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CARL AUSTIN, JR., et al.,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION : MORRIS COUNTY
Plaintiffs,	DOCKET NO. MRS-L-281-20
v.	CIVIL ACTION - CBLP
PHILIP KINZEL, et al.,	**OPINION**
Defendants.	

Argued: January 28, 2026

Decided: April 24, 2026

Michael J. Faul, Jr., Esq., Mikhail Sterlin, Esq., and Alyssa Puccio, Esq. of Herold Law, P.A. and Sherilyn Pastor, Esq. of McCarter & English, LLP, attorneys for the Plaintiffs.

Anthony J. Zarillo, Esq., Robert P. Vacchiano, Esq., and Casey A. Boyle, Esq. of Riker Danzig LLP, attorneys for the Defendants, CPA Insurance Inc., Genesis Legacy Solutions, LLC, and Maiden Holdings, Ltd.

Maura Smith, Esq. of Riker Danzig LLP, attorneys for Defendants, The Toa Reinsurance Co. of America, the Cincinnati Insurance Co. and SCOR Reinsurance Company.

Robert M. Mangino, Esq. and Leonard Sarmiento, Esq. of Clyde & Co US LLP, attorneys for Defendants, Aspen Insurance UK Limited, Underwriter Syndicate Nos. 2987 BRT, Lloyd's Syndicates 2623 and 623, Lloyd's Syndicates 1225 and 4020, Brit Global Specialty USA, Hannover Ruck SE, AXA XL, and Catlin Insurance Company/Catlin Syndicate.

Palak Sharma, Esq. and Joseph K. Scully, Esq. of Day Pitney LLP, attorneys for Defendant, Navigators Insurance Company.

Frank J. DeAngelis, P.J. Cv.

I. BACKGROUND INFORMATION

This case arises out of allegations that Defendant Philip Kinzel, CPA ("Kinzel"), committed professional malpractice with respect to work performed on behalf of Carl L. Austin ("Decedent"),

who died on October 12, 2019. Plaintiff The Estate of Carl L. Austin (The "Estate") is the Successor to Decedent. Carl L. Austin, Jr., ("Austin Jr.,") Co-Trustee of the Carl L. Austin 2012 Irrevocable Trust, dated January 28, 2012 (the "Trust") is of legal age, and resides within New Jersey. Peapack-Gladtone Bank ("Peapack"), a New Jersey corporation, is the other Co-Trustee of the Trust. Defendant, Kinzel & Co., LLC, ("Kinzel & Co.,") is a New Jersey LLC, is a New Jersey limited liability company offering public accountancy and tax services for individuals, estates and trusts. Kinzel is authorized to practice public accountancy in the State of New Jersey, and is the executive principal of Kinzel & Co., LLC, within New Jersey.

From the early 1990s through 2018, Decedent relied on Defendants to prepare his personal federal and state tax returns consecutively. During February 2012, Decedent funded the Trust with cash of $62,902.40 and publicly traded securities having a fair market value of $4,937,097.60 for a total of $5,000,000.00. The 2012 creation and funding of the Trust were part of Decedent's estate and tax planning program, making Decedent's spouse, Marie B. Kantorek ("Kantorek"), the sole beneficiary of the Trust during her lifetime. However, on May 12, 2020, Kantorek died and the funding of the Trust for the benefit of Kantorek during 2012 constituted a 2012 taxable gift by Decedent within the meaning of the Internal Revenue Code of 1986 ("Code"). Defendants as the preparers of Decedent's taxes, were obligated to timely prepare a 2012 Form 709 federal gift tax return reflecting a special gift tax election in respect of his 2012 taxable gift to the Trust, Plaintiffs claim that a timely election under the Code is a gift tax marital deduction equal to the funding amount, reducing Decedent's 2012 taxable gifts from $5,000,000.00 to zero ("QTIP Election"). The effect of a timely election under the Code would have allowed for the exclusion of Decedent's 2012 gifts to the Trust upon Mr. Austin's death in 2019 from his federal estate tax calculation as reflected on an IRS Form 706 (Federal Estate Tax Return).

The timely election under the Code of Decedent's 2012 gifts to the Trust was intended to step-up the tax cost basis of the securities with which Decedent funded the Intended QTIP Trust from the low purchase prices he had paid to their fair market values on May 12, 2020, the date of Kantorek's death. Plaintiffs allege that Defendants knew that both Decedent and the Trust were relying on them to timely prepare the QTIP Election for filing with the IRS on the 2012 IRS Form 709 (Federal Gift Tax Return) as a result of funding the Trust.

Throughout 2012, email communications were exchanges with Plaintiffs and Defendants confirming Defendants' obligations and role in effectuating Decedent's estate and tax planning program for the 2012 tax year. Plaintiffs maintain that Defendants directly expressed to the Intended QTIP Trust by words or conduct, the Defendants' understanding of professional responsibility to prepare the QTIP Election and the 2012 Form 709. For the tax year 2012, Defendants allegedly failed to timely prepare the 2012 QTIP Election and QTIP Form 709. In 2013, Defendants prepared Decedent's federal income and gift tax return in connection with taxable gifts made by Decedent during 2013.

During the course of Defendants' 2014 preparation of Decedent's 2013 tax returns, Defendants allegedly knew or should have discovered, and brought to the attention of Plaintiffs, that Defendants had failed to timely prepare Decedent's 2012 federal gift tax return and failed to timely prepare the QTIP Election during 2013. Defendants alleged failures during 2014 led to unnecessary accruing of late filing and payment tax penalties and accruing statutory interest.

From 2014 through 2018, Defendants' continued to prepare Decedent's tax returns. Plaintiffs allege that during this period Defendants knew or should have discovered, and brought to the attention of Decedent, that Defendants had failed to timely prepare Decedent's 2012 federal gift tax return and failed to timely prepare the QTIP Election. According to Plaintiffs, Defendants'

failures from 2014 through 2018 led to the unnecessary accruing of late filing fees and payment tax penalties and the accruing of statutory interest for each year. Additionally, Plaintiffs allege that Defendants' failures have proximately caused the Estate to owe 2012 federal gift taxes and accruing gift tax related penalties, and statutory interest thereon, as well as to owe additional estate taxes and federal and state income taxes, totaling in excess of $1,000,000.00. Additionally, Plaintiffs allege that Defendants failures proximately caused the Trust and/or Austin Jr., to owe federal and state income taxes, the total of which is in excess of $1,000,000.00.

Plaintiffs maintain that they will incur legal fees and other costs for professional services by a New Jersey law firm retained by the Executor in order to mitigate losses related to the unpaid 2012 taxes due, including advocating IRS abatement of federal tax penalties associated with the late filing and payment, plus statutory interest thereon. Plaintiffs further assert that they have and will incur additional compensatory, consequential and incidental damages that are proximate result of Defendants' malpractice.

Plaintiffs filed their Fifth Amended Complaint on February 19, 2024. In the present application, three motions are at bar; (1) Defendants CPA Insurance Inc., Genesis Legacy Solutions, LLC and Maiden Holdings, Ltd.'s motion objecting to the special discovery adjudicator's August 22, 2025 Decision; (2) Navigators Insurance Company's Motion for Summary Judgment; and (3) the reinsurance defendants' motion for summary judgment.

II. STANDARD OF REVIEW

Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The trial court's "function is not . . . to weigh the evidence and

determine the truth . . . but to determine whether there is a genuine issue for trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)). The trial judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id. When the facts present "a single, unavoidable resolution" and the evidence "is so one-sided that one party must prevail as a matter of law," then a trial court should grant summary judgment. Id.

A trial court's authority to appoint a Special Adjudicator is set forth in Rule 4:41-1, which provides:

> The reference for the hearing of a matter by a judge of the Superior Court shall be made to a special adjudicator only upon approval by the Assignment Judge, and then only when all parties consent or under extraordinary circumstances. The order of reference shall state whether the reference is consensual and, if not, shall recite the extraordinary circumstances justifying the reference.

As for payment of a Special Adjudicator's fees, Rule 4:41-2 provides in pertinent part, "[t]he special adjudicator's compensation shall be fixed by the court and charged upon such of the parties or paid out of any fund or property as the court directs." R. 4:41-2. Our rules, however, do not indicate how a Special Adjudicator's fees shall be divided between the parties. The trial court has the discretion to set the payment of a Special Adjudicators fees. In re Est. of Hope, 390 N.J. Super. 533, 541 (App. Div. 2007) (holding that "[a] trial court's rulings on discretionary decisions are entitled to deference and will not be reversed on appeal absent a showing of an abuse of discretion involving a clear error in judgment").

III. ANALYSIS

a. CPA Insurance Inc., Genesis Legacy Solutions, LLC and Maiden Holdings, Ltd.'s Motion to Reinstate Answer and Separate Defenses

Defendants, CPA Insurance Inc. ("CPAI"), as successor in interest to CPA Mutual Insurance Company of America Risk Retention Group Inc. ("CPA Mutual") (collectively "CPAI"), Genesis Legacy Solutions, LLC ("Genesis"), and Maiden Holdings, Ltd. ("Maiden") (collectively "Insurance Defendants") move to object to the Special Discovery Adjudicator's August 22, 2025 decision (the "Aug. 22, 2025 Decision").

Insurance Defendants assert that since the Court's September 6, 2022 Order did not recite what extraordinary circumstances supported the appointment, the Court must view the appointment as based on the consent of the parties. See Maragliano v. Maragliano, 321 N.J. Super. 83 (App. Div. 1999) ("absent extraordinary circumstances, which were not shown in this case, a master may be appointed 'only when all parties consent.'"). Insurance Defendants argue that CPA Mutual objected to the Honorable John J. Harper's appointment, consented to the appointment of a Special Discovery Adjudicator, and proposed three other candidates to the Court. Insurance Defendants contend that Plaintiffs' counsel insisted on Judge Harper and no one else, because Plaintiffs' counsel perceived Judge Harper as favoring Plaintiffs' positions on the insurance coverage dispute.

Insurance Defendants assert that consent to appointment of an impartial Special Discovery Adjudicator ("SDA") at the expense of the parties cannot set aside the parties' consent to the choice of that Special Discovery Adjudicator. Insurance Defendants note that when they advised the Court on September 1, 2022, that CPA Mutual objected to Judge Harper's appointment, the Court directed the parties to confer to agree on a candidate. Insurance Defendants maintain that CPA Mutual attempted to do so, proposing three qualified candidates, to which the Kinzel Defendants' counsel was acceptable to two out of the three candidates, but Plaintiff's counsel rejected all three candidates without providing any justification. Boyle Cert., Ex. L, M. Following the counsels meet

and confer, the Court appointed Judge Harper as the SDA. Insurance Defendants assert that Judge Harper's prior service as mediator was not a positive factor supporting his appointment, but rather a disqualification. Insurance Defendants argue that the Administrative Office of the Courts issued a directive to all active and retired judges of the Superior Court in 2008 setting forth "Guidelines on the Practice of Law by Retired Judges." Insurance Defendants aver that the directive prohibits the acceptance of an appointment by a retired judge to a fee-generating position of Special Discovery Adjudicator, unless

> [T]he parties to the case initiate the appointment, select the retired judge who is to be appointed, establish the fee arrangement, and the court's only participation is to memorialize their agreement in an appropriate order. Such memorialization shall be by the Assignment Judge.

Administrative Office of the Courts, State of New Jersey, Directive #5-08, Guideline 7 (Mar. 24, 2008) (Supplemented in other respects Nov. 13, 2024). Insurance Defendants argue that Judge Harper was prohibited by Directive 5-08 from accepting appointment as SDA since counsel for CPA Mutual did not select him and in fact opposed his appointment, and because an agreement of the parties to his selection and appointment in September 2022 was not memorialized by the Assignment Judge.

Furthermore, Insurance Defendants note that R. 4:41-1 requires the approval of the Assignment Judge as "a check on such appointments." Zehl v. Elizabeth Bd. of Educ., 426 N.J. Super. 129, 142 (App. Div. 2012). Insurance Defendants maintain that the record provides no evidence of the Assignment Judges approval of the September 6, 2022 Order. Insurance Defendants contend that without CPA Mutual's consent to Judge Harper's appointment, without approval of the Assignment Judge, the Court improperly appointed Judge Harper in September 2022, in contradiction of R. 4:41-1. Additionally, Insurance Defendants aver that CPA Mutual did not consent to the December 1, 2022 Order to cure the error of the original appointment. Insurance

Defendants maintain that Paragraph 6 of the Order was drafted as a control on future discovery, limiting it to the remaining estoppel or breach of duty issues that would determine whether CPA Mutual's insurance policies provided coverage for the balance of the settlement remaining after disbursement of the limits of one CPA Mutual policy. CPA Mutual's consent to that provision is indicative of its cooperative efforts to proceed in the litigation despite an adverse ruling on its prior objection to Judge Harper's appointment R. 42-1(b). Having preserved its objection on the record, Insurance Defendants argue that CPA Mutual cooperated with the Court's case management responsibility and consented to an Order that established the procedures for implementing the Griggs settlement and controlled and limited remaining discovery, including by explicitly preserving CPA Mutual's right to assert privilege. Insurance Defendants maintain that CPA Mutual's consent to the form of the December 1, 2022 Order was not a waiver of its objection or consent to Judge Harper's appointment.

