Posted Date	Name of Case (Docket Number)	Type
Aug. 31, 2023	IN THE MATTER OF PROPOSED CONSTRUCTION OF COMPRESSOR STATION, ETC. (NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION) (A-3616-20) The court interprets Exemption 11 of the Highlands Act, N.J.S.A. 13:20-28(a)(11), which exempts entirely from all provisions of the Act and "any rules or regulations" adopted by the DEP pursuant to it: the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act, to exempt only "routine" upgrades to a utility's lines, rights of way or systems in the Preservation Area, rejecting the DEP's interpretation that "routine" modifies only "maintenance and operations" and does not modify "upgrade." Applying its interpretation, the court vacates the Highlands Applicability Determination issued to the Tennessee Gas Pipeline Company exempting its proposed compressor station in the Preservation Area from permitting review and remands the matter to the DEP for consideration of whether Tennessee's new compressor station can qualify as a "routine upgrade" to its pipeline system, thus bringing it within Exemption 11.	Appellate
Aug. 28, 2023	STATE OF NEW JERSEY VS. DENNIS F. GARGANO, JR., ET AL. (17-02-0034, OCEAN COUNTY AND STATEWIDE) (A-1230-22) During the investigation of an alleged drug distribution network, the State Police obtained wiretap orders authorizing the interception of communications on various cellular phones pursuant to the New Jersey Wiretapping and Surveillance Control Act (the Act), N.J.S.A. 2A:156A-1 to -37. By leave granted, the State challenged an order suppressing all intercepted communications that followed the interception of a privileged marital communication between one of the defendants and his codefendant spouse. The trial court entered the order under N.J.S.A. 2A:156A-21, which in pertinent part mandates the suppression of "the entire contents of all intercepted wire, electronic[,] or oral communications obtained during or after any interception" that is "unlawfully intercepted" or "not made in conformity with" the wiretap order or authorization. N.J.S.A. 2A:156A-21(a) and (c). The court affirms the order based on its interpretation of the Act. The State concedes that at the time of the interception of the initial privileged marital communication, N.J.R.E. 509 did not include a crime-fraud exception, and, as a result, the initial and subsequent 305 intercepted privileged marital communications are inadmissible at defendants' trial under the then-extant version of N.J.R.E. 509. The State argues interception of the initial privileged marital communication did not trigger the mandatory suppression of all subsequent wiretap interceptions during the investigation under N.J.S.A. 2A:156A-21 because interception of the privileged marital communication was neither unlawful nor made in violation of the wiretap orders. The court concludes that not every interception of a privileged marital communication is unlawful and requires application of N.J.S.A. 2A:156A-21's suppression remedy. The court finds incidental interceptions of privileged communications during the mandatory intrinsic minimization process attendant to the execution of every wiretap order are anticipated by, and authorized by, the Act, and do not trigger N.J.S.A. 2A:156A-21's suppression remedy. The court holds that, because the State Police knew the initial interception was of a communication between married spouses, made no effort to minimize the interception, and monitored the communication beyond the time necessary to determine if it was privileged, the interception was unlawful under the Act and violated the wiretap order, which expressly required minimization. The court rejects the State's argument suppression is not required because the initial marital communication, and the 305 subsequent marital communications, were intercepted based on the good faith but erroneous belief the crime-fraud exception recommended by the Court in State v. Terry, 218 N.J. 224 (2014), and later enacted, N.J.S.A. 2A:84A-22(2)(e), L. 2015, c. 138, § 2, eff. Nov. 9, 2015, would apply retroactively such that the interceptions would be supported on that basis.	Appellate
Aug. 22, 2023	MORRIS PROPERTIES, INC., ET AL. VS. JONATHAN WHEELER, ET AL. (L-0238-19, ATLANTIC COUNTY AND STATEWIDE) (A-2653-20) In this legal-malpractice case, the corporate plaintiff and its president appeal from an order granting defendants' summary-judgment motion. The trial court found plaintiffs' expert had failed to analyze how defendants' alleged breaches of the standard of care would have impacted a potential jury verdict or settlement and had not opined that defendants' alleged malpractice proximately caused any damages. The judge also dismissed the president's individual claim because the undisputed facts showed she and defendants did not have an attorney-client relationship. The court affirms, holding plaintiffs had not established proximate cause as a matter of law and that expert testimony was necessary in this case to prove proximate causation and damages. With respect to the president's individual claim of legal malpractice, the court holds she failed to demonstrate the existence of an attorney-client relationship between herself and defendants.	Appellate
Aug. 18, 2023	AVA SATZ VS. ALLEN SATZ (FM-02-2630-18, BERGEN COUNTY AND STATEWIDE) (A-3535-21)	Appellate

