

PREPARED BY THE COURT

WIGGINS PLASTICS, INC.; and
KNICKERBOCKER BED COMPANY,

Plaintiffs,

v.

COUNTY OF PASSAIC; PASSAIC COUNTY
BOARD OF CHOSEN FREEHOLDERS; JOHN
DOES 1 THROUGH 10 (fictitious names of
individuals whose identities are presently
unknown); JOHN DOES 11 THROUGH 20
(fictitious names of employees, agents,
representatives and/or assigns of the County of
Passaic and/or Passaic County Board of Chosen
Freeholders, whose identities are presently
unknown) and ABC CORPORATIONS 1-10
(fictitious names of entities whose identities are
presently unknown),

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: PASSAIC COUNTY**

Docket No.: PAS-L-2441-22

CIVIL ACTION

ORDER

THIS MATTER, having been opened before the Court on discovery disputes concerning Wiggins Plastics, Inc. and Knickerbocker Bed Company (collectively “Plaintiffs”) and the County of Passaic, Passaic County Board of Commissioners’ (improperly pled as Passaic County Board of Chosen Freeholders) (collectively “County of Passaic”), and Assuncao Brothers (collectively Defendants). Plaintiffs appeal recommendations relating to the Special Adjudicator’s October 27, 2025, Report which denied Plaintiffs application for a Protective Order and issued additional discovery recommendations.

IT IS on this 21th day of November 2025;

ORDERED that Plaintiffs’ appeal of the Special Adjudicator’s Report dated October 27,

2025 is hereby **DENIED**; and it is further

ORDERED that Plaintiffs must produce a computation of their damage claims, setting forth each category of their damages as contemplated by R. 4:103-1 (a) (3). The calculations and supporting documents should follow the Rollins identification of categories of damages; and it is further

ORDERED that Plaintiffs are not required to include reproduction or identification of any copies of photographs already served on Defendants; and it is further

ORDERED that the production should be made at least three business days before the last date of Polevoy's scheduled depositions; and it is further

ORDERED that if calculations and supporting documents backing up the spreadsheets' calculations are not produced or are not identified by Bates Stamp references to documents already produced, then plaintiffs and their experts should be barred from relying upon the spreadsheets or unproduced or unidentified documents at trial; and it is further

ORDERED that a copy of this Order be served via e-courts.

/s/ Darren J. Del Sardo

Hon. Darren J. Del Sardo, P.J.Cv.

SEE ATTACHED STATEMENT OF REASONS

**NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE COMMITTEE ON
OPINIONS**

WIGGINS PLASTICS, INC. and
KNICKERBOCKER BED COMPANY,

Plaintiff(s),

v.

COUNTY OF PASSAIC, et al.,

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY
LAW DIVISION

DOCKET NO.: PAS L-2441-22

CIVIL ACTION - CBLP

OPINION

Decided November 21, 2025

Charles A. Yuen, Esq., of Charles Allen Yuen LLC, counsel for Plaintiffs Wiggins Plastics, Inc. and Knickerbocker Bed Company.

Jerald J. Howarth, Esq., of Howarth & Associates, LLC, counsel for Defendants County of Passaic and Passaic County Board of Commissioners.

Stephen T. Scirocco, Esq., of Scirocco Law, counsel for Defendant Assuncao Brother, Inc.

Hon. Darren J. Del Sardo, P.J. Cv.

Pending before the Court is Plaintiffs' Wiggins Plastics, Inc. and Knicker Bed Company, (collectively "Plaintiffs") Appeal of the Special Adjudicator's Recommendations on Plaintiff's Motion for Protective Order, filed on October 31, 2025. Defendants, County of Passaic, Passaic County Board of Commissioners

(collectively “the County”) and Assuncao Brothers (collectively Defendants) submitted an Opposition on November 4, 2025. After careful consideration, the Court relies upon the following statement of reasons in support of its decision.