Next, Insurance Defendants contend that even if extraordinary circumstances existed and had been found for appointing a SDA, Judge Harper's appointment created a conflict of interest that required CPA Mutual's express waiver of that conflict and express consent to the appointment. Insurance Defendants assert that in the absence of CPA Mutual's consent, Judge Harper should not have been appointed as he was not the natural choice to serve as SDA, because of his prior appointment as mediator, his knowledge of the case, his role as facilitator of the Griggs settlement, Judge Harper should have been disqualified.

Insurance Defendants rely on Minkowitz v. Israeli, contending that the Appellate Division prohibited the same person from functioning as both mediator and arbitrator in the same case, unless the parties' expressly consent to that dual role. Minkowitz v. Israeli, 433 N.J. Super. 111, 142-49 (App. Div. 2013). Insurance Defendants asserts that the court compared the role of a

mediator with that of an arbitrator and found that the two were not compatible, as a mediator "facilitates communication between the parties in an effort to promote settlement," Id. at 143, while an arbitrator has an "evaluative" role as a neutral factfinder and exercises "broad discretion over discovery and other procedural matters." Id. at 144. Insurance Defendants aver that the court reasoned that "a mediator, who may become privy to party confidences in guiding disputants to a mediated resolution, cannot thereafter retain the appearance of a neutral factfinder necessary to conduct a binding arbitration proceed." Id. at 142.

The Insurance Defendants argue that Judge Harper was not an arbitrator, however his role as mediator and SDA required application of the same prohibition. Insurance Defendants maintain that a Special Discovery Adjudicator wields judicial power in accordance with the Court's directives. See R. 4:41-3. Further, Insurance Defendants assert that Judge Harper has authority over the parties as a judge would have and is critical to the judicial factfinding process. Insurance Defendants aver that where the Court appoints a person to mediate the case, the same person cannot then be a neutral decision-maker proposing rulings or recommendations to the Court that the Court may rely upon. Cf. R. 1:40-5(a) (In custody and parenting time matters, the Family Part shall require the parties to attend mediation, but "[t]he mediator may not subsequently act as an evaluator for any court-ordered report or make any recommendation to the court respecting custody and parenting time."). Insurance Defendants maintain that Judge Harper could not be both in active service as mediator in this case and appointed to serve as a neutral factfinder and decision-maker in the role of SDA. In addition, Insurance Defendants argue that Judge Harper engaged in ex parte communications with Plaintiffs counsel as a mediator, after he began to view himself as having been appointed to serve as "Discovery Master." Insurance Defendants contend that the May 10, 2022 email from Plaintiffs' counsel to Judge Harper, which was not copied to adversary

counsel, informed Judge Harper about Judge Ironson's rulings of that date "[a]s continuation of yesterday's discussion." See Casey A. Boyle Certification ("Boyle Cert.,") Ex. G. Insurance Defendants maintain that while a mediator may and typically does engage in ex parte discussions to facilitate settlement, a neutral decision-maker who is an arm of the Court should not be communicating ex parte with counsel. See Code of Judicial Conduct, Canon 3, R. 3.8. Further, Insurance Defendants note that the December 1, 2022 Consent Order issued to manage the Griggs settlement and to control discovery was not "a specific agreement clearly defining and accepting the complementary dispute resolution professional's . . . dual roles," as required by the holding in Minkowitz, 433 N.J. Super. at 147. Insurance Defendants argue that the Order said nothing about Judge Harper's role as mediator in the same case, or CPAI's acceptance of him serving in dual roles, only referring to Judge Harper as the standing SDA.

Next, Insurance Defendants assert that judicial officials who issue orders to parties, make legal rulings, and decide questions of fact must "disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned." See Code of Judicial Conduct, Canon 3, R. 3.17; State v.McCabe, 201 N.J. 34, 43 (2010) ("judges must avoid acting . . . in a manner that may be perceived as partial"). Insurance Defendants note that counsel for Plaintiffs repeatedly informed the Court that Judge Harper was laser focused on maximizing insurance coverage. Insurance Defendants assert that such focus may have been acceptable in mediation of the underlying malpractice case between Plaintiffs and the Kinzel Defendants, including later facilitating the Griggs settlement, it became inappropriate in addressing the disputed insurance coverage issues that brought CPA Mutual, and now other defendants, into the case as a result of the Griggs settlement.

Further, Insurance Defendants maintain that laser focus on maximizing insurance coverage revealed a perceived bias that Plaintiffs sought to exploit, which should have disqualified Judge Harper from appointment as SDA. Insurance Defendants note that R. 1:12-1 states that "[t]he judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if the judge . . . has driven an opinion upon a matter in question in the action." Insurance Defendants argue that according to Plaintiffs' counsel, Judge Harper was of the opinion that insurance coverage by CPA Mutual for the Kinzel Defendants' alleged malpractice should be provided and maximized. Insurance Defendants rely on State v. Marshall, 148 N.J. 89, 278 (1997), asserting that the court stated that "the effect of paragraph (d) is directed primarily at statements made outside of the declarant's role as a judge." Insurance Defendants assert that Judge Harper was not acting in the role of a judge when mediating the case, and in his function as SDA, he was acting in that role, to the extent that the appointing Order granted him the same authority as a judge to manage the proceedings before him, and his report and recommendation were to be provided for the Court's benefit in ultimately deciding contested issues in the case.

Insurance Defendants argue that maximizing insurance coverage is not an opinion that Judge Harper could justifiably harbor as a SDA, and not one that was his to give since decision on the substantive issues in the case was not and could not be delegated to him. Insurance Defendants contend that Judge Harper's opportunity and inclination to express an opinion about insurance coverage during mediation of the underlying malpractice case is the reason he could not also serve as neutral SDA who could make potentially binding rulings on disputed insurance coverage issues. Insurance Defendants assert that Judge Harper was reported by Plaintiffs to have expressed such opinions about the outcome of the coverage aspects of the case in 2021, before CPA Mutual was added to Plaintiffs' Complaint as a defendant on coverage issues. Insurance Defendants contend

that the Court should have understood the perception of the potential bias and prejudgment that disqualified Judge Harper. Insurance Defendants aver that subsection (g) of R. 1:12-1 states that a judge shall be disqualified and shall not sit in any matter "when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." Insurance Defendants notes that due to the turn-around from submission of counsel's letters to issuance of the September 6, 2022 Order, it appeared that the Court either never considered CPA Mutual's objection or rejected it without consideration of the issues that would prevent Judge Harper's appointment. Insurance Defendants assert that any judge who has expressed views similar to those that Judge Harper allegedly held should recuse from hearing and adjudicating the insurance coverage issues on their merits. See Panitch v. Panitch, 339 N.J. Super. 63, 71 (App. Div. 2001) (suggesting that judges who become deeply involved in counsel's settlement negotiations may appear to favor one side over the other and should step aside and allow another judge to try the case if settlement is not achieved). Insurance Defendants maintain that the Code of Judicial Conduct requires that judges "disqualify themselves in proceedings in which their impartiality might be reasonably questioned." Canon 3, R. 3.17(b).

Insurance Defendants argue that CPAI had ample, reasonable beliefs that Judge Harper favored Plaintiffs on the issues of concern in this litigation, namely the existence and extent of insurance coverage for the Griggs settlement. See Matter of Township of Bordentown, 471 N.J. Super. 196, 231 (App. Div. 2022), cert. denied, 252 N.J. 533 (2023) (stating that a "special master is subject to 'substantially the same conflict of interest rules as judges").

Further, Insurance Defendants assert that a perceived conflict of interest that should have cautioned the Court against Judge Harper's appointment is contained in the proposed Order submitted by Plaintiffs' counsel with their July 2023 motion to amend the Complaint again and

add Genesis, Maiden, and reinsurers as defendants. Insurance Defendants aver that Plaintiffs included a provision in their proposed order appointing Judge Harper "to serve as a Master/Monitor to resolve all claims against all insurers and reinsurers and have jurisdiction over same to effectuate maximum recovery under all policies of insurance/reinsurance." See Boyle Cert., Ex. S. Insurance Defendants contend that Plaintiffs sought appointment of Judge Harper to decide the dispute insurance coverage issues in their favor, to which the Honorable David H. Ironson ("Judge Ironson") struck out the provision of the proposed order in lieu of another provision of the Order proposed by Plaintiffs' counsel stating that Judge Harper "shall continue his duties as Mediator/Discovery Master until conclusion of the case," Judge Ironson substituted instead, a handwritten notation stating "[n]o basis exists to vacate court order by Judge Hansbury filed 9/6/22." Id.

Further, Insurance Defendants argue that in the course of Judge Harper's service as mediator, he had demonstrated to Plaintiffs' counsel that he was pursuing maximum insurance coverage to facilitate settlement of the malpractice case. At the same time, Insurance Defendants assert that Judge Harper pressed the parties to expand his role from mediator to that of a decision-making arbitrator and subsequently to that of "discovery master." However, Insurance Defendants argue that there is no evidence that Judge Harper considered such issues at the time of his appointment as SDA. Insurance Defendants maintain that Judge Harper's requests in January 2021 to the Kinzel Defendants that they dismiss their third-party claims against the Herold firm, and his rejected offer to serve as arbitrator for the malpractice cause of action, foreshadowed the development of a bias that improperly influenced his subsequent work on the case.

Additionally, Insurance Defendants assert that Judge Harper's communication with counsel in May 2022 and Judge Ironson's several Orders that month present this Court with

evidence of Judge Harper's conflict of interest. Insurance Defendants contend that Judge Harper, while identifying himself as "Discovery Master," continued to engage in ex parte communications with Plaintiffs' attorneys. Then, Insurance Defendants assert that when Judge Ironson directed that Mr. Eisner conduct "discovery mediation" and CPAI declined to participate further with Judge Halper serving as "Discovery Master/Mediator," Judge Harper emailed CPAI's counsel that he would "advise Judge Ironson of your failure to cooperate and to follow Judge Hansbury's Order making me discovery master of all matters including the Griggs Settlement." Further, Insurance Defendants contend that Judge Ironson never addressed CPAI's arguments that Judge Harper had a conflict and could not serve as SDA, and that his appointment was improper both for that reason and because of its deviation from the requirements of R. 4:41-1.

Insurance Defendants also assert that the Special Discovery Adjudicator addressed the substance of the coverage dispute by adopting findings related to the issue of whether only one CPA Mutual policy was triggered and the applicable CPA Mutual policy limit. Insurance Defendants contend that the Special Discovery Adjudicator adopted findings that state:

> 60. Further, Plaintiffs identified a record which confirmed CPA Mutual/CPAI triggered the -30 policy despite CPAI Mutual's counsel's repeated statements to Plaintiff and the Court to the contrary
>
> 65. One of the documents produced by CPA Mutual/CPAI is a May 2, 2024 email from a Claims Auditor at Maiden Global Serving Company to CPA Mutual/CPAI's reinsurance broker (Andreana Johnson of Guy Carpenter) confirming Maiden's position that CJ Austin's claim is a non-interrelated claim.

Insurance Defendants argue that there is no support in, or citation to, the record for this finding as to no. 60. Further, Insurance Defendants assert that no. 65, after a review of the cited document shows that it in no way supports the finding of fact that Plaintiffs proposed and the Special Adjudicator adopted without question, and, in fact, stands for the opposite position. Insurance

Defendants argue that CPA Mutual advised that the Plaintiffs were alleging a non-inter-related claim and that it was CPA Mutual's position that the claim is under the 29 policy only. See Boyle Cert., Ex. RR. Insurance Defendants maintain that only one of the two policies provides coverage for the Austin claim, as CPAI has always maintained would be the case.

Insurance Defendants assert that Judge Harper's August 22, 2025 Decision almost entirely conforms with Plaintiffs' submission of proposed Findings of Fact and Conclusions of Law, which Judge Harper requested from both parties. Insurance Defendants argue that "[t]he best way to foster public confidence in our civil courts is to decide cases on their merits." Thabo v. Z Transp., 452 N.J. Super. 350, 371 (App. Div. 2017). Insurance Defendants maintain that the court explained the purpose of the "two-step procedural paradigm" embodied in R. 4:23-5, which provides:

> These procedural safeguards are intended to "ensure that the defaulting litigant is aware that the order of dismissal or suppression without prejudice has been entered and of its consequences." Pressler & Verniero, Current N.J. Court Rules, comment 1.2 on R. 4:23-5 (2017). . . . Discovery rules are intended to create a level playing field for all litigants and promote the resolution of civil dispute on the merits. Judges are entrusted to ensure that these rules are properly and fairly enforced.

Thabo, 452 N.J. Super. at 371. Insurance Defendant assert that the Appellate Division concluded that the "system failed because both the motion judge and the attorney representing the moving party failed to follow the strict procedural requirements of R. 4:23-5," where the trial judge denied plaintiff any right to appear at oral argument and subsequently entered an order dismissing plaintiff's complaint with prejudice, despite plaintiff's assertions that it had complied with outstanding discovery and evidence that defendant was delinquent in its own discovery obligations. Id. at 371-72.

Insurance Defendants assert that Judge Harper's August 22, 2025 Decision credits Plaintiffs' unsupported assertions that the Certification submitted by CPAI's representative, Brian

Reardon, were "not credible," "are insufficient," and "lack credibility." Id. at ¶¶ 156, 176. Insurance Defendants aver that Judge Harper's findings and conclusions are a misstatement of case law, as well as a mischaracterization of Judge Ironson's directives in March 2024, which permit a party to cure prior discovery deficiencies. Insurance Defendants maintain that CPAI had every right and opportunity to cure any alleged discovery violations and have its defenses and pleadings reinstated. Insurance Defendants contend that this Court should refuse to adopt the August 22, 2025 Decision and should reinstate CPAI's pleadings and defenses.