	Defendant appeals from Family Part orders enforcing provisions of a marital settlement agreement (MSA). A critical area of dispute centered on plaintiff's desire to obtain a get—a divorce recognized under Jewish religious law through a process known as a beis din proceeding. Before a verdict was reached in the Family Part divorce trial, the parties reached an agreement on all issues, including each party's obligations with respect to participation in beis din proceedings. The court rejects defendant's argument that the Family Part judge violated his First Amendment rights by ordering him to participate in beis din proceedings and to sign an arbitration agreement with the beis din. The court acknowledges the fundamental principle that civil courts may not become entangled in religious proceedings. The First Amendment's Establishment Clause bars a state from placing its support behind a religious belief, while the Free Exercise Clause bars a state from interfering with the practice of religion. U.S. Const. amend. I. The court concludes the Family Part judge was asked to enforce a civil contract, not a religious one. The court holds the MSA is a legally binding contract based on ample consideration from both parties and entered into knowingly and voluntarily. The Family Part judge therefore had the lawful authority to enforce the agreement as written. New Jersey Supreme Court precedent permits civil courts to resolve controversies involving religious groups if resolution can be achieved by reference to neutral principles of law and does not require the interpretation of religious doctrine. Defendant agreed in the MSA to abide by the beis din ruling, whatever that might be. The Family Part judge did not interpret religious doctrine and scrupulously avoided entanglement with religion because the judge applied well-established principles of civil contract law, not rabbinical law. The latter body of law remained solely within the province of the beis din and was not interpreted or applied by the Family Part judge. The court concludes that the orders defendant challenges served the secular purpose of enforcing the parties' contractual obligations under the MSA, which in turn serves the secular purpose of encouraging divorce litigants to resolve their disputes by negotiating and entering an MSA.	
Aug. 10, 2023	STATE OF NEW JERSEY VS. DAANDRE J. WADE, ET AL. (22-11-1041, MIDDLESEX COUNTY AND STATEWIDE) (CONSOLIDATED) (A-2377-22/A-2378-22) In May 2019, defendants were found in possession of two loaded handguns while driving a car on public roads. Neither defendant had a permit to carry a handgun. Both defendants were indicted for second-degree unlawful possession of a handgun without a permit in violation of N.J.S.A. 2C:39-5(b)(1). Following the United States Supreme Court's decision in New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. ___, 142 S. Ct. 2111 (2022), defendants moved to dismiss those criminal charges, arguing that the version of the gun-carry permit statute in effect at the time of their arrest, N.J.S.A. 2C:58-4 (2018), was facially unconstitutional under Bruen. The trial court agreed and dismissed the charges. This court granted the State leave to appeal the order. The court holds that defendants did not have standing to challenge the gun permit statutes because neither defendant had applied for a handgun-carry permit. Nevertheless, the court addresses the merits of the constitutional challenge and holds that the justifiable need requirement in N.J.S.A. 2C:58-4(c) (2018) was severable and the remaining provisions of N.J.S.A. 2C:58-4 (2018), as well as N.J.S.A. 2C:39-5(b)(1), were constitutional and enforceable. Accordingly, the court reverses the order dismissing the charges and remands with direction that the trial court reinstate both counts of unlawful possession of a handgun without a permit.	Appellate
Aug. 9, 2023	STATE OF NEW JERSEY VS. TYSHON M. NIEVES (21-09-1334, ATLANTIC COUNTY AND STATEWIDE) (A-3379-21) In this appeal from an order denying defendant's motion to suppress evidence seized following the 5:00 a.m. execution of a knock-and-announce search warrant at a residence, the court finds the law enforcement officers did not wait a reasonable period after knocking and announcing their presence before forcibly breaching and entering the home's front door. The court determines that based on the circumstances presented, the officers' forcible entry into the home after waiting less than five seconds after after knocking and announcing their presence was unreasonable and rendered the subsequent search of the home and seizure of evidence unconstitutional. The court determines the exclusionary rule requires suppression of the evidence, reverses the order denying the suppression motion, and remands for further proceedings.	Appellate
Aug. 9, 2023	BRANDON MEREDITH HARDY VS. SUSAN D. JACKSON (L-2250-21, BURLINGTON COUNTY AND STATEWIDE) (A-3155-21) Plaintiff, who is incarcerated at a federal prison located in New Jersey, wants to marry someone who is incarcerated at a federal prison located in a different state. He sued the New Hanover Township Municipal Clerk and Registrar, claiming she had violated his civil rights contrary to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2, by applying the requirement in N.J.S.A. 37:1-7 and -8 that couples appear in person to obtain a marriage license. He appeals an order denying his motion for a preliminary injunction and granting defendant's cross-motion to dismiss the complaint. He argues the enforcement of the in-person requirement was unconstitutional and contends the motion judge should have used his equitable powers to enjoin enforcement of the requirement. The court rejects both arguments. The court holds the statutes at issue do not create an unconstitutional bar of a prisoner's right to marry but instead apply to individuals who want to marry and are reasonably related to the legitimate goal of ensuring the validity of marriages. The court also holds the motion judge could not have used his equitable powers to enjoin defendant's enforcement of the statutory in-person requirement. Accordingly, the court	Appellate

	affirms the dismissal of plaintiff's complaint and the denial of plaintiff's motion for a preliminary injunction.	