BACKGROUND

This case arose from a bridge replacement project in a County-owned river adjacent to the plaintiff Wiggins' industrial property. The County's general contractor, Assuncao Brothers Inc. ("Assuncao"), allegedly performed construction activities that contributed to severe flooding of the Plaintiff's property during the remnants of Storm Ida on September 1, 2021. The Plaintiff's amended complaint includes a fourth count alleging the County's negligent selection of Assuncao and the denial of safe work.

Plaintiff Wiggins asserts that the County's contractor, Assuncao, demolished the old bridge, modified the riverbank, and constructed a cofferdam that led to the flooding of the Plaintiff's property. Wiggins filed the initial complaint on September 29, 2022, and an Amended Complaint on May 11, 2023, alleging that the County negligently selected Assuncao, whose bid proposal was inadequate and unsafe.

The case was filed as a complex matter under Track 4 which permitted 450 days of discovery. The parties have engaged in ongoing discovery exchanges for

approximately 1189 days. Discovery is set to expire on March 31, 2026, and trial is scheduled for May 11, 2026.

The instant application is related to a discovery dispute regarding the Special Adjudicator's¹ Report dated October 27, 2025. *See* Special Adjudicator's Report dated October 27, 2025, Exhibit A.

Plaintiffs sought a Protective Order regarding the demand for the production of documents requested by Defendants, to be produced at the deposition of Richard Polevoy, the principal of both Plaintiffs. Defendants' notice of deposition requested Plaintiffs to produce documents relating to Plaintiffs' damage claims caused by the subject flooding.

Plaintiffs argued that they had complied with all discovery request by previously producing the documents demanded by Defendants and argue that it would be overly burdensome to have Plaintiffs segregate documents relating to Plaintiffs' damage claims. Plaintiffs argue that the notice of production violates R. 4:18-1, the Court's July 31, 2025 deadline for production of documents, the policy against the production of attorney work product and the prohibition against requiring unduly burdensome production of documents.

¹ On May 20, 2025, the Court entered an order appointing Garry S. Rothstadt, J.A.D. (Ret.) as a Special Adjudicator in this matter under Rules 4:41-1 (-5).

The application was opposed by Defendants. Defendants argued that the production of documents that support Plaintiffs' damages is warranted because of the voluminous production of documents. Defendants demand that Plaintiffs identify the documents that support their spreadsheet summaries of damages in excess of eleven million dollars.

The Special Adjudicator considered submissions and oral arguments before making the recommendation on Plaintiffs' application for a Protective Order.

Plaintiffs now move to directly appeal Garry S. Rothstadt, J.A.D. (Ret.) Special Adjudicator's recommendations number(s) 1, 3, 5, and 6 on his report dated October 27, 2025.

Defendants argue that the documents relating to the Protective Order were appropriately denied on procedural and substantive grounds. Defendants assert that said documents were sought for years. Defendants contend that the damages claim categories were established by Plaintiffs' expert, the Rollins accounting firm. Therefore, according to Defendants, their request for the relevant documents is not duplicative, as the documents previously produced do not correspond to or address the specific categories created by Rollins. Accordingly, Defendants seek production of documents responsive to the Rollins-created categories, which have not been provided.

During oral argument, Defendant County of Passaic highlighted that the manner in which Plaintiffs produced documents precludes Defendants' substantive review of the damage claims.

Defendants further argue that Plaintiffs' application for a Protective Order was deficient as they failed to provide a certification by an individual with personal knowledge and no proof in support of Plaintiffs' claim of responsive documents. Defendants assert they provided examples to the Special Adjudicator to establish the Plaintiffs' massive document drop. Additionally, Defendants argue that Plaintiffs failed to demonstrate "good cause" under R. 4:10-3.

The Special Adjudicator held that Plaintiffs did not meet their burden to preclude the production of the subject documents. The recommendation revealed that during oral arguments, Plaintiffs' Counsel stated that initial disclosures under R. 4:103-1(a) (3)² were never made because this action was not originally filed under CBLP. The Special Adjudicator noted that even though Plaintiffs' Reply Brief attached as exhibits four documents relating to Plaintiffs' damages, the CBLP rules are not satisfied as each calculation requires proofs to substantiate the alleged damage.