Further, Insurance Defendants argues that Judge Harper misapplied other aspect of the standard in rendering the August 22, 2025 Decision. Insurance Defendants assert that Judge Ironson's March 2024 orders applied R. 4:23-5 to CPAI's Reinstatement Motion, whereas Plaintiffs and the SDA adopted that the governing standard was instead based on R. 4:23-2(b), which authorizes the court to strike a party's pleadings or defenses where the party fails to obey an order to provide or permit discovery. Insurance Defendants argue that the August 22, 2025 Decision by the SDA failed to articulate how Plaintiffs were prejudiced by any alleged delay or failure by CPAI to provide discovery. Further, Insurance Defendants assert that the SDA did not make any finding that the documents sought by Plaintiffs go to the foundation of Plaintiffs' claims against CPAI and for such additional reasons, the Court should reject the SDA's August 22, 2025 Decision.

Insurance Defendants assert that in the accompanying findings of fact and conclusions of law, the SDA failed to state any facts to support such legal conclusions, noting only that: (a) CPAI's conduct has "cause[d] significant delays in this case and material prejudice to Plaintiffs"; and (b) with respect to certain regulatory documents, "[t]he prejudice to Plaintiffs is clear as these records are pertinent to Plaintiffs' claims." Id. at 11, 46. Insurance Defendants assert that prejudice must

affect the litigant's ability to prove its claims or defenses. See Zaccardi v. Becker, 88 N.J. 245, 253 (1982). However, Insurance Defendants maintain that the absence of any finding of prejudice is evident as Plaintiffs have obtained all of the documents sought and have had every opportunity to rely on them in their claims before this Court. Insurance Defendants contend that the discovery sought by Plaintiffs from CPAI during the proceedings before the SDA has no relationship to Plaintiffs' estoppel and breach of contract claims; reinsurance treaties and communications; financial and actuarial reports; communications with the State of Vermont Department of Financial Regulation ("Vermont DFR"); and documents pertaining to CPA Mutual's reorganization. Insurance Defendants note that CPAI produced such documents in accordance with the September 18, 2023 Decision, establishing that there are no deficiencies with their production. Insurance Defendants argue that the August 22, 2025 Decision is misguided because the Decision failed to detail any prejudice whatsoever to Plaintiffs as a result of the alleged discovery deficiencies, and the Court should reject the Special Discovery Adjudicator's August 22, 2025 Decision.

Next, Insurance Defendants assert that the August 22, 2025 Decision imposes severe sanctions with punitive and case-dispositive effect without any finding that CPAI acted intentionally or with bad faith. Insurance Defendants argue that Judge Harper modified Plaintiffs' proposed draft throughout to indicate that CPAI had either intentionally withheld or negligently concealed evidence, demonstrating that the Judge Harper lacked grounds to adopt Plaintiffs' unfounded assertions that CPAI had acted intentionally. See Boyle Cert., Ex. SS. Insurance Defendants assert that the Judge Harper failed to distinguish between negligent noncompliance and intentional misconduct without an express finding of intentionality, ultimately lacking any authority to strip CPAI of its defenses and suppress its pleadings. Insurance Defendant maintain that the SDA misapplied the R. 4:23-5 standard, contradicting decades of fundamental New Jersey

case law, and violated due process, by recommending a decision striking CPAI's pleadings and defenses. Finally, Insurance Defendants assert that the August 22, 2025 Decision lacks any basis to impose dismissal or suppression of CPAI's pleadings or defenses, and the Court should reject Judge Harper's conclusion to the contrary.

Further, Insurance Defendants maintain that Judge Harper's misunderstanding of his role is highlighted by his finding that CPAI is in contempt of Judge Harper's January 29, 2024 Judgment which was not adopted by the Court and was beyond the authority of the SDA. See Boyle Cert., Ex. JJ at ¶¶ 203, 206, 209.

Finally, Insurance Defendants contend that the August 22, 2025 Decision fails to provide an adequate basis for concluding that CPAI engaged in spoliation, as the Decision contradicts itself by concluding that CPAI "committed spoliation" when it "intentionally withheld and/or negligently concealed evidence." See Boyle Cert., Ex. JJ at 6, ¶ 14. Insurance Defendants assert that although a party can be found liable for negligent spoliation of evidence, the level of intent is a factor in determining the "appropriate remedy for the spoliation." See, e.g., Davis v. Barkaszi, 424 N.J. Super. 129, 148 (App. Div. 2012). Insurance Defendants maintain that no definitive conclusion as to CPAI's level of intent was presented here as Judge Harper appears to have concluded that the facts were insufficient to support a finding of intentionality by CPAI, as the Special Discovery Adjudicator affirmatively modified Plaintiffs' proposed order to add negligence. See Boyle Cert., Ex. SS at ¶¶ 130, 137, 161, 178, 259. Insurance Defendants assert that Plaintiff has presented unfounded claims of spoliation, which the August 22, 2025 Decision adopted and found that "CPA Mutual/CPAI intentionally withheld and/or negligently concealed evidence and has committed spoliation." Id. at Ex. JJ. Insurance Defendants maintain that the Plaintiffs have

continuously presented unfounded arguments relating to Insurance Defendants for spoliation, that fail to be substantiated.

Insurance Defendants assert that the problems of the August 22, 2025 Decision are further highlighted by the adoption of findings of fact and conclusions of law proposed by Plaintiffs as to Genesis and Maiden. Insurance Defendants argue that the SDA, as an adjunct of the Court, cannot make findings or conclusions as to the merits of Plaintiffs' claims against Genesis and Maiden before Plaintiffs have even established personal jurisdiction over them. U.S. Cath. Conf. v. Abortion Rights Mobilization, Inc., 487 U.S. 72, 79-80 (1988). Insurance Defendants contend that Genesis and Maiden never consented to proceeding before an SDA and consistently objected to any such proceedings. Moreover, Insurance Defendants aver that Judge Harper was tasked with addressing the discrete, threshold issue of CPAI's motion to reinstate its pleadings, and there have been no proceedings as to Genesis and Maiden that would permit him to make decisions as to them.

In opposition, Plaintiffs assert that the August 22, 2025 Decision is effectively a default judgment against Insurance Defendants, and no exceptional circumstances have been established to modify the Order. Plaintiffs contend that Insurance Defendants claims toward Judge Harper were considered and rejected by Judge Ironson as reflected in the entry of the March 14, 2024 Order denying CPAI's Motion for Reconsideration. Plaintiffs argue that Judge Harper was specifically authorized by this Court to decide the Motion to Reinstate along with Plaintiffs' Cross-Motion, which was confirmed by this Court at the Case Management Conference on June 6, 2025. Plaintiffs maintained that Insurance Defendants' claims relating to Judge Harper's scope of authority, appointment, bias, and conflict, have all been considered and rejected and Insurance Defendants are not entitled to keep rehashing the same arguments.

Further, Plaintiffs assert that pursuant to the Amended Order and Findings of Fact and Conclusions of Law, Insurance Defendants' intent has been conclusively established and is not subject to debate. See R. 4:41-5(b) ("In an action to be tried without a jury the court shall accept the master's findings of fact unless contrary to the weight of the evidence."). Additionally, Plaintiffs maintain that spoliation is also established as a matter of law. Plaintiffs assert that to reinstate its pleadings Insurance Defendants were required to demonstrate that all documents had been fully and responsively produced, and has failed to do so.

Plaintiffs aver that R. 4:41-5(b) provides, in part, that in non-jury actions, the court must accept a Special Adjudicator's findings of fact unless they are contrary to the weight of the evidence. Plaintiffs assert that the record overwhelmingly supports Judge Harper's factual determination and legal conclusions. Plaintiffs argue that there are two Orders of Reference, the September 6, 2022 Order and the December 1, 2022 Consent Order. See Ex. K and L. Plaintiffs contend that neither the September 6, 2022, nor the December 1, 2022, Consent Order limits Judge Harper's authority to include estoppel and breach of contract claims. Plaintiffs maintain that for over three years, the Court has used the Orders of Reference and subsequent order to confirm Judge Harper's authority and to allow the parties to file motions for reconsideration before Judge Harper if they did not agree with his rulings. See Boyle Cert., Ex. N and O.

Next, Plaintiffs assert that the legal standard governing Insurance Defendants Motion to Reinstate is R. 4:23-2(b). Plaintiffs argue that the rule advanced by Insurance Defendants applies to situations where a party fails to respond to discovery, whereas R. 4:23-2(b) authorizes the court to issue sanctions when a party violates court orders directing it to produce discovery. Plaintiffs assert that since R. 4:23-2(b) is the only applicable rule, to reinstate its pleadings, Insurance Defendants must demonstrate that it has complied with the September 18, 2023 Order and that all

discovery deficiencies identified in that order has been cured. Plaintiffs maintain that if Insurance Defendants' discovery is not complete, then its Motion must be denied and its pleadings must be stricken with prejudice.

Plaintiff asserts that Insurance Defendants conduct meets the standard for dismissal of pleadings with prejudice under R. 4:23-2(b) as dismissal is appropriate when 'the actions of the party show a deliberate and contumacious disregard of the court's authority.' Dixon v. Rutgers, The State Univ. of New Jersey, 110 N.J. 432 (1988). Further Plaintiffs rely on Abtrax Pharms v. Elkins-Sinn, 139 N.J. 499 (1995) asserting that during discovery, Abtrax continually failed to provide Elkins with documents it had requested in answers to interrogatories and in requests for production of documents. Id. at 521-522. Plaintiffs assert that the trial court found that plaintiff engaged in willful and contumacious discovery abuses and dismissed the plaintiff's complaint with prejudice. Id. at 502. Plaintiffs note that the New Jersey Supreme Court upheld the trial court's findings and dismissal with prejudice. Id. at 521-22.

Here, Plaintiffs argue that Insurance Defendants continually asserted that discovery is complete, and has provided certifications to such effect, similar to Abtrax, and here were rendered false through subsequent productions. Further, Plaintiffs contend that worse than Abtrax, Insurance Defendants have submitted eight certifications that production is complete, and each Certification was rendered false due to piecemeal productions, further admitting that documents are missing as a result of a technical issue. See Michael J. Faul, Jr. Esq., Certification ("Faul Cert.,") Ex. J. Further, Plaintiffs aver that CPA Mutual's former president admitted that they "purged a lot of stuff." See Faul Cert., Ex. F. And Plaintiffs note that after Genesis and Maiden acquired CPAI, CPA Mutual's servers were destroyed, and CPA Mutual's documents were transferred twice. Plaintiffs argue that Insurance Defendants have refused to provide ESI or submit to a forensic

examination to confirm production is complete and the Amended Motion to Reinstate contains many admissions of purported "lost" documents.

Turning to the prejudice, Plaintiffs assert that they have already incurred millions of dollars in counsel fees pursuing discovery, which CPAI should have provided from the start. Plaintiffs argue that Insurance Defendants' actions forced Plaintiffs to subpoena third parties for records that Insurance Defendants should have produced, including from CPA Mutual/CPAI's reinsurance broker, Guy Carpenter, its Captive Manager - Strategic Risk Solutions, its third-party claims administrator - Gallagher Basset, and reinsurer Navigators Insurance Company. Plaintiffs note that they were required to seek public records about Insurance Defendants from the Vermont Department of Financial Regulation because Insurance Defendants continually asserted records were "Confidential" or that they did not exist, all of which were proven false. Plaintiffs maintain that unlike Abtrax, which involved two corporate entities, Mr. Austin is an individual, not a corporate entity, was insured by virtue of assignment by the Kinzel Defendants, and had reasonable expectations and the insurers owe him a fiduciary duty. Plaintiffs argue that Insurance Defendants purged records making a fair trial impossible and leading to Plaintiff never being able to have a complete claims file nor will Insurance Defendants be able to cure its deficiencies because its records are gone. See Faul Cert., Exs. A; F; R.

Furthermore, Plaintiffs assert that Insurance Defendants fully participated in proceedings before Judge Harper but ultimately refused to comply with Judge Harper's Orders and requests, who found their non-compliance was intentional. See Faul Cert., Ex. A and C. Plaintiffs contend that by the March 14, 2024 Order, the Court affirmed the Amended Order and provided Insurance Defendants with another opportunity to comply by producing all outstanding discovery identified in the September 18, 2023 Amended Order and Finding of Fact and Conclusions of Law within

sixty days. See Faul Cert., Ex. B. Plaintiffs argue that Insurance Defendants altered financial records and openly concealed discovery in violation of multiple orders, as such, Insurance Defendants cannot now say they have fully complied with discovery obligations and produced all responsive documents. See Faul Cert., Ex. C.

Plaintiffs assert that as of August 22, 2025, CPA Mutual's claims file was still incomplete and deficient, further CPA Mutual's servers were decommissioned at the same time CPAI was producing the records, which fully explains Insurance Defendants refusal to product documents in native format with metadata. Id. at ¶ 160. Plaintiffs maintain that this Court has held that Brian Reardon's certifications lack credibility since he does not have personal knowledge and cannot certify to the completeness of the productions, and instead of producing someone with the ability to certify, Insurance Defendants continued to fight against the Court's decision submitting seven Certifications from Mr. Reardon. See Faul Cert., Ex. R and S.