Aug. 3, 2023	MUSCONETCONG WATERSHED ASSOCIATION VS. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL. (NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION) (A-2491-20) On February 23, 2017, the New Jersey Department of Environmental Protection (DEP) issued a flood hazard area applicability determination (FHA Determination) to Hampton Farm, LLC (Hampton Farm). Shortly thereafter, appellant Musconetcong Watershed Association (MW Association) requested the DEP to conduct an adjudicatory hearing so it could challenge the FHA Determination. Four years later, on April 6, 2021, the DEP denied that request. MW Association timely appealed from the April 6, 2021 decision. It also sought leave to appeal from the February 23, 2017 FHA Determination, contending it had become final when the DEP denied MW Association's request for a hearing. On an interlocutory motion, a two-judge panel of the court denied leave. The court now reconsiders, reverses that interlocutory ruling, and grants leave to appeal. The court holds that the DEP's FHA Determination became a final agency decision subject to appeal when the DEP denied MW Association's request for an adjudicatory hearing to challenge the FHA Determination. At that time, all administrative remedies were exhausted. To address the DEP's four-year time delay in deciding MW Association's request for an adjudicatory hearing, the court holds that any party, including a third-party objector, has the right to petition the DEP to rule on a pending request for an adjudicatory hearing under N.J.A.C. 1:1-4.1(a). The DEP will then have thirty days from receipt of the petition to "inform all parties of its determination" regarding that request. N.J.A.C. 1:1-4.1(a). The court also holds that MW Association did not have a right to an adjudicatory hearing because no statute conferred that right to MW Association, which is a third-party objector, and MW Association did not have a particularized property interest warranting a hearing. Accordingly, the court affirms the April 6, 2021 final agency decision. Finally, because the court has reversed the ruling on the interlocutory motion, the DEP has two options concerning its FHA Determination. It can either (1) elect to address MW Association's challenges to its February 23, 2017 FHA Determination and a new briefing schedule will be issued; or (2) request a remand so it can expand and update the factual findings supporting its FHA Determination.	Appellate
Aug. 2, 2023	CHRISTOPHER NEUWIRTH VS. STATE OF NEW JERSEY, ET AL. (L-1083-20, MERCER COUNTY AND STATEWIDE) (A-3695-21) Plaintiff, who had been terminated from his position as assistant commissioner for the Department of Health, filed a complaint against the State, alleging a claim under the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -8. In his second amended complaint, plaintiff asserted a defamation claim against Governor Philip D. Murphy. A Law Division judge granted defendants' motion to dismiss the defamation claim, concluding plaintiff had not pleaded the element of actual malice with sufficient specificity. In his fourth amended complaint, plaintiff again asserted a defamation claim against Governor Murphy, referencing in particular statements made during May 29, 2020 and June 1, 2020 press briefings. Defendants moved to dismiss the defamation claim pursuant to Rule 4:6-2(e). The judge denied the motion, concluding plaintiff had pleaded sufficient facts in the fourth amended complaint to demonstrate actual malice. The court reversed, concluding the judge had misapplied the actual-malice standard. After conducting a de novo review, the court held plaintiff's conclusory allegations did not meet the actual-malice standard and, as a result, plaintiff's defamation claim failed. Reversing the denial of defendants' motion to dismiss, the court remanded the case with a direction that the judge enter an order dismissing the defamation claim.	Appellate
July 25, 2023	JOSEPH JOHNSON, ET AL. VS. CITY OF HOBOKEN, ET AL. (L-2813-21, HUDSON COUNTY AND STATEWIDE) (A-1596-21) Plaintiffs sued defendants, a law firm and three individuals associated with the firm, claiming that their rights of privacy had been violated when defendants failed to redact their personal identifiers contrary to the directive of Rule 1:38-7. Plaintiffs also contended that defendants violated one plaintiff's right of privacy by including records of that plaintiff's arrest and criminal charges. The court holds that Rule 1:38-7 did not create a private cause of action for a violation of the Rule. Instead, the remedy for a violation of Rule 1:38-7 is set forth in the Rule, which states that a party or other interested individual can move, on an expedited basis, to replace documents containing unredacted personal identifiers with redacted documents. R. 1:38-7(g). The court also holds that plaintiffs failed to state viable causes of action for invasions of privacy or infliction of emotional distress. Accordingly, the court affirms the dismissal of plaintiffs' complaint.	Appellate