² Except as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties: (3) a computation of each category of damages claimed by the disclosing party — who must also make available for inspection and copying as under *Rules* 4:18 and 4:104-5(a) the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered." R. 4:103-.

Furthermore, the recommendation held that Plaintiffs work product argument and the deadline from expiration of the deadline production is without merit. In sum, the overall recommendation was to deny the Plaintiffs' Motion for a Protective Order. *See Exhibit A.*

DECISION

The Court affirms the Special Adjudicator's recommendation dated October 27, 2025, as the recommendation was properly determined. The Court has thoroughly reviewed and independently analyzed the recommendations and hereby affirms the Special Adjudicator's recommendations. In addition, the Court reviewed the record made at oral argument before the Special Adjudicator.

The Special Adjudicator issued six (6) recommendations relating to the Plaintiffs' request for Protective Order. Plaintiffs dispute three (3) of the recommendations which are all related to the denial of the Protective Order. The disputed recommendations are as follows: (1) Plaintiffs should be Ordered to produce a computation of their damages, (2) Plaintiffs should be Ordered production to be made at least three business days before the before the last date of the Polevoy's scheduled depositions, and (3) Plaintiffs and their experts should be barred from relying upon the spreadsheets or unproduced or unidentified documents at trial.

R. 4:10-3 provides that the court, on a finding of good cause, may make any order which justice requires to protect a party or person from annoyance, embarrassment,

oppression, undue burden or expense on motion by a party or person from whom discovery is sought. In determining whether good cause exists, the Court should consider the nature of the lawsuit and the issues raised by the pleadings, the substantive law likely to be applied in the resolution of the issues raised by the pleadings, whether the parties seeking discovery already have the materials sought, and the burden or expense to the parties seeking the protective order. *See Catalpa Inv. Group, Inc. v. Franklin Twp. Zoning Board of Adjustment*, 254 N.J. Super. 270, 237-74 (Law. Div. 1991).

The Court must consider the special discovery rules for cases enrolled in the Complex Business Litigation Program (CBLP). The rules in Part IV, Chapter XI govern the practice and procedure in cases included in the CBLP. As cited by the Special Adjudicator's recommendation, Plaintiff was required to produce "a copy or description by category of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment." *See* R. 4:102 (a) (2). Additionally, R. 4:103-1 (a) (3) specifically outlines the requirement of a party to produce documents that support their claim for damages in the form requested.

Here, the Court does not find good cause to issue a Protective Order to preclude Plaintiffs from producing the documents pertaining to the damages claim.

Defendants seek the damages documents to be produced to allow Defendants to properly defend the action. Plaintiffs previously produced spread sheets itemizing cost incurred by Plaintiffs as a result of Defendants conduct. Plaintiffs provided spreadsheets prepared by their expert, the Rollins accounting firm, which identified and categorized damages but failed to supply the supporting documents.

Upon review and as previously held by the Special Adjudicator, the subject documents produced do not provide any support for the spreadsheets. Moreover, upon listening to the record made at oral arguments before the Special Adjudicator, Plaintiffs' Counsel confirmed there are more documents supporting the Plaintiffs' damage claim.

The Court agrees with the Special Adjudicator that the subject documents should have been disclosed during the initial disclosures and the Plaintiffs, and their experts, are in a better position to identify said documents as they presumably relied upon the documents to create the damages spreadsheets.

The Court finds Plaintiffs' support for their underling motion by way of Certification from Counsel, Charles A. Yuen, Esq., is insufficient to support the Motion for Protective Order. Plaintiffs' Counsel does not have personal knowledge regarding the burden or expense of document production, as required by R. 1:6-6.

Accordingly, the Court concludes that the Special Adjudicator provided a thorough, comprehensive and well-reasoned written decision that the Court adopts in its entirety and has attached hereto.