Next, Plaintiffs contend that Insurance Defendants have violated four orders across a fourteen month period and that significant discovery remains outstanding, including the vast majority of communications with reinsurers concerning Plaintiffs' claims under the -29 and -30 policies, demanded in Plaintiffs August 25, 2021 and January 30, 2023 Notices to Produce to CPA Mutual. Additionally, Plaintiffs assert that Insurance Defendants produced only two letters to the Vermont DFR, while Judge Harper ordered all communications. Plaintiffs argue that such information is critical to understanding the true relationship between CPAI, Genesis, and Maiden, and the financial responsibility of the companies to CPAI and who is ultimately responsible for the significant damages Plaintiffs sustained by the bad faith insurance practices of Insurance Defendants and its successors. Plaintiff contends that Strategic Risk Solutions ("SRS) was the primary point of contact between the Vermont DFR and CPA Mutual, providing regular updated

to the department about CPAI, however SRS was an integral part of CPA Mutual's operations in Vermont. Plaintiff avers that David Tatlock of SRS attended most, if not all, CPA Mutual's Annual Meetings, and on November 29, 2022, was elected Treasurer of MPA Mutual Insurance Holding Company, while maintaining his position at SRS. See Faul Cert., Ex. V. Upon subpoena, Plaintiffs assert that SRS production revealed that Insurance Defendants altered documents before producing them to Plaintiffs, SRS production contained critical regulatory documents that Defendants concealed. See Faul Cert., Ex. LL, X, Z. Plaintiffs notes that upon review of the evidence, Judge Harper concluded that Insurance Defendants continue to withhold the Vermont Captive Insurance Application and supporting documents that were filed on Insurance Defendants' behalf with the Vermont DFR as part of CPAI's requirements to form a Vermont captive insurance company.

Plaintiffs assert that Insurance Defendants' obligation to pay counsel fees is a court-ordered obligation as part of the Amended Order granting counsel fees amounts to a final, enforceable, judicial determination of liability for monetary sanctions associated with Insurance Defendants' contempt of court and discovery violations pursuant to R. 4:23-2(b). Further, Plaintiffs argue that the Amended Order rejected Insurance Defendants' broad privilege claims, stating that "all documents on Defendant's privilege logs are to be produced and will be subject to the Limited Discovery Order." And Insurance Defendants were permitted to redact only "legal strategy" not reserves. Plaintiffs assert that Insurance Defendants' claim that its disclosure of coverage counsel reports to Guy Carpenter, a third party, did not waive privilege is contrary to N.J.R.E. 530, which holds that voluntary disclosure to a third party generally waives attorney-client and work-product privileges. Plaintiffs contends that Insurance Defendants failed to provide all documents and records it claimed privilege to the Discovery Adjudicator for an in camera review and it is the Discovery Adjudicator who has the authority to rule on objections and Insurance Defendants are

in contempt of the Discovery Adjudicator's orders. Finally, Plaintiffs assert that Insurance Defendants' answers to Plaintiffs Coverage Interrogatories, served 440 days late were non-compliant and unresponsive. Plaintiffs assert that Insurance Defendants' delay and unresponsiveness constitutes a continuing violation of Judge Ironson's December 15, 2022 Order and the Amended Order, and is further evidence of Insurance Defendants' bad faith.

Plaintiffs argue that Insurance Defendants motion should be denied because it engaged in extensive spoliation of evidence and cannot produce all discovery identified as deficient in the September 18, 2023 Amended Order. Plaintiffs aver that to establish spoliation of evidence, the moving party must show (1) a duty to preserve the evidence, (2) a breach of that duty, and (3) an injury proximately caused by the breach of duty. Aetna Life & Cas. Co., 309 N.J. Super. 358, 365 (App. Div. 1998). Further Plaintiffs note that a duty to preserve evidence "arises when there is pending or likely litigation between two parties, knowledge of this fact by the alleged spoliating party evidence relevant to the litigation, and foreseeability that the opposing party would be prejudiced by the destruction or disposal of the evidence." Hirsch v. General Motors Corporation, 266 N.J. Super. 222, 250 (Law Div. 1993). Plaintiffs assert that CPA Mutual's records were purged while this litigation was pending nor does Insurance Defendants dispute such actions. See Faul Cert., Ex. C ¶ 240. Plaintiffs argue that Insurance Defendants repeated claims that there is no prejudice is inaccurate as Insurance Defendants tactics have significantly delayed the disposition of Plaintiffs' Estoppel and breach of duty claims. Plaintiffs further note that CPA Mutual deliberately altered documents to obfuscate the facts, such as Maiden paying discovery master fees and CPA Mutual's taxes. Plaintiff asserts that Insurance Defendants intentionally concealed and withheld evidence of successor liability of Maiden and Genesis, including concealment of the Vermont Captive Application, allowing its successors to transfer assets and decommission servers

during discovery, resulting in lost data and potentially leaving Insurance Defendants without sufficient funds to satisfy a judgment. See Faul Cert., ¶¶ 49-50; 117-119.

Plaintiffs also claim that R. 4:41-1 requires either the parties' consent or extraordinary circumstances to appoint a discovery adjudicator. Plaintiffs assert that Insurance Defendants failed to produce any evidence that the Assignment Judge did not approve of the appointment of Judge Harper. Further, Plaintiff's contend that the allegation that Insurance Defendants did not consent to the September 6, 2022 Order is contrary to the Court-issued and filed September 6, 2022 Order, stating that it had the consent of all parties. Plaintiffs further note that the December 1, 2022 Consent Order was signed by Insurance Defendants' without any reservations of rights, all the while being used as CPA Mutual's Cross-Motion to extend discovery filed in response to Plaintiffs' Motion for Partial Summary Judgment on Estoppel.

Plaintiffs assert that by Consent Order dated December 1, 2022, the Court, expanded Judge Harper's authority when it referred to the issues of Estoppel and Breach of Duty to Judge Harper, and directed that Limited Discovery be concluded within ninety days from the date of the Consent Order. See Faul Cert., Ex. L. Plaintiffs note that the Order of Reference did not contain any limitations as to Judge Harper's authority. Thus, Plaintiffs aver that the authority of the SDA includes, without limitation, adjudicating discovery disputes and issuing orders pursuant to the Judge's Orders and correspondence, and New Jersey Court Rules, such as R. 1:10-3;4:23-1;4:23-3; and 4:23- 4. Plaintiffs assert that R. 4:41-5 expressly preempts the standards for a Motion for Reconsideration, requiring objections to be made within ten days from the date of filing. Plaintiffs argue that by not filing any objections within ten days as required under R. 4:41-5, Insurance Defendants have waived its rights to challenge the September 6, 2022 Order and December 1, 2022 Consent Order.

Plaintiffs contend that in the absence of consent, a trial court is permitted to appoint a Discovery Adjudicator if extraordinary circumstances exist in support of the decision. Plaintiff relies on T.M. v. Order of St. Benedict of New Jersey (MRS-L-399-17) Ex. Q, asserting that the Hon. Stuart A. Minkowitz, A.J.S.C., determined that extraordinary circumstances existed to warrant the appointment of Freda Wolfson as discovery adjudicator despite the opposition of one party. The Court reasoned that the parties demonstrated an inability to cooperate and work together, the matter had over two thousand two hundred and thirty-five days of discovery and multiple trial dates.

Plaintiffs assert that extraordinary circumstances exist here, as this case has over one thousand six hundred eighty days of discovery, and multiple trial dates have been adjourned, Judge Harper has billed $156,255.10 resolving discovery disputes that otherwise would have resulted in protracted litigation. Plaintiffs maintain that even if Insurance Defendants did not consent to Judge Harper's appointment, extraordinary circumstances exist to support his appointment as Discovery Adjudicator and the Court Rule should be relaxed to present an injustice at this juncture.

Plaintiffs argue that Insurance Defendants have never filed a motion to recuse Judge Harper, although Insurance Defendants allege that Judge Harper's supposed transgressions stem not from his own statements or actions, but from purportedly objectionable statements of Plaintiffs' lead counsel during confidential mediation, all to allege Judge Harper was not neutral and impartial on insurance coverage issues. Plaintiff asserts that nothing Judge Harper has said remotely suggests that he lacks impartiality or has prejudged the case in Plaintiffs' favor, and Judge Harper's role in securing the participation of all potentially liable insurers against whom legitimate claims can be brought is a natural objective of any jurist or mediator presiding over settlement negotiations in a complex insurance case. Plaintiffs maintain that statements by counsel advocating that a mediator

be appointed SDA because of his knowledge of the case, understanding of the issues, or his other attributes such as his reputation, skill and subject matter expertise is not improper nor unusual. Plaintiffs rely on Deland v. Twp. of Berkeley, asserting that the objecting party filed a formal motion to remove a Special Adjudicator and sought reconsideration of a motion decision that had relied on the Special Adjudicator's findings. Deland v. Twp. of Berkeley, 361 N.J. Super 1, 12 (App. Div. 2003). Plaintiffs note that the Special Adjudicator submitted recommendations to the Superior Court Judge in a Mt. Laurel case and removal of the Special Adjudicator was sought on the grounds that he had a financial interest in the outcome of the case and specifically matters on which he was making recommendations stemming from his representation of developers who stood to benefit from his recommendations. Id. Plaintiffs avers that the Court refused to disturb the challenged motion decision, reasoning that the Special Adjudicator's recommendations were primarily legal in nature, and, in that case, were subject to judicial review.

Next, Plaintiffs note that in Matter of Township of Bordentown, the Court rejected a similar disqualification argument, where the objecting party argued specifically that the Special Adjudicator had a conflict of interest and was biased toward the municipal entity because he regularly represented municipalities in similar cases both as a Special Adjudicator and advisor. In Matter of Township of Bordentown, 471 N.J. Super. 196, 231 (App. Div. 2022), certif. denied, 252 N.J. 533 (2023). Plaintiffs assert that the Court held that the Special Adjudicator's challenged interest did not rise to the level of a conflict reasoning that the Special Adjudicator's acknowledged financial interest was insufficiently direct to support the extreme measure of disqualification. Plaintiffs assert that Insurance Defendants have failed to identify a direct or indirect interest on the part of Judge Harper, financial or otherwise, that could possibly animate or suggest a bias in favor of Plaintiffs or against the Insurance Defendants.

In reply, Insurance Defendants contend that Plaintiffs failed to address the Appellate Divion's holding that a mediator should not also serve as a neutral factfinder in the same case unless all parties enter into a specific agreement clearly defining and accepting the complementary dispute resolution professional's dual roles. Minkowitz, 433 N.J. Super. at 147. Further Insurance Defendants assert that Plaintiffs failed to address the absence of the Assignment Judge's approval of the appointment. Insurance Defendants aver that Plaintiffs reliance on T.M. v. Order of St. Benedict (MRS-L-399-17) is misguided as the actual record of T.M. establishes that on April 6, 2023, the Assignment Judge entered a five-page Order accompanied by an eight-page Statement of Reasons by which he determined that he would appoint an SDA because of specifically described extraordinary circumstances, something that never occurred here. See Robert P. Vacchiano Certification ("Vacchiano Cert.,") Ex. TT. Insurance Defendants assert that Judge Minkowitz directed counsel in T.M. to confer and select an SDA, and if they could not agree, to submit names of three potential candidates for the Court to consider, then defendants reported that the parties could not agree on a selection and provided the names of three retired New Jersey Superior Court Judges. Insurance Defendants note that the Assignment Judge rejected counsel's suggestion to appoint a retired Superior Court Judge who previously served as a mediator. Insurance Defendants assert that the Order demonstrates that Judge Harper was improperly appointed here and that Insurance Defendants' Motion must be granted.

Next, Insurance Defendants assert that even if Plaintiffs' reading of R. 4:41-1 is accurate, AOC Directive #5-08 explicitly prohibits a retired Superior Court Judge's appointment unless selected and agreed to by the parties, and also requires that the Assignment Judge be the one who "memorializ[es]" an agreement prepared by the parties. Administrative Office of the Courts, State of New Jersey, Directive #5-08, Guideline 7 (March 24, 2008) (Supplemented in other respects

Nov. 13, 2024). Insurance Defendants aver that T.M. shows that the Assignment Judge was aware of the Directive and knew that a retired Superior Court Judge could not be appointed in the absence of his selection by and mutual agreement of all parties. Further, Insurance Defendants assert that Plaintiffs' brief misstates that Insurance Defendants consented to Judge Harper's appointment on September 6, 2022, as a letter on September 1, 2022 from CPAI's counsel to Judge Hansbury objected to Judge Harper's appointment and proposed three alternative candidates. See Boyle Cert., Ex. L.

Next, Insurance Defendants contend that neither its consent to the form of the December 1, 2022 Order, nor its participation in editing the language of Plaintiffs' proposed order, can be viewed as a waiver of Insurance Defendants' prior objection or an express agreement accepting Judge Harper's dual roles. Insurance Defendants argue that neither Plaintiffs nor Judge Harper appropriately followed the provisions of R. 4:41 for his appointment, scope of authority, and proper form for his rulings through report and recommendations to the presiding Superior Court Judge rather than self-enforcing Order and Judgment. Finally, Insurance Defendants note that they objected to Judge Harper's appointment in 2021 and 2022, before he had ruled on any discovery disagreements.