July 14, 2023	JOSEPH BERARDO VS. CITY OF JERSEY CITY, ET AL. (L-0324-21, HUDSON COUNTY AND STATEWIDE) (A-1342-21) Defendant City of Jersey City's (City) Code of Ordinances Section 105 permits any individual to request a "determination of significance" from the City's Historic Preservation Officer (HPO) regarding whether a subject building warrants preservation. Consistent with local ordinances, plaintiff, who owns a circa-1900 building in Jersey City, sought a determination of significance before applying for a demolition permit. The City's HPO concluded plaintiff's	Appellate

	building likely would not be approved for demolition due to its historic, architectural, and cultural significance. Pursuant to local zoning ordinance, plaintiff appealed to defendant Zoning Board of Adjustment (ZBA), which upheld the determination of significance. Thereafter, he filed a complaint in lieu of prerogative writs in the Law Division alleging defendants' actions were arbitrary, capricious, and unreasonable. The Law Division found the ZBA's decision was not arbitrary, capricious, or unreasonable and dismissed the complaint. The court concludes the HPO's issuance of a determination of significance — an advisory opinion seemingly intended to prevent plaintiff's submission of an application for a demolition permit — is not a procedure authorized by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -163. The MLUL does not authorize HPOs to unilaterally grant or deny historic preservation designations that bind a zoning officer in determining whether a demolition permit shall issue; that advisory function belongs solely to the Historic Preservation Commission, as detailed in the MLUL, and cannot be delegated to other entities or individuals. The Commission, in turn, may designate a site as historic only if it is voted upon by a majority of the full governing body. The court reverses and remands to allow plaintiff to apply for a demolition permit in accordance with the MLUL. The court also concludes Jersey City's Code of Ordinances Sections 105-3, 105-4, and 105-7 are ultra vires and inconsistent with the objectives and procedures concerning historic preservation mandated by the MLUL to the extent they delegate powers reserved for a municipality's historic preservation commission to the HPS.	
July 12, 2023	STATE OF NEW JERSEY IN THE INTEREST OF M.P. (FJ-07-0934-20, ESSEX COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1229-22) M.P., a juvenile, is charged with gun possession and participation in a murder. He appeals the trial judge's decision to admit the statement he gave to detectives during a stationhouse interrogation, which was attended by his mother. M.P. asks the court to adopt a new categorical rule that would prohibit police from conducting a stationhouse interrogation of a juvenile unless the minor has consulted with an attorney. M.P. relies on neuroscience and behavioral science research that shows juveniles are not only more impulsive and compliant than adults but also tend to lack the cognitive skills to comprehend Miranda rights. He contends that in view of advances in the scientific understanding of adolescent brain development, no juvenile should be subjected to a stationhouse interrogation—with or without parental participation—until the juvenile has consulted with counsel. The court explains it has no authority to pronounce any such per se requirement. While acknowledging there have been significant reforms to New Jersey's juvenile justice system in recent years based on scientific research on how a juvenile's brain develops and how it functions differently from a fully mature adult brain, the court holds those studies do not grant it authority to substantially rework the State's juvenile interrogation jurisprudence, and certainly not to overturn New Jersey Supreme Court precedents. The court concludes that while the rules and principles announced in those precedents are not immutable, it is for our Supreme Court and the Legislature—not an intermediate appellate court—to weigh the benefits and costs of the major juvenile justice system policy shift M.P. proposes. The court also declines M.P.'s request to revise the Miranda warnings to make them more comprehensible to adolescents. While noting the current warnings are not sacrosanct and might be improved based on juvenile brain research, the court concludes the task of revising the warnings to address the inherent differences between adults and juveniles would benefit from a collaborative process the court cannot provide. Turning to the application of existing precedents to the present case, although the court is mindful of the deference it owes to the trial judge's factual findings, it concludes that considering all relevant circumstances, including M.P.'s intellectual challenges, mental conditions, highly emotional state, and the role his mother played, the State failed to prove beyond a reasonable doubt that M.P. knowingly, intelligently, and voluntarily waived his right against self-incrimination. The court therefore reverses the trial judge's decision. The court rejects the State's argument that reviewing courts should not consider an interrogee's personal characteristics, such as intelligence and education background, if those circumstances were not known by or "noticeable" to police. The court holds those circumstances remain relevant notwithstanding they may not manifest outwardly during an interrogation. The court explains that reviewing courts do not employ a purely objective test when determining whether the State proved a valid Miranda waiver beyond a reasonable doubt, but rather consider the characteristics of the accused and not just the details of the interrogation. The court also rules the guidance the Supreme Court provided in State in Int. of A.A., 240 N.J. 341, 354 (2020)—which held police should provide an opportunity for a juvenile and parent to consult privately after Miranda warnings are given—did not mandate a new rule of police procedure but rather amplified the existing totality-of-the-circumstances test. Accordingly, the court reasons the rationale undergirding A.A. should be given retroactive effect.	Appellate