Garry S. Rothstadt, Special Adjudicator
NJ Attorney ID #032651983
COLE SCHOTZ P.C.
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602-0800
201-489-3000
201-489-1536 Facsimile

WIGGINS PLASTICS, INC. AND
KNICKERBOCKER BED
COMPANY,

Plaintiffs,

v.

COUNTY OF PASSAIC; PASSAIC
COUNTY BOARD OF CHOSEN
FREEHOLDERS; PASSAIC
COUNTY BOARD OF
COMMISSIONERS; ASSUNCAO
BROTHERS, INC.; NGM
INSURANCE COMPANY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: PASSAIC COUNTY
DOCKET NO. PAS-CBLP-L-2441-22

Civil Action
CBLP Action

**REPORT OF SPECIAL
ADJUDICATOR'S
RECOMMENDATIONS ON
PLAINTIFFS' MOTION FOR A
PROTECTIVE ORDER**

The following sets forth the undersigned Special Adjudicator's¹ report and recommendations required by Rule 4:41-5 as to Plaintiffs Wiggins Plastics, Inc.'s (Wiggins) and Knickerbocker Bed Company's (KBC) motion filed under Rule 4:10-

¹ On May 20, 2025, the court entered an order, under Rules 4:41-1 to -5, appointing the undersigned as a Special Adjudicator in this matter. Among other directives, the court's order stated that the Special Adjudicator was "to consider, hear, and recommend a schedule for completion of all fact, expert and third-party discovery and to consider, hear, and recommend resolution of all discovery disputes between the parties."

3, seeking a Protective Order regarding the production of documents at the deposition of Richard Polevoy, the principal of both plaintiffs. The application was opposed by defendants the County of Passaic, Passaic County Board of Commissioners (collectively the County) and Assuncao Brothers, Inc.

Having considered the parties' submissions and the October 21, 2025 oral argument of counsel, and for the reasons stated during that hearing and as set forth below, it is the Special Adjudicator's recommendation that plaintiffs' application be granted in part and denied in part.

The gist of the dispute is that, according to plaintiffs, they have already produced thousands of pages of documents, and it would be overly burdensome to have plaintiffs now go over all of the produced documents for the sole purpose of segregating out documents related to plaintiffs' damage claim and then producing them at Polevoy's deposition in categories responsive to the County's notice for the deposition.² Moreover, according to plaintiffs, the notice for production violates (a)

² The notice requested the production of the following documents:

2. All documents or specific Bates Stamp references to all documents supporting plaintiffs damage claims relating to Thermo plastic parts stock losses caused by the subject flooding;
3. All documents or specific Bates Stamp references to all documents supporting plaintiffs damage claims relating to Thermo set parts stock losses caused by the subject flooding;
4. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to Wiggins plastics parts stock losses caused by the subject flooding;
5. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to Knickerbocker property stock losses caused by the subject flooding;
6. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to Knickerbocker steel stock losses caused by the subject flooding;
7. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to any additional "stock losses caused by the subject flooding;
8. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to business personal property furniture losses as a result of the subject flooding;

Rule 4:18-1, (b) the court's July 31, 2025 deadline for production of documents, (c) the policy against production of attorney work product, and (d) the prohibition against requiring unduly burdensome production of documents. Defendants all disagree and contend that production of the damage documents separated by categories is warranted due to plaintiffs serving of thousands of pages of documents

9. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to business personal property equipment losses as a result of the subject flooding;

10. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to business personal property machinery losses as a result of the subject flooding;

11. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to additional business personal property losses not set forth above as a result of the subject flooding;

12. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to raw material inventory damaged as a result of the subject flooding;

13. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to "Orbitform (inspector fee for dual head riveter)" damaged as a result of the subject flooding;

14. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to "eBay (replacement motor to test on extruder)" incurred as a result of the subject flooding;

15. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to "freight charges" incurred as a result of the subject flooding;

16. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to "set-up & installation charges" incurred as a result of the subject flooding;

17. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to "sales tax" incurred as a result of the subject flooding;

18. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to finished product inventory damaged as a result of the subject flooding;

19. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to lost sales, revenue and profit as a result of the subject flooding including but not limited to order cancellation notifications received from customers, correspondence and/or notification(s) sent to customers canceling orders and similar documentation of lost sales;

20. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to machinery repairs as a result of the subject flooding;

21. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to building damages and repairs as a result of the subject flooding;

22. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to "incurred flood expenses" as a result of the subject flooding;

23. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to "incremental outsourcing costs" incurred as a result of the subject flooding;

24. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to any additional "extra expenses" incurred as a result of the subject flooding; and,

25. All documents or specific Bates Stamp references to all documents supporting plaintiffs' damage claims relating to any additional damages not set forth above incurred as a result of the subject flooding.

that were either blank or in a "mishmash" form, and because of plaintiffs' failure to ever specifically identify documents that support their spreadsheet summaries of plaintiffs' damage claims, estimated to be in excess of eleven million dollars.

Guiding the consideration of plaintiffs' application is the well settled principle that "[o]ur discovery rules are to be liberally construed because we adhere to the belief that justice is more likely to be achieved when there has been full disclosure and all parties are conversant with all available facts." Corr. Med. Servs. v. State, Dep't of Corr., 426 N.J. Super. 106, 116 (App. Div. 2012) (quoting In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 82 (2000)). "[O]ur civil practice rules . . . recognize that '[l]iberal procedures for discovery in preparation for trial are essential to any modern judicial system . . . in which concealment and surprise are not to be tolerated.'" Shanley & Fisher, P.C. v. Sisselman, 215 N.J. Super. 200, 215 (App. Div. 1987) (quoting Lang v. Morgan's Home Equipment Corp., 6 N.J. 333, 338 (1951)).

"A party's discovery rights, however, 'are not unlimited.'" Alt. Glob. One, LLC v. Feingold, 479 N.J. Super. 593, 600 (App. Div. 2024) (quoting Trenton Renewable Power, LLC v. Denali Water Sols., LLC, 470 N.J. Super. 218, 226(App. Div. 2022)). Despite the liberality of discovery, "'a party or . . . the person from whom discovery is sought' may 'for good cause shown' seek 'any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or

undue burden or expense." Trenton Renewable Power, LLC, 470 N.J. Super. at 227. (quoting Rule 4:10-3).

Under Rule 4:10-3, otherwise permitted discovery "may be limited by the court if it determines that the discovery sought is reasonably cumulative or duplicative, or the burden or expense of the proposed discovery outweighs its likely benefit." Ibid. If warranted, "[a] court may grant the person from whom discovery is sought various forms of relief, including: '[t]hat the discovery not be had,' 'the discovery . . . be had only on specified terms and conditions,' or 'the scope of the discovery be limited to certain matters.'" Ibid. (quoting Rule 4:10-3(a), (b), and (d)). "The limiting factors underlying Rule 4:10-3 must be weighed against the presumptively broad scope of discovery authorized in Rule 4:10-2 and other discovery provisions in our Rules of Court." Serrano v. Underground Utils. Corp., 407 N.J. Super. 253, 267 (App. Div. 2009).

Also, since the court previously designated this matter for management under the Complex Business Litigation Program, (CBLP), Rules 4:102 through 4:105 apply to the present application and its subject matter. Those rules provide guidance specifically as to discovery of damage calculations.

Under the CBLP rules, every party must serve "a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and

may use to support its claims or defenses, unless the use would be solely for impeachment." R. 4:102(a)(2). And, specifically as to a party's claim for damages, Rule 4:103-1(a)(3) requires production of "a computation of each category of damages claimed by the disclosing party – who must also make available . . . the documents or other evidentiary material . . . on which each computation is based, including materials bearing on the nature and extent of injuries suffered." (Emphasis added).

