merits. Maher, 384 N.J. Super. at 190. The late notice application should be considered in light of the end that wherever possible, cases may be heard on their merits, and any doubts which may exist should be resolved in favor of the application. S.E.W. Friel Co., 73 N.J. at 122.

In R.L., 387 N.J. Super. at 340-41, the court allowed the late filing of a claim and found the existence of extraordinary circumstances, in part because there was no prejudice to the public entity. In Lowe, 158 N.J. at 631, the Court considered the potential prejudice to the medical malpractice defendants when deciding if extraordinary circumstances existed. The Court allowed the claim, finding that the

defendant doctor forwarded the complaint to the state entity where he practiced as soon as it was filed. Relevant to the Court's analysis was the finding that any delay did not prejudice the defendants because the doctor was required to keep medical records in the ordinary course of treating patients and must have been aware of the possibility of a malpractice suit, given the facts surrounding the patient's treatment. Id. at 631.

In this matter, the trial court failed to adequately assess whether the public entity suffered prejudice and if it had done so, it would have found an absence of any prejudice. Had the trial court recognized that no prejudice was shown, it should have ruled that extraordinary circumstances existed to warrant the allowance of the late notice of claim.

The Defendant asserts that the delay resulted in lost opportunity to investigate the accident and that much of the evidence has been potentially lost. These unsubstantiated assertions are not evidence of prejudice. As noted by the Court in D.D., "[t]he purpose of the ninety-day deadline is to 'compel a claimant to expose his intention and information early in the process in order to permit the public entity to undertake an investigation while witnesses are available and the facts are fresh.'" 213 N.J. at 146, quoting Lutz v. Twp. of Gloucester, 153 N.J. Super. 461, 466 (App. Div. 1977).

The substantial prejudice element of N.J.S.A. 59:8-9 places the burden of production and persuasion on the public entity. Blank, 318 N.J. Super. at 114. Defendant has failed to meet that burden as there is no evidence of “substantial prejudice in maintaining one's defense,” such as “the loss of witnesses, the loss of evidence, fading memories, and the like.” Id. at 114-15, quoted in Mendez v. S. Jersey Transp. Auth., 416 N.J. Super. 525, 535 (App. Div. 2010).

This is a pedestrian knock down case in which the issue of liability is proven through the testimony of the parties and witnesses. Defendant fails to identify the disappearance of evidence because there is no evidence that has been lost by the late filing of the notice of tort claim. Unlike a complicated medical malpractice action which could involve the loss of parties, evidence, and witness recollections over time, the persons with knowledge of facts in this matter solely involve the plaintiff, the bus driver, and witnesses identified in the police report. If they were not contacted by the Defendant already, there is no appreciable prejudice that the Defendant has shown by securing their testimony at this time.

Furthermore, it defies logic that an investigation was not undertaken immediately after the hit and run in order to document information current in the minds of witnesses. The police report states in part that “NJ Transit PD was notified and arrived. For further information refer to NJ Transit file #23-05L3408.” (Pa0002) It must be inferred that New Jersey Transit was notified on or about the

time this hit and run occurred. Although not part of the record before this Court, it can reasonably be presumed that Risk Management at New Jersey Transit would have been notified that one of its drivers struck a pedestrian and an investigation would have immediately ensued. Witnesses would have been questioned and evidence would have been preserved, satisfying the salient purpose of the notice provision of the Tort Claims Act.

The Defendant's bare assertions that any delay caused prejudice is not supported by any facts in the record. The Appellate Court has made clear that:

The fact of delay alone does not give rise to the assumption of prejudice; the public entity must present a factual basis for the claim of substantial prejudice. Kleinke v. City of Ocean City, 147 N.J. Super. 575, 581 (App.Div.1977). Substantial prejudice must be shown by "specificity and not by general allegation. . . ." Blank, supra, 318 N.J. Super. at 115.

Mendez, 416 N.J. Super. at 535-36.

The trial court in this matter failed to address whether Defendant was aware of the hit and run and conducted an internal investigation, and it should have done so before ruling that Plaintiff failed to satisfy the extraordinary circumstances standard. The lack of prejudice should have been an important factor in the trial court's analysis and by all accounts it was not considered here.

POINT II

**THE ETHICAL IMPLICATIONS OF THE TRIAL COURT'S
DECISION WILL DO A DISSERVICE TO THE LEGAL
PROFESSION AND ITS STANDING IN THE STATE**

The trial court's determination that the facts of this matter do not constitute extraordinary circumstances is alarming, and the ramifications are far reaching.