July 10, 2023	MTAG AS CUST FOR ATCF II NJ, LLC VS. TAO INVESTMENTS, LLC, ET AL. (F-002270-21, HUDSON COUNTY AND STATEWIDE) (A-3138-21) The court considered plaintiff's challenge to a trial court order vacating a final judgment by default in a tax sale foreclosure. Plaintiff obtained a final judgment by default on its tax sale lien and defendants timely moved to vacate the order, alleging defective service of process. The trial court found sufficient defects with process to warrant vacating the final judgment, which reopened the redemption period and allowed defendant to redeem.	Appellate

	The court affirmed, concluding service of process was defective pursuant to both the general court rules governing personal service, as well as the RULLCA-specific statute governing service of process on LLCs, N.J.S.A. 42:2C-17. The court noted the differences between service rules in RULLCA and the Business Corporations Act (BCA), N.J.S.A. 14A:1-1 to: 18-11, in finding plaintiff's waiver argument unavailing. Although RULLCA and the BCA contain some similarities, the rules governing service are distinct and materially different. Service upon a corporation in New Jersey is governed by Rule 4:4-4(a)(6) and N.J.S.A. 14A:4-2, whereas service upon an LLC is governed by Rule 4:4-4(a)(5), and RULLCA, N.J.S.A. 42:2C-17. The RULLCA service of process provision contains an additional method of service lacking in the BCA, providing, as a permissive alternative, that where personal service in accordance with the court rules fails despite reasonably diligent efforts, service may be made upon the State filing office. N.J.S.A. 42:2C-17(b). The BCA service of process provisions do not authorize the State to accept process as an agent of a corporation. R. 4:4-4(a)(6); N.J.S.A. 14A:4-2. Because final judgment was vacated, the court followed Green Knight Cap., LLC v. Calderon, 252 N.J. 265 (2022), in holding the period of redemption reopened and continued until barred by a valid final judgment of the Superior Court. The court interpreted the holding in Green Knight, in conjunction with Rule 4:64-6(b) and the tax sale law, N.J.S.A. 54:5-86(a), to mean the redemption period reopens when a final judgment in foreclosure is timely vacated.	
July 5, 2023	STATE OF NEW JERSEY VS. JASON W. VANDEREE (19-05-0357, PASSAIC COUNTY AND STATEWIDE) (A-2329-21) Defendant injected himself with fentanyl-laced heroin, lost control of an SUV he had been driving, his vehicle crashed into a gas station, and tragically killed three persons and injured others. He pled guilty to three counts of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a), and was sentenced to an aggregate prison term of thirty years, with the requirement that he serve over twenty-five years before he is eligible for parole. Defendant appeals from the denial of his motion to suppress and his sentence. He argues that the warrantless search of his clothes, conducted at a hospital over an hour after his arrest, was unlawful, and that he is entitled to a resentencing. The court holds that the search of his clothes was a lawful search incident to his arrest. The court also holds that the sentencing court conducted the appropriate analysis and did not abuse its discretion in sentencing defendant to three consecutive prison terms of ten years for the death of each victim. Accordingly, the court affirms defendant's convictions and his sentence.	Appellate
July 3, 2023	KAREN MCKNIGHT VS. BOARD OF REVIEW, ET AL. (DEPARTMENT OF LABOR) (A-3067-20) Appellant Karen McKnight appeals from the Board of Review's (the "Board") August 26, 2022 final agency decision, which held her liable to return an overpayment of $6,277 for unemployment benefits she was allegedly ineligible to receive for the weeks ending June 30, 2018 through May 4, 2019, pursuant to N.J.S.A. 43:21-16(d). The central issue on appeal is whether a claimant, who is otherwise separated from full-time employment, may include wages received from a part-time position, which they continue to maintain, in the calculation of their average weekly wage for purposes of unemployment benefits. The court concluded that the exclusion of the wages contravenes the legislative purpose of the unemployment benefits statute and is arbitrary as legally unsupported. Therefore, the court reversed and remanded for a recalculation of benefits.	Appellate