Further, Insurance Defendants argue that Plaintiffs' misstate the applicable standard by mischaracterizing Judge Harper's decisions as "orders" and asserting that Insurance Defendants must show exceptional circumstances to avoid the Court's adoption of the SDA's report and recommendation. See Pls. Opp. Br. at 3, 10, 19. Insurance Defendants assert that the applicable standard demands sufficient factual support in the record so as to justify the Superior Court's adoption of the discovery adjudicator's findings, which is absent. R. 4:41-5(b). Insurance Defendants maintain that the law of the case doctrine applies only where there has been a ruling

on the merits by a "co-equal court on an identical issue." Lombardi v. Masso, 207 N.J. 517, 539 (2011). Insurance Defendants note that the law of the case doctrine has no bearing when a party seeks reconsideration of interlocutory discovery orders. Id. at 135. Insurance Defendants relying on Lawson, asserts that the Appellate Division held that the trial court erred in denying reconsideration of a discovery ruling by applying the strict standard for final orders and invoking the law of the case doctrine. Insurance Defendants aver that the Appellate Court clarified that interlocutory orders, including discovery rulings, are governed by R. 4:42-2, which permits revision at any time before final judgment in the interest of justice. Id. at 134.

Insurance Defendants note that in Weiss, the Appellate Division stated that prior orders denying sanctions and attorney's fees were issued without prejudice, meaning they were not final and could be revisited upon proper showing. Weiss v. Richter Org., LLC, No. A-5004-14T2, 2018 N.J. Super. Unpub. LEXIS 1196, *25-26 (App. Div. May 23, 2018). Insurance Defendants maintain that the Appellate Court held that these earlier rulings did not constitute "law of the case" because they expressly allowed for reconsideration if defendants continued discovery violations or if plaintiff submitted the required fee analysis, which plaintiff failed to do. Id. at *25. Insurance Defendants argue that Plaintiffs' flawed law of the case argument is opposite of this Court's order allowing Insurance Defendants to seek review of the August 22, 2025 Decision, in which this Court contemplated that Insurance Defendants has the right to seek relief from Judge Harper's August 22, 2025 Decision. Insurance Defendants contend that the record underpinning the August 22, 2025 Decision shows that Insurance Defendants complied with the directive in the prior September 18, 2023 Decision.

Insurance Defendants argue that Plaintiffs argument of incomplete document production leading to an unfair trial is predicated on Plaintiffs seeking irrelevant documents to the coverage

issues within this dispute. Insurance Defendants contend that Plaintiffs have acknowledge that their claims against Insurance Defendants are coverage claims, but incorrectly assert that their ability to prosecute such claims are irreparably compromised due to Insurance Defendants' actions. However, Insurance Defendants argue that this matter is a coverage dispute centered on how many limits apply to Plaintiffs' loss, and all the necessary documents are the insurance policies at issue, as well as the underlying pleadings, all of which have been in Plaintiffs' possession for over five years.

Insurance Defendants maintain their above arguments in that Judge Harper determined that the record does not enable a finding that Insurance Defendants have intentionally withheld discovery. See Boyle Cert., Ex. SS. Finally, Insurance Defendants assert that Genesis and Maiden never consented to proceeding before Judge Harper, nor was there ever a proper order of reference as to them. See Pls. Opp. Br. at 25. Insurance Defendants argue that Plaintiffs fail to address the caselaw precluding a court or its adjudicator from making substantive findings as to parties absent a finding of jurisdiction. As such, Insurance Defendants assert that Judge Harper's adoption of substantive findings and conclusions as to parties over whom personal jurisdiction has not been established further demonstrates that Judge Harper acted beyond his role and precludes adoption of his Report.

b. Navigators Insurance Company's Motion for Summary Judgment

Defendant Navigators Insurance Company ("Navigators") moves to dismiss Counts Twenty-Two and Twenty-Three of the Plaintiffs' Fifth Amended Complaint. Navigators assert that this Court held in its July 12, 2024 Order, the Plaintiffs are not third-party beneficiaries of the Reinsurance Contracts. Navigators contends that L.T. v. F.M., is applicable here as the Court's conclusion is supported by the long-standing legal precedent, and the terms of the Reinsurance

Contracts. See L.T. v. F.M., 438 N.J. Super. 76, 88 (App. Div. 2014) (explaining that "where there is an unreversed decision of a question of law or fact made during the course of litigation, such decision settles that decision for all subsequent stages of the suit"). Navigators asserts that the Reinsurance Contracts are strictly between CPA Mutual and its reinsurers and contain a "No Third Party Rights" provision. See Nate Zwick Certification ("Zwick Cert.,") at ¶ 6, Ex. 1, 3.

Next, Navigators contends that the Court's July 12, 2024 Order denied the Reinsurer's Motion to Dismiss on the basis that the Plaintiffs have alleged sufficient facts to proceed under the theory of liability articulated in Venetsanos v. Zucker, Facher & Zucker, 271 N.J. Super. 459 (App. Div. 1994). Navigators argues that in Venetsanos, the reinsurer, Homestead and its reinsured, Mutual, had entered into a fronting arrangements. Id. at 468. Navigators notes that Homestead had performed the underwriting for the original policy on Mutual's paper, which Homestead reinsured 100 percent. Id. at 464. Navigators asserts that Homestead adjusted the underlying claims, communicated directly with the original insured's attorney, was involved extensively in the settlement negotiations, and retained "final decision-making power" on all settlements. Id. Navigators further asserts that the trial court concluded that Homestead should be charged with the responsibilities of a primary insurer because it was not a "true reinsurer." Id. at 472.

Navigators contends that this case is distinguishable from Venetsanos as the undisputed material facts establish that Navigators is strictly a passive reinsurer and was not involved in underwriting the policies, adjusting the Plaintiffs' claims, or evaluating the Kinzel Defendants' claim for coverage under the underlying policies.

Navigators maintains that the Reinsurance Contracts are not facultative reinsurance contracts that reinsure these policies specifically, and that Navigators is just one of many reinsurers who participated on two reinsurance treaties to which CPA Mutual ceded numerous policies,

including the Kinzel Policies. Navigators asserts that its participation only accumulated to 2% and 3% on each respective Reinsurance Contract, and neither contract gives Navigators any control over claims handling or defense. Navigators asserts that the Reinsurance Contract provided that CPA Mutual, alone would make all claims decisions.

Further, Navigators claims that it only issued payment on account of CPA Mutual's billings and making a single request for a status update, Navigators did not communicate with CPA Mutual or any of CPA Mutual's counsel concerning the underlying claims. As such Navigators contends that it has been a passive reinsurer throughout this matter until it was added as a defendant. Navigators argues that there is no evidence that would support the Plaintiffs claims against Navigators that would show; (1) Navigators was involved in the reorganization of CPA Mutual or controlled the reorganization of CPA Mutual; or (2) involvement in or control of CPA Mutual's strategy, direction, investigation, handling or defense of the underlying claims, or was involved in CPA Mutual's coverage decisions. Navigators maintains that Plaintiffs cannot demonstrate that Navigators has "take[n] charge of and manage[d] the defense of suits against the original insured." Venetsanos, 271 N.J. Super. at 472–73. Navigators argues that the claims against it should be dismissed as it was a passive reinsurer and was not involved in and did not control CPA Mutual or its handling and defense of the underlying claims.

In opposition, Plaintiffs assert that there was never a classic and traditional insurer/reinsurer relationship presented here, as the insurers solicited and underwrote 95% of the risk. Plaintiffs argue that Navigators assumed 100% of the liabilities after CPA Mutual paid its retention. Plaintiffs contend that Navigators supported, facilitated, controlled, and/or directed CPA Mutual including the ability to settle this case.

Next, Plaintiffs argue that the Responses to the requests explain that although discovery is incomplete and has been wrongfully withheld, documents reveal that certain reinsurers audited CPA Mutual, reviewing its claims files and their contents, and providing active direction on how and when it should set claims reserves. Plaintiffs maintain that Navigators admitted to indemnifying CPAI for amounts relating to the Kinzel claim and this litigation. Further, Plaintiffs assert that CPA Mutual indicated that it ceded the vast majority of its risk to reinsurers. Plaintiffs aver that CPA Mutual's annual statements indicate that in 2021, 95% of CPA Mutual's losses were ceded to, and assumed by, various reinsurers, and in 2022, 94% of risk was ceded to and assumed by various reinsurers. Further, Plaintiffs assert that as to involvement and control of the defense and with coverage decisions, the responses note that the Reinsurers agreement with CPA Mutual contractually permitted them to associate in CPA Mutual's defense of policyholders' claims, requiring CPA Mutual to cooperate in every respect in such defense with the Navigators. Plaintiffs contend that Navigators have received reports regarding the litigation, beyond billings, and interconnected with matters such that they now claim documents and information received is protected by attorney-client privilege or work product doctrine, or any other privilege or protection.

Turning to the involvement in reorganization, Plaintiffs assert that the documents produced, including Letters of Intent dated July 14, 2022 and August 29, 2022, indicating that as part of Genesis's acquisition of CPA Mutual, a key assumption and condition was collecting "all reinsurance recoverable," including those due from Navigators. Plaintiffs maintains that document production led to a showing that the "Next Steps" included obtaining reinsurance commutation agreements from the Reinsurer Defendants and approaching the Vermont DFR about the change

in structure and applying for approval for change in control. Plaintiffs argue that there is ample evidence supporting their claims and if there is a dispute, it is a question for the jury.

Plaintiffs contend that although the Reinsurance Contracts were with CPA Mutual, they expressly left the Reinsurance liable for CPA Mutual's claims, and according to the reinsurance contracts with CPA Mutual, at expiration or termination of this Contract, the Reinsurer shall remain liable for all Policies attaching during the term of this Contract. Plaintiffs contend that Navigators arguments are misguided, arguing that Aftab v. N.J. Property-Liability Ins. Guar. Ass'n., 386 N.J. Super. 41, 50, certif. denied, 188 N.J. 357 (2006) supports denying Navigators' motions. Plaintiffs argue that in Aftab a risk retention group sought benefits from New Jersey's Insurance Insolvency Guaranty Fund where the trial court found they were not permitted to do so and entered summary judgment to the Guaranty Fund. Plaintiffs note that on appeal, the Appellate Division asked whether the members of the risk retention group were entitled to the benefits offered by the Insolvency Fund, holding that "an insurer registered in New Jersey solely as a risk retention group is not covered by the guaranty association regardless of status elsewhere and regardless of its reinsurer or its relationship with its reinsurer." Id. at 44. Plaintiffs assert that the court held that allowing the risk retention group's members access to the benefits of the Guaranty Fund would be against public policy and offer them access to guaranty funds to which they did not contribute. Id. Plaintiffs argue that the Aftab decision is consistent with Venetsanos, and it supports that determination of the contours of the reinsurance relationship should be made on a complete record.

Next, Plaintiffs assert that Navigators ignore that they have a right to associate under the Policies and that they have exercised such option and are otherwise controlling the handling, adjustment, and litigation of the involved matters. Plaintiffs contend that CPA Mutual, was reorganized out of existence and CPAI is a separate entity, which would entitle a jury to consider

that these facts demonstrate there is no traditional Insurer-Reinsurer relationship involved. Plaintiffs argue that the interconnectedness between Navigators and new entities that were formed and became involved with CPA Mutual's claims and coverage in late 2022 are represented by the same firm as Navigators, supporting a finding that Navigators exerted input, control and charge over the management of CPA Mutual's obligations and liabilities under New Jersey law.

Finally, Plaintiffs assert that Navigators deficiencies are well-documented in both the deficiency letters sent by Plaintiffs on September 25, 2025 and December 12, 2025, as well as in Judge Harper's August 22, 2025 Order. Plaintiffs maintain that Navigators failed to comply with the rules of the Court to produce all responsive discovery is their collective refusal to include a Certification or Affidavit of Completeness under R. 4:18-1(c) and R. 4:104-5(c)(1). Further, Plaintiffs argue that Navigators sought to inordinately limit the scope of discovery by including general objections and failing to produce full discovery within their own restricted scope, as evidenced by their specific responses to Plaintiffs' request. Plaintiffs maintain that similar to their deficiency letters, Judge Harper's August 22, 2025 Order documents the extent of Navigators discovery failures, including an entire section dedicated to CPA Mutual/CPAI's deficiencies as they relate to reinsurance discovery deficiencies.

In reply, Navigators maintains that Venetsanos standard is applicable in that the reinsurer must usurp the cedent's role in the underlying litigation by directing defense counsel and controlling settlement. Aftab, 386 N.J. Super. at 59-60. Navigators asserts, as stated above that there is no contract language or conduct to satisfy such test nor does any of the reinsurance treaties bear resemblance to those extraordinary Equitas arrangements. Further, Navigators asserts that post-settlement conduct such as retaining counsel for CPA Mutual and Navigators has no bearing on whether Navigators controlled the defense of Kinzel in the underlying malpractice suit.

Next, Navigators argues that under the Management Discussion and Analysis, CPA Mutual reports its own underwriting expenses, which reinforces that CPA Mutual, not Navigators, performed all underwriting. Navigators contends that nothing in the documents produced suggests that Navigators underwrote CPA Mutual's policies or assumed 100% of CPA Mutual's liabilities as Plaintiffs suggest. Navigators asserts that CPA Mutual independently evaluated, priced, and issued its policies. Mark Johnson Affidavit in Support of Navigators' Motion for Summary Judgment ("Johnson Aff.") at ¶ 8. Navigators maintains that the $500,000 retention in the reinsurance contracts at issue here means that many losses do not result in any reinsurance claim at all and that CPA Mutual retains 50% of the loss under policies written for $1,000,000 per occurrence limits as in the case of the Kinzel Policy.