Amicus urges this Court to consider the potential consequences of the trial court's ruling. This matter brings to fore the tension that exists between strict interpretation of the notice requirements of the Tort Claims Act and maintaining and fostering the integrity of the legal profession. The decision requires that an injured person contact and meet with an attorney, while still inpatient. Attorneys then MUST enter upon those premises to serve that potential client. An appearance that will only serve to undermine the impression of attorneys. Under the trial court's ruling, nothing short of a patient that is comatose or dependent on others for all their needs will constitute extraordinary circumstances. Such conduct by the bar, driven out of necessity to protect potential clients' rights, is abhorrent, but would become commonplace. Accident victims, who should be focused on their health if their condition is serious enough to warrant admission, will instead have to tolerate such intrusions or risk forever being barred from suing to recover for injuries sustained.

As amicus counsel, maintaining the integrity of the profession and its image among the general population is of paramount concern. An inherent conflict has been created by the trial court's refusal to recognize that Plaintiff's inpatient admission warranted the finding of exceptional circumstances, regardless of

whether Plaintiff had friends who visited or telephones and internet available for use. The goals of protecting a person's right to sue and maintaining the integrity of the legal profession can and should be consistent and not distinct, but if this decision stands, the goals will be pitted against each other.

To preserve an injured person's right to sue, nothing short of invading the privacy of injured patients in facilities will suffice, thereby undermining the bar's desired image of professionalism and integrity. The physical and mental well-being of injured patients admitted to a facility for treatment of their ailments will be subordinated to the need to file a timely claim, inevitably necessitating intrusive visits by attorneys. The public outrage that may ensue would be justified.

Attorneys chasing clients in hospital and rehabilitation facilities is an image that should make the profession shudder. Even if such practice is not considered a violation of the Rules of Professional Conduct, it is not one that the bar should welcome.

RPC 7.3., Personal Contact with Prospective Clients, provides in relevant part that:

- (a) A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment, subject to the requirements of paragraph (b).
- (b) A lawyer shall not contact, or send a written or electronic or other form of communication to, a prospective client for the purpose of obtaining professional employment if:
 - (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

The Supreme Court addressed RPC 7.3 in In re Pajerowski, 156 N.J. 509 (1998), and the Court's discussion highlights the importance of maintaining the integrity of the profession in the context of soliciting and communicating with potential clients in a hospital or rehabilitation setting. In re Pajerowski involved a respondent attorney that admitted to violating RPC 7.3(b) by soliciting clients through his runner, who would contact accident victims in hospitals on or shortly after the accident occurred to persuade them to retain respondent to represent them. Id. at 513.

The Court cited the DRB (Disciplinary Review Board) majority opinion that recommended disbarment for the RPC 7.3(b) violation, which highlights the importance of integrity to the legal profession. The DRB described the reprehensibility of respondent's conduct in "ambulance-chasing" victims at hospital emergency rooms, stating that:

[R]espondent attempted to take advantage of individuals when they were most vulnerable [engaging in] "ambulance-chasing" that is so unsavory and repugnant to the legal profession. The effect upon an accident victim cannot be understated. Victims must have a right to be insulated from those who would attempt to prey upon their vulnerability... Respondent's misconduct was not only unprofessional and intrusive, but also regrettably contributes to the negative image that some members of the public associate with attorneys. Respondent's misconduct not only dishonored himself but also the profession whose reputation this Board is charged to protect. Respondent's ethics violations damaged not only the prospective clients he solicited, but also the entire bar.

Id. at 517.

The Court found that soliciting victims soon after their injuries presented opportunity for various forms of vexatious conduct and emphasized the importance of “preserv[ing] the confidence of the public in the integrity of the legal system.” Id. at 521.

The trial court’s decision, of second guessing the ability of an accident victim to pursue his claim during his 4 month inpatient admission and failing to consider the existence of prejudice, will ultimately do a great injustice to the legal profession and attorneys struggling to uphold the integrity of the bar and protect the potential claims of accident victims. Amicus urges this Court to reverse the trial court ruling and allow the Plaintiff leave to file a late notice of claim. The Plaintiff’s lengthy admission, the lack of prejudice to the Defendant, and the consequences that the trial court’s decision could have upon the image of the legal profession if allowed to stand, warrant reversal.

CONCLUSION

For all of the following reasons, amicus curiae, respectfully requests that the Court reverse the Appellate Court’s decision affirming the Trial Court Order denying the Plaintiff leave to file a late notice of claim pursuant to N.J.S.A. 59:8-9.

Respectfully submitted,



Dated: August 20, 2025

JESSICA E. CHOPER, ESQ.