July 3, 2023	THOMAS MAKUCH, LLC VS. TOWNSHIP OF JACKSON, ET AL. (L-0537-17, OCEAN COUNTY AND STATEWIDE) (A-3679-20) This appeal arises out of an action challenging the suspension of a company that had been providing towing services in a municipality. As a matter of first impression, the court holds that the company had limited constitutional due process rights when it was suspended from the Township's towing lists. The court also holds that plaintiff received the process due its limited property interest. In addition, the court rejected plaintiff's arguments that its suspension from the towing lists violated its constitutional substantive due process and equal protection rights. Consequently, the court affirmed the summary judgment dismissal of plaintiff's claims against the Township, its police chief, and one of its police officers.	Appellate
June 30, 2023	ALVIN SINGER VS. TOYOTA MOTOR SALES, U.S.A., INC. (L-3543-20, BERGEN COUNTY AND STATEWIDE) (A-2981-21) In this appeal from the Law Division's grant of summary judgment to defendants, the court was asked to consider, for the first time, whether a motor vehicle subject to a recall notice alone is sufficient to establish a claim pursuant to the New Jersey Lemon Law statute, N.J.S.A. 56:12-29 to -49. Defendant issued a recall notice that encompassed plaintiff's vehicle. Plaintiff subsequently brought the vehicle to the dealer to have the recall repair performed. Primarily due to disruptions resulting from the COVID-19 pandemic, defendant's ability to complete the recall was delayed. A Law Division judge granted defendant summary judgment. The court affirmed and held the existence of a recall notice alone is not sufficient to establish the "nonconformity" element of a Lemon Law claim. In addition, because plaintiff primarily used the vehicle for business purposes, it is excluded from the Lemon Law's coverage.	Appellate

June 28, 2023	C. ARSENIS, ET AL. VS. BOROUGH OF BERNARDSVILLE, ET AL. (L-1061-21, SOMERSET COUNTY AND STATEWIDE) (A-0603-21) The court considers whether the Superior Court has jurisdiction to adjudicate claims for monetary damages, filed years after the statutory deadline for filing a tax appeal, based on allegations that municipal officials committed fraud and other torts by assessing real property in a manner inconsistent with law and at an amount above its true market value. The court concludes that the Superior Court lacks jurisdiction to hear such claims because they are substantively equivalent to a tax appeal properly venued in the Tax Court or a county board of taxation, and the statutory deadlines for challenging local property tax assessments may not be circumvented by a late-filed complaint seeking damages for alleged torts arising from the tax assessment process. In light of these conclusions, the court affirms the trial court order dismissing the complaint in this matter with prejudice for failure to state a claim upon which relief can be granted.	Appellate
June 20, 2023	LIDIA BRANCO VS. FRANCISCO ANDRE RODRIGUES, ET AL. (C-000187-20, MIDDLESEX COUNTY AND STATEWIDE) (A-3030-21) Plaintiff and decedent were partners for twenty-five years but never married. During their relationship, decedent owned an income-producing property in fee simple, which, unbeknownst to plaintiff, he transferred during his lifetime to himself and plaintiff as joint tenants with rights of survivorship. Decedent signed and recorded the transfer deed. Plaintiff discovered her interest in the property only after decedent passed away. Plaintiff sought injunctive relief to quiet title and was granted summary judgment, based on the trial court's holding that all elements of a valid inter vivos gift were present. Defendant, who is decedent's son and administrator of the estate, urges reversal, claiming material issues of fact precluded summary judgment, specifically challenging the validity of the inter vivos gift of real property. The court affirms. Defendants presented no evidence to rebut the presumptions of donative intent, delivery and acceptance raised by the recorded transfer deed. Acceptance is presumed subject to plaintiff's right to disclaim her interest within a reasonable time of becoming aware of it. The additional element of relinquishment required for a valid inter vivos gift in New Jersey was also satisfied upon recordation of the transfer deed because decedent could not unilaterally restore his former fee simple estate.	Appellate
June 15, 2023	MADELINE KEYWORTH VS. CAREONE AT MADISON AVENUE, ET AL. (L-2267-18 AND L-0948-21, MORRIS AND BERGEN COUNTIES AND STATEWIDE) (RECORD IMPOUNDED) (A-3751-21/A-0722-22) These consolidated cases require us to consider the scope of the statutory self-critical analysis privilege and determine whether materials developed as part of self-critical analysis conducted pursuant to a facility's patient safety plan are subject to discovery, disclosure, and admissible at trial. This analysis hinges upon whether the facilities involved in these cases met the requirements imposed by the Patient Safety Act (PSA), N.J.S.A. 26:2H-12.23 to -12.25, and related regulations, rendering the materials sought by plaintiffs privileged and protected from disclosure. Defendants argue the trial court erred by ruling incident/investigation reports concerning separate incidents resulting in injuries at two facilities are not privileged under the PSA and therefore discoverable. The court