The general rules governing civil actions, incorporated into the CBLP by Rule 4:102-1(a), also refer to production of documents by categories. A notice for a deposition served upon a party under Rule 4:14-2(a) can be "accompanied by a request made in compliance with and in accordance with the procedure stated in R. 4:18-1 for the production of documents and tangible things at the taking of the deposition." R. 4:14-2(d). Under Rule 4:18-1(b)(1), a request for production of documents "shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity."

The response to the notice "shall either include the requested documents or other material or state, with respect to each item or category, that inspection and related activities will be permitted as requested." R. 4:18-1(b)(2). "[A] party who produces documents for inspection shall produce them as they are kept in the usual

course of business or shall organize and label them to correspond with the categories in the request." R. 4:18-2(b)(2)(a).

As already noted, a party served with such notice can seek a protective order limiting or barring the production demanded. R. 4:10-3. "Implicit in R[ule] 4:10-3 is the notion that the movant bears the burden of persuading the court that good cause exists for issuing the protective order." Kerr v. Able Sanitary & Env't Servs., Inc., 295 N.J. Super. 147, 155 (App. Div. 1996). "'Good cause' is determined by a court upon a detailed analysis of the circumstances of the parties and issues involved." Mugrage v. Mugrage, 335 N.J. Super. 653, 657 (Ch. Div. 2000).

In order to prevail, the moving party must establish "that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Ibid.* A protective order will be granted if the movant establishes "the tools of discovery become, intentionally or unintentionally, weapons of oppression." Berrie v. Berrie, 188 N.J. Super. 274, 282 (Ch. Div. 1983).

Here, plaintiffs' have not met their burden to establish that the subject discovery should not be had. Plaintiffs' support for their motion is a certification from plaintiffs' counsel, Charles A. Yuen, Esq. There is no certification from Polevoy or anyone else associated with plaintiffs claiming that production of documents, or identifying the previously served documents by Bates Stamp numbers, would be unduly burdensome or expensive. See Rule 1: 6-6 (requiring

certifications in support of motions be authored by individuals with personal knowledge). Yuen's certification contains conclusory statements without any factual support that establishes compliance with the notice would be overly burdensome. Moreover, plaintiffs did not supply exhibits to their counsel's certification with the documents relating to damages that they did produce.³ Rather, the County's attorney supplied those copies. (See Exhibits to Certification of Jerald Howarth, Esq. dated October 13, 2025).

The damage related documents previously produced by plaintiffs took the form of spread sheets evidently itemizing various costs allegedly incurred by plaintiffs as a result of defendants' conduct. Those spreadsheets apparently classified plaintiffs' damages for injuries relating to its "stock," and "furniture, fixtures and equipment," and by categories that the County incorporated into the subject document request.

One document – Exhibit A to Howarth's Certification (Bates Stamp numbers WIGSUP32625-001-0057- contained numerous pages of spreadsheets and what appears to be some of the back-up for the spreadsheets' amounts. The remaining production of damage related documents supplied with the Howarth certification are either repeated copies of other spread sheets, some apparently authored by

³ Later, in his reply certification, plaintiffs' counsel attached as exhibits four documents evidently relating to plaintiffs' alleged damages.

accountants, relating to plaintiffs' damage claim, without any supporting documents (i.e invoices, checks, proposals or estimates), or simply blank spread sheets with their various columns left empty. (See Howarth Certification Exhibits B through UU).

Other than what is included in the Howarth Certification's Exhibit A, there is virtually no document that provides any support for the spreadsheets allegedly summarizing plaintiffs' damage claims. At oral argument, plaintiffs' counsel confirmed that there are more documents supporting plaintiffs' damage claim. All of those documents, which should have been part of plaintiffs' Rule 4:103-1(a)(3) initial disclosure, had it been made as required, need to be produced at the Polevoy deposition to allow defendants an opportunity to question the witness about plaintiffs' alleged damages and to understand the totality of plaintiffs' damage claim, which can only ultimately benefit plaintiff.⁴