Navigators argues that the CPA Mutual treaties expressly require reinsurers to indemnify CPA Mutual for covered losses actually paid by CPA Mutual in excess of the treaty retention and do not impose any duty on Navigators with respect to the insureds or claimants. See Mangino Cert., I; Ex. J. However, Navigators contends that Plaintiffs' reliance on Aftab is misplaced, as Aftab never suggested that risk retention groups are financially backed by reinsurance as Plaintiffs claim. Aftab, 386 N.J. Super. at 50, certif. denied, 188 N.J. 357 (2006). Navigators maintains that Plaintiffs reliance on the 2016 Board Minutes is misguided as well, as the discussion did not concern the insurance program at issue in this case but rather a program designed for the members of the American Advantage Association.

Further, Navigators maintains that audits are commonplace in the reinsurance industry to confirm accurate compliance with treaty terms. Navigators contends that audits exist across treaties irrespective of any claim and do not confer authority to manage litigation or dictate defense strategy. See § 91:60. Navigators argues that Plaintiffs' theory collapses against the treaties'

explicit language: "CPA Mutual alone and at its full discretion shall adjust, settle or compromise all claims," and CPA Mutual is the "sole judge" of what, whether, and how much to pay. See Mangino Cert., Ex. I; Ex. J.

Navigators contends that the Right to Associate clause is permissive as it states that CPA Mutual shall afford Navigators an opportunity to be associated when requested, not an obligation and certainly not a transfer of control. See Mangino Cert., Ex. I; Ex. J. Navigators maintains their above arguments in that Plaintiffs are unable to show Navigators controlled the underlying malpractice suit, and Plaintiffs only attempt to cover materials and actions that occurred after February 2022, when the Griggs Settlement ended the underlying litigation. Navigators maintains that Plaintiffs' focus on post-February 2022 discovery is immaterial and largely privileged materials that shed no light on the Venetsanos inquiry. Navigators concludes that the undisputed evidence demonstrates no reinsurer involvement in the Kinzel claim.

Finally, Navigators contends that even if it was aware of CPA Mutual's reorganization and that reinsurance was critical to payment of its losses, it changes nothing as treaty reinsurance indemnifies the cedent for covered losses it pays or becomes liable to pay; it does not create a direct payment obligation to third-party claimants. Turning to Plaintiffs' anti-assignment argument, Navigators asserts that the 2020 treaty does not contain an anti-assignment clause, the 2019 treaty expressly distinguishes between "successors" and "assigns," requiring consent only for assignments. See Mangino Cert., Ex. I. Navigators contends that courts have uniformly held that anti-assignment clauses do not apply to mergers or reorganizations. Coty US LLC v. 680 S. 17th St., LLC, 2015 N.J. Super. Unpub. LEXIS 2878, *31 (App. Div. Feb. 26, 2015); Segal v. Greater Valley Terminal Corp., 83 N.J. Super. 120, 124 (App. Div. 1964). Navigators maintains that if a

reinsurer has an objection to any reinsurance claim for the Kinzel loss by a successor of CPA Mutual, that objection is a matter for reinsurers and the successor to resolve through arbitration.

In sur-reply, Navigators claims that Plaintiffs failed to respond individually to Navigators' motion on its own merits and instead responded to all motions for summary judgment by Navigators and CPA Mutual's reinsurer ("Reinsurers"). Navigators argues that under the Reinsurance Contracts, each of the Reinsurers are severally liable, not jointly liable. Navigators' asserts that the Reinsurers' liability is limited to their separate participating shares of which Navigators is 2 percent and 3 percent on the reinsurance contracts. SUMF ¶¶2-3. Next, Navigators asserts that Plaintiffs are incorrect that Navigators is represented by Riker Danzig LLP, as Riker Danzig has never represented Navigators. Second, Navigators argues that the Plaintiffs suggest that Navigators relied on certain cases that Navigators did not cite in its brief. Finally, Navigators maintains that Plaintiffs are incorrect that all Reinsurers, have withheld the production of documents on the basis of attorney-client privilege, as Navigators has not withheld any documents.

Navigators' asserts that Navigators have produced the entirety of its reinsurance claim file twice with only redactions that Judge Harper ruled should be made, and Plaintiffs' failure to address Navigators' Motion separately is not only confusing and misleading but also reveals the lack of merit to the Plaintiffs' arguments.

Next, Navigators argues that a fronting arrangement is a defined and well-established risk-transfer tool in which one insurance company issues an insurance policy, but all of the underwriting, claims handling, and liability is the responsibility of another insurer who fully reinsurers the insurance policy. Munich Reinsurance Am., Inc. v. Tower Ins. Co. of New York, No. 09-CV-2598-FLW, 2012 WL 2917576, at *1 (D.N.J. July 17, 2012). In contrast, Navigators asserts that the reinsurance contracts are traditional excess of loss reinsurance contracts, Navigators and

other reinsurers agreed to reinsure $1 million excess of $500,000; CPA Mutual retained the first $500,000, making CPA Mutual required first to pay a retention of $500,000. Munich Reinsurance Am., Inc. v. Am. Nat. Ins. Co., 999 F. Supp. 2d 690, 698 (D.N.J. 2014), aff'd, 601 F. App'x 122 (3d Cir. 2015). Navigators maintains that once CPA Mutual satisfied the $500,000 retention, Navigators' own liability is capped at just 2 percent and 3 percent of $1 million above that for the first layer and 2 percent and 3 percent of $4 million for the second layer, making Navigators not a 100% reinsurer of the underlying Kinzel Policies. Navigators asserts that there is nothing within the provisions of the Reinsurance Contracts cited by the Plaintiffs supporting the conclusion that this is a fronting arrangement.

Navigators argues that there is no evidence that shows that Navigators must exercise the right and must have controlled the claim due to the Reinsurance Agreements having a right to associate provisions. Navigators asserts that Plaintiffs cannot point to a single document evidencing that Navigators requested to associate in the defense of the underlying claims or that Navigators made any claim decisions. Next Navigators contends that Navigators did not exercise its right to associate in the defense of the claims. The existence of the right to associate in a reinsurance contract does not mean that a reinsurer must be associated in the defense of the claim. Navigators asserts that even if Navigators had associated, that does not mean that Navigators assumed control of the claim, and the documents show that Navigators was a passive reinsurer.

Navigators further notes that Plaintiffs have obtained documents and other discovery directly from CPA Mutual including; (1) documents concerning reinsurance that CPA Mutual was ordered to produce; (2) Plaintiffs subpoenaed documents from Guy Carpenter in 2023, who produced documents including correspondence between CPA Mutual and Reinsurers; (3) Plaintiffs also subpoenaed records directly from Navigators in 2023 before Navigators was added as a party,

to which Navigators objected to the subpoena, but was ordered to produce its reinsurance claim files subject to the redaction of CPA Mutual's privileged communications to Reinsurers; (4) Plaintiffs sought and obtained documents from the Vermont regulators concerning CPA Mutual's reorganization; (5) Plaintiffs also obtained documents from Navigators after they sued Navigators. Navigators maintains that additional discovery would be futile as no amount of additional discovery will create facts or documents that do not exist. DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 341 (App. Div. 2013); Kaczorowska v. Nat'l Envelope Corp., 342 N.J. Super. 580, 591 (App. Div. 2001).

Finally, Navigators asserts that Plaintiffs have no factual basis as to the claims against Navigators and the other Reinsurers. Navigators argues that Plaintiffs lacked a good faith basis to sue Navigators having received a copy of Navigators' reinsurance claim file in response to their 2023 subpoena. Navigators maintains that such documents did not evidence anything that suggested that CPA Mutual's reinsurance program involved a fronting arrangement or that Navigators was exerting any influence over how CPA Mutual had defended the underlying claims or how CPA Mutual had made coverage decisions.

c. Reinsurance Defendants' Motion for Summary Judgment

Defendants, Aspen Insurance UK Limited, Underwriter Syndicate Nos. 2987 BRT, Lloyd's Syndicates 2623 and 623, Lloyd's Syndicates 1225 and 4020, Brit Global Specialty USA, Hannover Rück SE, AXA XL, Catlin Insurance Company/Catlin Syndicate, The Toa Reinsurance Company of America, The Cincinnati Insurance Company, and SCOR Reinsurance Company (together, the "Reinsurer Defendants") move for summary judgment against Plaintiffs.

Reinsurer Defendants argue that absent privity of contract, no cause of action can be asserted against a reinsurer by a non-party insured or its assignees. Reinsurer Defendants contend

that Plaintiffs did not enter into any contract with the Reinsurer Defendants and therefore lack standing to pursue claims arising under the Reinsurance Contracts. See Parkway Ins. Co. v. N.J. Neck & Back, 330 N.J. Super. 172, 187 (Super. Ct. 1998). Reinsurer Defendants assert that the Reinsurance Contracts were entered into exclusively by CPA Mutual and the Reinsurer Defendants. See Mangino Cert., Ex. I; Ex. J. Reinsurer Defendants maintain that Plaintiffs did not negotiate, execute, or assume any rights or obligations under them and Plaintiffs have admitted to such in their responses to requests for admission. See Smith Cert., Ex. E. Further Reinsurer Defendants aver that Judge Ironson characterized Plaintiffs as an outside party to the Reinsurance Contracts. See Mangino Cert., Ex. E.

Reinsurer Defendants contend that reinsurance contracts do not create privity between the reinsurer and the original insured. See Holmes' Appleman on Insurance 2d, Vol 14, § 106.7, n.252. Further, Reinsurer Defendants note that where there is no privity of contract between the original insured and the reinsurer, an original insured does not enjoy a right of direct action against a reinsurer. Aftab, 386 N.J. Super. at 59; Venetsanos, 271 N.J. Super. at 472-73; see also Illinois Inc. v. United Ins. Co., 625 A.2d 1, 18 (App. Div. 1993) rev'd in part on other grounds, 138 N.J. 437 (1994). Reinsurer Defendants rely on British Ins. Co. of Cayman v. Safety Nat. Cas., 335 F.3d 205, 212 (3d Cir. 2003), asserting that the Third Circuit held that a reinsurance contract confers no rights on the insured party in an underlying policy, and the reinsurer is not directly liable to that insured party. Reinsurer Defendants assert that the reinsurer's obligation is limited to indemnifying the reinsured, not investigating, defending, or settling claims made by the original insured. Id. at 214.

Next, Reinsurer Defendants contend that Judge Ironson's findings that Plaintiffs are not a third-party beneficiary based on the plain language of the Reinsurance Contracts and the "absence of any language intending to confer a benefit to a third party," was made in accordance with well

settled law. See Transaction ID LCV20241741354 at p. 4 of 8 (citing "No Third Party Rights" provision of Reinsurance Contracts); See, e.g., Owens-Illinois, 264 N.J. Super. at 494; In re Bennett Funding Grp., Inc., 60 Fed. Appx. 863, 865 (2d Cir. 2003). Reinsurer Defendants contend that because the Reinsurance Contracts unambiguously disclaim third-party rights and Plaintiffs offer no contrary language or evidence, their claims against the Reinsurer Defendants fail as a matter of law.

Reinsurer Defendants assert that Venetsano recognized a limited exception to the general prohibition of direct actions against reinsurers where "the reinsuring agreement itself provides, or the conduct of the reinsurer demonstrates, that [the reinsurer] takes charge of and manages the defense of suits against the original insured." 271 N.J. Super. at 473. However, Reinsurer Defendants argue that Venetsanos involved a fronting arrangement where the reinsurer; (1) solicited, evaluated and underwrote the entire risk; (2) assumed 100% of the Reinsurer's liability and risk; (3) retained absolute authority over final claim adjustment and settlement; (4) exercised direct control over the defense, including communications with trial counsel. Id. at 469. Reinsurer Defendants assert that none of such factors are present here, as Reinsurer Defendants did not; (1) solicit, evaluate or underwrite the CPA Mutual Policies; (2) assume 100% of the risk, as the Reinsurance Contracts provide traditional excess of loss reinsurance, whereby CPA Mutual retains the first $500,000 of any loss and Reinsurer Defendants respond directly to CPA Mutual to the extent any covered loss exceeds $500,000; and (3) the Reinsurance Contracts unambiguously state that CPA Mutual "alone and at its full discretion shall adjust, settle or compromise all claims and losses under its Policies." See Mangino Cert., Ex. I; Ex. J.

Finally, Reinsurer Defendants assert that the reinsurance contracts' standard "right to associate" provision that does not by any means equate to control. Reinsurer Defendants argue that

the right to associate is not synonymous with the right to direct or manage claims. See North River Ins. Co. v. Philadelphia Reinsurance Corp., 797 F. Supp. 363, 367 (D.N.J. 1992). Reinsurer Defendants maintain that passive rights to monitor or receive updates do not transform a reinsurer into a controlling party subject to direct liability.

In opposition, Plaintiffs assert that Reinsurer Defendants here, like the Homesteaders in Venetsanos, tried to avoid its obligations, arguing that it had no direct obligations to claimants. Plaintiffs assert that in Venetsanos, the Appellate Division disagreed and affirmed the trial court's grant of summary judgment to claimant, finding Homestead responsible for claimant's coverage and bad faith claims. Plaintiffs assert that the Court held with respect to claimant's coverage claims:

> [w]here ... the reinsuring agreement itself provides, or the conduct of the reinsurer demonstrates, that it takes charge of and manages the defense of suits against the original insured, the reinsurer may be held to be a privy to the action.