reversed the trial court's orders. Surveying the case law interpreting the PSA and regulations, the court notes that the PSA was designed to reduce medical errors by promoting internal self-reporting and self-critical analysis related to adverse events and near misses by health care facilities. N.J.S.A. 26:2H-12.25 renders the entire self-critical-analysis process privileged, shielding a health care facility's deliberations and determinations from discovery or admission into evidence. N.J.S.A. 26:2H-12.25(g), does not condition the privilege on the finding of a Serious Preventable Adverse Event (SPAE). That an event is not reportable does not abrogate the self-critical-analysis privilege. The privilege unconditionally protects the process of self-critical analysis, the results of the analysis, and the resulting reports developed by a facility in its compliance with the PSA. A court may not order the release of documents prepared during the process of self-critical analysis. N.J.S.A. 26:2H-12.25(c) requires health care facilities to report every SPAE that occurs in that facility to the Department of Health (DOH). The documents, materials and information submitted to the DOH pursuant to this requirement are absolutely privileged and shall not be "subject to discovery or admissible as evidence or otherwise disclosed in any civil, criminal, or administrative action or proceeding." N.J.S.A. 26:2H-12.25(f). The statute provides no rationale or standard for parsing the contents of the documents, allowing for some portions to be privileged and others not privileged. However, when information sought to be protected from disclosure is not submitted to the DOH, the path to a privilege is different. N.J.S.A. 26:2H-12.25(g) establishes the self-critical analysis privilege for internal documents that are the product of an 'investigative process that may or may not lead to reporting to the DOH. Any documents, materials, or information developed by a health care facility as part of a process of self-critical analysis conducted pursuant to N.J.S.A. 26:2H-12.25(b) is not subject to discovery, disclosure or admissible as evidence in any civil, criminal, or administrative proceeding. Accordingly, if documents are submitted to the DOH pursuant to N.J.S.A. 26:2H-12.25(f) or meet the requirements of N.J.S.A. 26:2H-12.25(g), they are absolutely privileged and not subject to discovery. Under either of those circumstances, a trial court does not engage in a redaction process and release the redacted document. The	Appellate

	entire document is statutorily protected from disclosure. At the same time, the PSA expressly preserves plaintiffs' right to discover facts through conventional means of discovery if obtained from any source or context other than those specified in the PSA. Moreover, documents created outside the self-critical analysis process are subject to discovery. In each case, plaintiffs are free to engage in discovery of facts from non-privileged sources. Additionally, if defendants produced voluminous medical records in response to a discovery request in either case, plaintiff may request, and the court may order, that defendants provide a "narrative to steer them to information contained in thousands of pages of medical records" in accordance with Brugaletta v. Garcia, 234 N.J. 225, 252 (2018).	
June 9, 2023	ROSEMARY BENEDUCI VS. GRAHAM CURTIN, P.A., ET AL. (L-2254-18, UNION COUNTY AND STATEWIDE) (A-0466-21) This appeal presents a question of first impression regarding whether a claim can be made under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, where (1) an employer merges with another employer, (2) the employee does not apply for a position with the new employer, but (3) the employee contends that while all other employees were offered employment with the new employer, the employer did not extend the same offer, for reasons proscribed by the LAD. Because of the LAD's remedial purpose, plaintiff's claim that the decision not to transition her employment from Graham Curtin, P.A. — the closing employer — to McElroy Deutsch, Mulvaney & Carpenter, LLP. — the new employer — was based on discriminatory factors may constitute a viable cause of action. There are genuine disputes of material facts regarding whether the decision not to employ her at McElroy Deutsch, Mulvaney & Carpenter was, in fact, discriminatory. Therefore, the court reverses the motion court's summary judgment dismissal of plaintiff's complaint. In addition, because the motion court did not address the specifics of plaintiff's claims for wrongful termination, retaliatory termination, and aiding and abetting harassment based on age, disability, and use of disability leave, we do not either.	Appellate