Contrary to plaintiffs' position, requiring plaintiffs to identify and provide the calculation and backup for their damage computation is not overly burdensome. First, as already discussed, under Rule 4:103-1(a)(3), plaintiffs were under a court imposed obligation to serve the calculation and supporting documents. Second, plaintiffs already completed that task of categorizing their damage documents for

⁴ During oral argument, plaintiffs' counsel stated that the damage documents need to be updated. Also, he confirmed that the initial disclosure required by Rule 4:103-1(a)(3) was never made because this action was not originally filed under the CBLP.

preparation of the spreadsheets, either internally by their employees for plaintiffs' use or for the use of plaintiffs' accountants or potential experts. It cannot be deemed a hardship or burden for the plaintiffs to do so now in response to the County's notice for production.⁵

Plaintiffs' reliance on the unreported opinion in In re AME Church Emp. Ret. Fund Litig., 2025 U.S. Dist. LEXIS 91289 (W.D. Tenn. Apr. 24, 2025), from a Tennessee Federal District Court, does not warrant a different result. The case is not precedential and plaintiffs' reliance upon it is inapposite. There, the court determined that to have the defendant locate and identify documents imposed no greater burden on them than to have the plaintiff undertake the same exercise. Here, only plaintiffs and perhaps their experts, know what documents were relied upon when its representatives or others created the spreadsheets that plaintiffs served as proof of their damages. Defendants simply have no way of knowing that information or any ability to identify the documents used in the calculations, if any. Moreover, as repeatedly noted, Rule 4:103-1(a)(3) imposed an obligation on plaintiffs to provide the information in the form requested.

Plaintiffs' remaining arguments are without merit. For example, there is no need to disclose any attorney work product. The documents being sought are those

⁵ At oral argument, plaintiffs' counsel also acknowledged that any perceived burden would be greatly reduced if plaintiffs are not compelled to review and include in the production more copies of various photographs already produced.

that plaintiffs used to compute plaintiffs' alleged damages in the spreadsheets plaintiffs served in response to the original notices for production of documents or answers to interrogatories. Also, the fact that the deadline for production of documents has passed does not mean that plaintiffs' obligation to identify the documents they intend to rely upon in the computation of their damages has ended. Computations were made and served. The backup must be supplied, or if already supplied, now identified as backup for plaintiffs' computations. Without any evidence that plaintiffs have produced "a computation of each category of damages claimed [and] the documents or other evidentiary material, . . . on which each computation is based," R. 4:103-1(a)(3), they cannot rely on such documents at trial.

Based on the foregoing, I make the following recommendations:

1. Plaintiffs' motion for a protective order directing that plaintiffs not produce documents in advance of or at the Polevoy deposition should be denied.
2. To the extent plaintiffs' motion for a protective order seeks that production not be made in exactly in the form demanded by defendants, it should be granted.
3. Plaintiffs should, instead, be ordered to produce a computation of their damage claims, setting forth each category of their damages, together with all of "the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based," as contemplated by Rule 4:103-1(a)(3). The calculations and organization of the supporting documents should

follow, to the extent possible, the categories defined in the County's notice that were based on plaintiffs' accountants' (Rollins) identification of categories of damages. However, plaintiff should not be restricted to those categories only.

4. Plaintiffs should not be required to include reproduction or identification of any copies of photographs already served on defendants.

5. The production should be made at least three business days before the last date of Polevoy's scheduled depositions.

6. If calculations and supporting documents backing up the spreadsheets' calculations are not produced or are not identified by Bates Stamp references to documents already produced, then plaintiffs and their experts should be barred from relying upon the spreadsheets or unproduced or unidentified documents at trial.

Pursuant to the May 20, 2025 order appointing the undersigned as Special Adjudicator, any party may appeal the recommendations of the Special Adjudicator set forth herein in accordance with the procedures set forth in the May 20, 2025 order. Any recommendations not appealed in accordance with that order will be binding on the parties, as also provided in the order.

Respectfully Submitted,

/s/Garry S. Rothstadt

Garry S. Rothstadt, Special Adjudicator

Dated: October 27, 2025