Id. at 473. Plaintiffs aver that the Appellate Division also found the reinsurer liable for claimant's misconduct stating:

> This case concerns Homestead's obligations which arose from its method of conducting business. . . . If Homestead . . . is responsible for incurring additional liability . . . by reason of breach of duties . . . , Homestead can and should be directly answerable to the insured in a New Jersey Court.

Id. at 470. Plaintiffs argue that given the amount of risk solicited by, and ceded to, the Reinsurer Defendants were the actual insurers. Plaintiffs assert that the Reinsurer Defendants solicited and underwrote 95% of the risk, assumed 100% of the liabilities after CPA Mutual paid its retention, and now have the authority over the final claims adjustment, as demonstrated by having their defense firm file motions seeking to reduce the limits available by making inter-related claims argument respecting the CPA Mutal policies. Plaintiffs admit that there is no testimony since

depositions have not yet been taken on relevant topics such as the involvement in CPA Mutual's decision-making, strategy, direction, investigation, or handling of the Plaintiffs' claims, the Responses explain how the Reinsurer Defendants agreements with CPA Mutual contractually permitted them to associate in CPA Mutual's defense of policyholders' claims.

Plaintiffs contend that Reinsurer Defendants further required CPA Mutual to "cooperate in every respect in such defense" with the Reinsurers, describing how the Reinsurer Defendants received reports regarding the litigation, beyond billings, and interconnected with matters such that they not claim documents and information received is protected by the attorney-client privilege or work product doctrine, or any other privilege or protections. See Faul Cert., Ex. 35. Further, Plaintiffs argue that Reinsurer Defendants admit that they have indemnified CPAI for amounts relating to the Kinzel claim and this litigation. Plaintiffs assert that in CPA Mutual's financial disclosures, they indicated that it ceded the vast majority of its risk to Reinsurer Defendants, with annual statements indicating that in 2021, 95% of CPA Mutual's losses were ceded to, and assumed by, various reinsurers, and in 2022, 94% of risk was ceded to and assumed by various reinsurers. See Faul Cert., Ex. 34.

Turning to the involvement and control of the defense and with coverage decisions, Plaintiffs note that the responses address that the Reinsurer Defendants agreements with CPA Mutual contractually permitted them to associate in CPA Mutual's defense of policyholders' claims, further requiring CPA Mutual to "cooperate in every respect in such defense" with the Reinsurer Defendants. As to the involvement in reorganization, Plaintiffs assert that documents produced indicate its "[n]ext [s]teps" included obtaining reinsurance commutation agreements from the Reinsurers Defendants and approaching the Vermont DFR about the change in structure and applying for approval for change in control. Plaintiffs maintain that their responses detail how

CPA Mutual's application for change in control was made to, and approved by, the Vermont Insurance Department, that the Reinsurer Defendants agreements with CPA Mutual contractually permitted CPA Mutual to assign its rights only with "prior written consent" of Reinsurer Defendants, which the Reinsurer Defendants were permitted to withhold in their "sole unfettered discretion".

Plaintiffs contend that before CPA Mutual restructured itself out of existence, the Reinsurer Defendants had already accepted nearly all the liability for the insurance claims presented by the risk retention group. See Faul Cert., 34; see also, Aftab, 386 N.J. Super. at 50 ("[A] risk retention group is simply a group of businesses or others who join together to set up their own insurance company only to issue insurance policies to themselves."). Plaintiffs assert that for all purposes, the Reinsurer Defendants effectively fronted for CPA Mutual before it restructured. See Faul Cert., 34. Plaintiffs argue that because CPA Mutual was reinsured at the placement of coverage, they could associate in the defense of any claim, including the one involved here, and such evidence shown to a jury could establish that CPA Mutual was required to cooperate in every respect in such defense with the Reinsurer Defendants.

Plaintiffs maintain that in 2021, it was publicly reported, and made known to the Reinsurer Defendants, that CPA Mutual transferred renewal rights to CAMICO Mutual Insurance Company and as a result, CPA Mutual had limited written premium in 2021 and was running off its business. Plaintiffs assert that with no new premiums, CPA Mutual relied on its reinsurance to meet its obligation, eventually leading to CPA Mutual being restructured out of existence.

Next, Plaintiffs contend that the Reinsurer Defendants rely on misguided caselaw, asserting that Aftab, 386 N.J. Super. at 50, supports denying the Reinsurer Defendants' motion. Plaintiffs argue that in Aftab, a risk retention group sought benefits from New Jersey's Insurance Guaranty

Fund and the trial court found they were not permitted to do so, entering summary judgment to the Guaranty Fund. Plaintiffs aver that on appeal, the Appellate Division was asked to address not whether a direct claim against the Reinsurer Defendants was allowed, but rather whether the members of the risk retention group were entitled to the benefits offered by the Insolvency Guaranty Fund, holding that "an insurer registered in New Jersey solely as a risk retention group is not covered by [the guaranty association] regardless [of its status elsewhere] and regardless of the status of its reinsurer or its relationship with its reinsurer." Id. at 44.

Plaintiffs note that in Aftab, the court discussed Venetsanos, explaining that "[i]n a case involving a more orthodox reinsurance situation, an insured would ordinarily be regulated to rights against the primary insurer, recognizing the general rule that an original insured does not enjoy a right of direct action against a true reinsurer." Id. at 472. Plaintiffs aver that the court ultimately concluded that the circumstances of the reinsurance relationship were irrelevant because it would not result in a finding that the risk retention group's members could obtain the benefits offered by the Insurance Insolvency Guaranty Fund. Id.

Plaintiffs assert that this lawsuit does not involve unique facts or equitable considerations regarding double exposure because of requirements under a liquidation statute. Plaintiffs contend that the Reinsurer Defendants did not have contracts with entities including the newly formed entities that were created and assumed roles and involvements in the claims. Plaintiffs argue that the interconnectedness between the Reinsurer Defendants and those that are successors to CPA Mutual supports an inference of the Reinsurer Defendants' control and permits a viable direct claim against them.

Next Plaintiffs contend that Reinsurer Defendants reliance on North River is misguided, asserting that the reinsurers in that case sought discovery of the Reinsurer Defendants'

communications with its counsel, arguing that it should have access to these attorney-client communications under the "common interest" doctrine. North River, 797 F. Supp. at 367. Plaintiffs assert that the court found the common interest doctrine did not apply because the reinsured retained its own counsel independent from the reinsurer, and the reinsurer "had no input in any respect into the relationship between North River and its counsel, nor otherwise controlled that relationship." Id. Plaintiffs further aver that the court found that it "need not determine whether differences between reinsurance and direct insurance require a different application of the common interest doctrine, because it concludes that, even under the doctrine as developed in the direct insurance context, the documents in issue are not discoverable." Id. Plaintiff argues that Reinsurer Defendants' parenthetical concerning North River stating "rejecting expansive interpretations of common interest and emphasizing that reinsurance association rights do not imply joint control over defense," is inaccurate.

Further, Plaintiffs assert that Christiania Gen. Ins. Corp. of N.Y. v. Great Am. Ins. Co., 979 F.2d 268 (2d Cir. 1992) is inapplicable as the reinsurer there sued for declaratory judgment that it need not indemnify the reinsured for several reasons, including that the reinsured had misrepresented or concealed the risks insured, thereby entitling the reinsurer to rescind the agreements. Christiania Gen. Ins., 979 F.2d at 271, 273. Plaintiffs aver that the court provided that "[t]he relationship between a reinsurer and a reinsured is one of utmost good faith . . ." Id. at 278. Plaintiffs contend that Reinsurer Defendants added the language stating, "but this does not mean the reinsurer controls the defense or settlement of claims." However, Plaintiffs argue that such language is absent in the decision and the court did not address any level of involvement of the reinsurer concerning the investigation, defense or settlement of the underlying claim.

Additionally, Plaintiffs assert that Reinsurer Defendants reliance on Unigard Sec. Ins. Co. v. N. River Ins. Co., 79 F.3d 1425, 1431 (9th Cir. 1996) is misguided because there is no case within the Ninth Circuit Court of Appeals under this citation. Plaintiffs contend that the likely corrected citation is Unigard Security Insurance Co. v. North River Insurance Co., 79 N.Y.2d 576 (1992), which held a reinsurer must demonstrate prejudice before it can successfully invoke the defense of late notice of loss by the reinsured. Plaintiffs assert that the court did not hold the reinsurer's right to associate does not create a duty to defend or manage claims, rather the court acknowledged the possibility of different factual scenarios concerning the involvement of the reinsurer, stating "[w]e agree that there are cases in which the reinsurer's right to associate may be impaired by late notice from the reinsured." Unigard, 79 N.Y.2d at 584. Plaintiff avers that Unigard held that the right to associate involves the right to consult with and advise the reinsured in its handling of a claim. Id. Plaintiffs allege that Reinsurer Defendants did not take a hands off approach as they suggest in their briefing, requiring a genuine issue of material fact that must be determined by the jury.

Finally, Plaintiffs assert that the attorney-client privilege cannot be used as a shield and a sword to the detriment of another party. EagleView Techs., Inc. v. Xactware Sols., Inc., 522 F. Supp. 3d 40, 50 (D.N.J. 2021). Plaintiffs aver that the Reinsurer Defendants deficiencies are well-documented in both the deficiency letters sent by Plaintiffs on September 25, 2025 and December 12, 2025, as well as in Judge Harper's August 22, 2025 Order. Plaintiffs maintain that Reinsurers Defendants have not attempted to cure the deficiency and in turn attempted to limit the scope of discovery by including general objections. See Faul Cert., Ex. 40. Plaintiffs contend that without the discovery, Plaintiffs are unable to evaluate relevant and critical liability, coverage and damages issues, and Reinsurer Defendants' responses to document demands failed to identify responsive

documents, lacked Bates references, and relied on boilerplate objections designed to frustrate the discovery process. Id. Plaintiffs assert that Judge Harper's Order states that CPAI have admitted its four coverage reports are within the possession of the Reinsurers, to which the Reinsurer Defendants failure to produce a Certification pursuant to R. 4:18-1(c), failure to produce all the discovery in connection with the Plaintiffs' discovery requests, and failure to comply with Judge Harper's August 22, 2025 Order are violations of the Court Rules and will be the subject of Plaintiffs' motion to compel.

In reply, Reinsurer Defendants argue that Plaintiffs cannot point to any contract language or conduct to satisfy the test under Venetsanos where the reinsuring agreement itself provides, or the conduct of the reinsurer demonstrates, that it takes charge of and manages the defense of suits against the original insured." 271 N.J. Super. 459, 473. Reinsurer Defendants maintain that the treaties do the opposite as they expressly reserve exclusive claims-handling authority to CPA Mutual and forbid Reinsurer Defendants from adjusting or settling Claims. See Mangino Cert., Ex. I; Ex. J. Further, Reinsurer Defendants assert that the "Access to Records" and "Right to Associate" clauses do not confer control, as they merely allow oversight and information-sharing. Further, Reinsurer Defendants maintain that the reinsurance treaties at issue here bear no resemblance to the extraordinary Equitas Companies arrangements that Plaintiffs rely upon. See Uniroyal Chemical Co. v. Wausau Ins., et al., Dkt. No. MID-L-8172-94 (Super. Ct. July 9, 1999) Reinsurer Defendants assert that there is no grant of control, no authority to adjust or settle claims, and no assumption of the cedent's obligations to insureds. Next, Reinsurer Defendants maintain its above arguments in that the actions taken post settlement cannot establish reinsurer control of the Kinzel defense because the underlying litigation is over.

Further, Reinsurer Defendants assert that nothing in the Management Discussion and Analysis document suggests Reinsurer Defendants underwrote CPA Mutual's policies or "assumed 100%" of CPA Mutual's liabilities as Plaintiffs suggest. Reinsurer Defendants contend that the treaties that Plaintiff asserts as risk assumptions are excess-of-loss arrangements, not fronting agreements. Reinsurer Defendants contend that CPA Mutual independently evaluated, priced, and issued its policies. See Mark Johnson Affidavit ("Johnson Aff.") at ¶ 8. Reinsurer Defendants assert that the $500,000 retention in the reinsurance contracts at issue here means that many losses do not result in any reinsurance claim at all. Reinsurer Defendants maintain that for policies written for $1,000,000 per occurrence limits, as in the case of the Kinzel Policy, CPA Mutual retains 50% of the loss. By contrast, Reinsurer Defendants argue that Venetsanos involved a true fronting scheme where the reinsurer "made the initial underwriting decision" to issue the direct policy "fronted" by the reinsured The Mutual Fire, Marine and Inland Insurance Company. 271 N.J. Super. at 468. Reinsurer Defendants assert that Plaintiffs failed to show Reinsurers had a similar error as it was in Venetsanos. Reinsurer Defendants assert the reinsurance contracts are the antithesis of a fronting arrangement and mirrors standard treaty reinsurance terms, not the assumption of direct insurer obligations.

Further, Reinsurer Defendants argue that Plaintiffs' reliance on Aftab, 386 N.J. Super. at 50 is misplaced, as Aftab never suggested that risk retention groups are "financially backed by reinsurance" as Plaintiffs claim. Reinsurer Defendants aver that the court rejected an argument that the Guaranty Fund should cover claims against an insolvent professional liability insurer organized as a risk retention group because the statute expressly excludes risk retention groups from Guaranty Fund protection. Id. at 50. Reinsurer Defendants assert that Plaintiffs cannot demonstrate reinsurer control of CPA Mutual's claims handling or defense strategy.

Next, Reinsurer Defendants maintain that New Jersey courts may consider the conduct of the reinsurers in determining whether to permit a direct action under the limited exception recognized in Venetsanos, 271 N.J. Super. at 473. Reinsurer Defendants assert that Venetsanos asks whether the reinsurer usurped the cedent's role in the underlying litigation by directing defense counsel and controlling settlement. Id. Reinsurer Defendants assert that receiving broker updates or asking questions about the claims handling or settlement cannot pierce the veil of lack of privity with an insured. Further, Reinsurer Defendants argue that there are no documents showing that a reinsurer directed CPA Mutual, contacted Margolis Edelstein, or influenced defense strategy or settlement of Kinzel's claim. See Johnson Aff. at ¶ 10.

Finally, Reinsurer Defendants assert that the 2020 treaty does not contain an anti-assignment clause, moreover the 2019 treaty expressly distinguishes between "successors" and "assigns," requiring consent only for assignments. See Mangino Cert., Ex. I. Reinsurer Defendants contend that CPA Mutual's reorganization under 8 V.S.A. § 3441 was not an assignment; it was a statutory continuation of corporate existence as a stock insurer subsidiary of a mutual holding company. Courts uniformly hold that anti-assignment clauses do not apply to mergers or reorganizations. See, e.g., Coty US LLC v. 680 S. 17th St., LLC, 2015 N.J. Super. Unpub. LEXIS 2878, *31 (App. Div. Feb. 26, 2015).

In supplemental reply, Defendants, The Toa Reinsurance Company of America, The Cincinnati Insurance Company, and SCOR Reinsurance Company (together, the "Domestic Reinsurers") assert that Judge Ironson stated in his July 12, 2024, Opinion on the Reinsurers' Motion to Dismiss that the Venetsanos court only permitted a direct action against the reinsurers because they made the initial underwriting decision to issue the direct policy, undertook the entire

risk, handled the claim, regularly communicated with the claims adjuster to discuss trial and settlement, and had the final say on claims and their settlement.

Domestic Reinsurers argue that the uncontroverted evidence in this case confirms that the reinsurers did nothing of the sort here and were passive recipients of routine claim reports from Guy Carpenter regarding Plaintiffs' accounting malpractice litigation against the Kinzel Defendants. Next, Domestic Reinsurers contend that Plaintiff's characterization of the engagement of counsel for Riker Danzig is misplaced. The involvement of Riker Danzig is irrelevant to the issue of control, as the firm was retained by the Kinzel Defendants in connection with an entirely separate matter. Additionally, Domestic Reinsurers assert that Riker Danzig only represents a minority of CPA Mutual's reinsurers, none of whom are the lead on the program, and whose interests under the treaties do not collectively amount to a majority share of the reinsured risk.

Next, Domestic Reinsurers assert that when Plaintiffs moved to amend their complaint in June 2023, Cincinnati was not notified of the underlying claim against Kinzel Defendants and uncontroverted evidence shows that Cincinnati was not advised of the claim until several weeks later, on July 6, 2023. Finally, Domestic Reinsurers exhaustive discovery produced to date confirms that Plaintiffs cannot as matter of law pursue this action against the reinsurers and any additional discovery would be irrelevant, futile, and a waste of the parties and this Court's time and resources.

Legal Analysis

i. Motion to Reinstate Answer and Separate Defenses

Upon reviewing the parties submissions, the Court grants the motion to reinstate the Defendants' answer and denies the motion to enter the SDA's proposed Order. Upon review of the record, the Court finds that the Insurance Defendants have sufficiently complied with the relevant

discovery demands. The Court independently reviewed thousands of pages of discovery produced by Defendants, as well as interrogatories, answers and responses to requests to admit. The Court finds that Defendants have sufficiently responded to the discovery demands and no further responses are required. It is clear to the Court that Plaintiffs' discovery went well beyond the relevant disputed coverage issues. Much of the allegedly deficient responses were to irrelevant information to which discovery should have been limited. This case deals with whether two insurance limits apply. The restructuring of the insurer without any evidence that a finding of coverage for a second limit would not be satisfied by the insurance policy is irrelevant to Plaintiffs' claims. To the extent Plaintiffs claim spoliation of relevant evidence occurred, the issue can be raised to the trial judge for an adverse inference. As admitted at oral argument, despite this case being filed in 2020, no depositions have taken place. The Court cannot make any findings regarding spoliation without testimony related to intentional or malicious acts. The entry of default judgment for alleged discovery violations, which the Court finds lack any basis, would frustrate the strong preference for the resolution of disputes on the merits.

The record demonstrates that the Insurance Defendants objected to the appointment of Judge Harper as the SDA. The Court's September 1, 2022 Order appointed Juge Harper as the SDA. On December 1, 2022, the Insurance Defendants signed a consent order designating the resolution of disputes with Judge Harper as the SDA. Further, while the court's order appointing an SDA was not signed by the Assignment Judge as well as the trial judge, the Court finds substantial compliance with the Court rules and/or a harmless error as the parties consented to the appointment of an SDA, which did not require the Assignment Judge's approval. The dispute centers on the appointment of the specific SDA. After the entry of the September 1, 2022 Order, the Insurance Defendants did not submit a letter objecting to the Order, file a motion for

reconsideration or seek leave to appeal. Instead, after the entry of the September 1, 2022 Order, the Insurance Defendants did not seek to remove Judge Harper until Judge Ironson's March 14, 2024 Order. Even then, when Judge Ironson did not address the specific objection to Judge Harper, counsel did not contact the Court or otherwise move to reconsider Judge Iron's Order. In addition, while Insurance Defendants filed a motion objecting to the appointment of Judge Harper as the SDA, the motion dealt with the lack of exceptional circumstances for the appointment of an SDA, not specifically to the appointment of Judge Harper.

It is clear that the lack of objection and continued participation with Judge Harper was a litigation strategy. There is no rational explanation for why Insurance Defendants failed to timely seek the removal of Judge Harper. The Court finds that the Insurance Defendants waived their objection to Judge Harper's appointment based on their actions. In addition, the Court finds the issue moot, as the Court finds that SDA's services are no longer necessary. Paper discovery is substantially complete, and the Court can manage the remaining discovery issues. Thus, Judge Harper's appointment as the SDA is vacated.

The Court further notes that no prior court made specific findings of fact with respect to the imposition of counsel fees. Any prior order, either by the SDA or the Court awarding fees are vacated. Requests for attorneys' fees may be addressed with the Court at the appropriate time.

ii. Motions for Summary Judgment by Navigators and Reinsurer Defendants

Turning next the motions for summary judgment filed by Navigators and Reinsurer Defendants, the Court notes that as a general rule, there is no contractual relationship between an insured and a reinsurer, and therefore, the insured may not seek to recover directly from the reinsurer. Reinsurance agreements typically indemnify the primary insurer against loss rather than

liability, and the reinsurer's obligations are generally owed to the primary insurer, not the original insured. Venetsanos 271 N.J. Super. at 473; 1 New Appleman New Jersey Insurance Law § 2.16 (2026). A direct claim against a reinsurer may be permitted if the reinsurer assumes a role that goes beyond the traditional indemnification relationship. Such examples include the reinsurer taking charge of and managing the defense of claims against the original insured, deeming them a privity to the action, thereby exposing itself to direct claims by the insured or judgment creditors of the insured. Id.; 1 New Appleman New Jersey Insurance Law § 11.05 (2026). This principal was recognized in Venetsanos, where the court noted that reinsurers who actively manage or control the defense of claims may be held directly liable. Id. Venetsanos presented a unique set of circumstances, in that, the policy was issued to Manuel Dominguez by The Mutual Fire, Marine and Inland Insurance Company and was 100% reinsured by Homestead Insurance Company. Id. at 469.

In G-I Holding, Inc. v. Reliance Ins. Co., the insured argued that the court should follow Venetsanos and hold that a reinsurer, Hartford Insurance Company, was directly liable to it. 586 F.3d 247 (3d Cir. 2009). Like Venetsanos, the direct insurer, Reliance Insurance Company, was declared insolvent and placed in liquidation. When Reliance began encountering financial difficulties, Hartford and Reliance entered into a series of agreements, including an asset purchase agreement, quota share reinsurance agreement, and two claims-servicing agreements. Id. at 250-51. Pursuant to those agreements, "Hartford acquired renewal and other rights to, and became a reinsurer and servicer of, certain Reliance policies." Id. at 251-52. Hartford also issued a direct policy to the insured in response to the insured's concerns about Reliance's pending insolvency. The G-I Holding Court rejected the insured's claim that Hartford should be treated as the direct insurer, reasoning that: (1) Hartford did not have the same level of control over Reliance that

Homestead had over Mutual; and (2) there is no allegation of fronting. Id. at 259-60. The Claims Servicing Agreement specifically preserved the authority of Reliance to direct Hartford in the handling of any claim. Id.

In Aftab, the Appellate Division held that a reinsurer was not directly liable to the underlying insured for the following reasons:

> First, we note that the terms of the reinsurance agreement plainly describe a traditional insurer-reinsurer relationship, and provide no basis for direct claims against [the reinsurer]. Further, the record contains no specific facts to indicate that [the reinsurer] took charge of the claims, evaluated them, directed their resolution, communicated with assigned counsel, or otherwise controlled the claims. Nor is there any evidence of any contact between plaintiffs or the claimants against them with [the reinsurer]. And [the reinsurer at issue] was not [the cedent's] only reinsurer.

Aftab, 386 N.J. Super. at 60.

Conversely, the mere reservation of rights by a reinsurer, such as the right to approve settlements, is insufficient to establish direct liability unless the reinsurer exercises significant control over the claims process. Here, the Court finds that the Navigators was not in privity of contract with the Plaintiffs regarding the reinsurance contracts. Navigators argues that the reinsurer contracts at issue, are wholly between CPA Mutual and its reinsurers and contain a "No Third-Party Rights" provision. See Zwick Cert., at ¶ 6, Ex. 1, 3. There is no evidence in the record to find that the reinsurance contracts established a contractual relationship between Navigators and Plaintiffs capable of holding Navigators directly liable to Plaintiffs. Additionally, there is no evidence to establish a fronting arrangement with Navigators. Here, Navigators participated in 2% and 3% on each of the reinsurance contracts, neither of which gave Navigators any control over claims handling or defense. While the reinsurance contracts permitted Navigators to request to associate in a claim, sole control over all claim decisions rested with CPA Mutual. Despite the

creative arguments regarding Navigators participation under the reinsurance contracts, Navigators was a passive reinsurer. Plaintiffs fail to establish any indication that Navigators exerted control to effectively step into the shoes of CPA Mutual with respect to the adjustment of the Kinzel claim.

Turning to the Reinsurer Defendants, the Court finds that the Reinsurer Defendants were not in privity of contract with the Plaintiffs regarding the reinsurance contracts. Further, the creation of the reinsurance contracts did not create a contractual relationship between Reinsurer Defendants and Plaintiffs. See Holmes' Appleman on Insurance 2d, Vol 14, § 106.7, n.252. Additionally, absent assent from the policyholder, there was no new contractual relationship created between Reinsurer Defendants and Plaintiffs. Iowa Life Ins. Co. at 340. Further, the record establishes Plaintiffs are characterized as an outside party to the reinsurance contracts. See Mangino Cert., Ex. E. Similarly, the record and the plain language of the reinsurance contracts fail to establish Plaintiffs as third-party beneficiaries. In addition, there is no evidence that Reinsurer Defendants intended to confer a benefit to a third party within the Reinsurance Contracts.

Further, the four factor test established in Venetsanos, 271 N.J. Super. at 469, involved a fronting arrangement where the reinsurer; (1) solicited, evaluated and underwrote the entire risk; (2) assumed 100% of the Reinsurer's liability and risk; (3) retained absolute authority over final claim adjustment and settlement; and (4) exercised direct control over the defense. The record fails to demonstrate that the Reinsurer Defendants: (1) solicited, evaluated and underwrote the entire risk; (2) assumed 100% of the ceding company's liability and risk; (3) retained absolute authority over final claim adjustment and settlement; or (4) exercised direct control over the defense, including communications with trial counsel. The reinsurance contracts provided excess of loss reinsurance, in which CPA Mutual retained the first $500,000 of any loss, and in the event that the loss exceeded $500,000, Reinsurer Defendants would respond directly to CPA Mutual.

Additionally, the Reinsurance Contracts state that CPA Mutual alone and at its full discretion will be allowed to adjust, settle or compromise all claims and losses under its Policies. See Mangino Cert., Ex. I; Ex. J. None of such actions would establish that the Reinsurer Defendants significant control over the claims process. Nor does such actions or the Reinsurance Contracts explicitly assert that liability to expanded to the Reinsurer Defendants. Meyer, 90 N.J.L. at 128.

Reinsurer Defendants limited scope of control to the "Access to Records" and "Right to Associate" clauses do not confer control or expand liability to the Reinsurer Defendants as such clauses solely allow for oversight and information-sharing. The Court further notes that the Management Discussion and Analysis document does not support a finding that Reinsurer Defendants underwrote CPA Mutual's policies or assumed 100% of CPA Mutual's liabilities prior to or during the restructuring. Accordingly, summary judgment is granted in favor of Navigators and the Reinsurer Defendants.

IV. CONCLUSION

As set forth above, Insurance Defendants' motion to reinstate CPAI's pleading and defenses is granted. Further, the September 1, 2022 Order is vacated and Judge Harper is relieved of his responsibilities as the SDA with the Court's thanks for the work he performed. Summary judgment is granted as to Navigators and the Reinsurer Defendants.