June 7, 2023	URIEL GUZMAN VS. M. TEIXEIRA INTERNATIONAL, INC., ET AL. (L-3750-20, PASSAIC COUNTY AND STATEWIDE) (A-0841-21) Plaintiff alleged his employer wrongfully terminated him based on a perceived disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50. The disability allegedly perceived by defendants was that plaintiff was "suffering from COVID-19." A Law Division judge granted defendants' motion to dismiss pursuant to Rule 4:6-2(e), finding plaintiff had failed to plead a viable cause of action for perceived disability discrimination under the LAD. The court affirmed, agreeing that even assuming defendants believed plaintiff had COVID-19, the facts plaintiff had alleged in his pleadings – on July 23, 2020, plaintiff felt ill in that he felt "cold, clammy, and weak"; he was able to report to work and stay until the end of the day; the next day he was able to go to a free clinic to obtain a COVID-19 test; he did not allege he had gone to a hospital or a doctor's office or that he had otherwise sought medical attention or treatment; some unspecified time later, he reported he "was feeling better"; he was feeling well enough that he felt able to and offered to return to work; and he was terminated on July 29, 2020, after he had reported his condition had improved and he felt well enough to work – were not sufficient to establish a prima facie case under the LAD that he was terminated because his employer perceived he had a disability.	Appellate
June 7, 2023	STATE OF NEW JERSEY VS. FRANCISCO ARTEAGA (21-01-0035, HUDSON COUNTY AND STATEWIDE) (A-3078-21) Following the robbery of a store in West New York, police retrieved surveillance video from a nearby building and sent a still photo from the video to the New Jersey Regional Operations Intelligence Center (NJROIC) to help identify the perpetrator using facial recognition technology (FRT). When the NJROIC could not find a match, police sent all the raw video footage to the Facial Identification Section of the New York Police Department Real Time Crime Center (NYPD RTCC), where a detective captured a still image, compared it against the center's databases, and offered defendant as a possible match. Police subsequently included the photo from the NYPD RTCC along with five filler photos to construct photo arrays to show two eyewitnesses. The eyewitnesses identified defendant as the perpetrator, and he was subsequently charged. Defendant sent the State a discovery demand containing thirteen items seeking information regarding the FRT used to identify him. He also moved to suppress the out-of-court identifications by the eyewitnesses. The trial court conducted a Wade[1] hearing and denied the suppression motion. Meanwhile the State obtained documents from the NYPD RTCC answering two of the thirteen discovery demands. Defendant moved to compel the State to answer the remaining discovery requests, arguing the discovery was: necessary to impeach the eyewitness identification; impeach the police investigation; and exculpatory. Defendant's motion included a declaration from an FRT expert, detailing why the information sought was relevant and explaining the vulnerabilities of FRT, including problems with its reliability. The trial court denied the motion to compel.	Appellate

	On leave granted, defendant re-asserts the arguments made to the trial court. Amici joins in defendant's arguments on appeal. The court held the discovery dispute was a separate matter than the Wade hearing and defendant was entitled to the discovery to construct a defense and for impeachment purposes. Discovery into the FRT was necessary because it is a novel and untested technology, and no New Jersey court has addressed the issue. Moreover, the discovery sought was attainable because: the State raised no proprietary objections; had already obtained some discovery from the NYPD RTCC; and the items sought regarded defendant's identification and reliability of the identification process. The court reversed and remanded for entry of an order compelling the State to provide the eleven remaining items of discovery. The trial court is authorized to enter a protective order, order the in-camera review of the materials received from the State, and hold a Daubert[2] hearing, if necessary. [1] United States v. Wade, 338 U.S. 218 (1967). [2] Daubert v. Merrell Dow Pharm. Inc., 509 U.S. 579 (1993).	
June 6, 2023	STATE OF NEW JERSEY VS. TERRANCE L. JOHNSON (19-05-1438, ESSEX COUNTY AND STATEWIDE) (A-2035-21) The court reverses the trial judge's denial of defendant's motion to suppress drugs police found following a motor vehicle stop based on observed traffic violations. This case presents a novel question concerning the vehicle registration search exception to the warrant requirement. That exception authorizes police to enter a lawfully stopped vehicle to conduct a pinpointed search for a registration certificate if the motorist is unable or unwilling to produce that document after having been provided a meaningful opportunity to comply with the police request for it. State v. Terry, 232 N.J. 218, 222 (2018). In this case, defendant parked and exited the vehicle before police could effectuate the stop. The court addresses whether police may initiate a search under this "very narrow" exception when the detained motorist is outside the vehicle when police request the registration certificate, and the officer determines it would be unsafe to allow the motorist to reenter the vehicle to retrieve it. The court concludes that providing a detained motorist a meaningful opportunity to produce the registration certificate is an indispensable prerequisite to conducting a registration search—one that can only be excused when the motorist is unable or unwilling to comply with the police request for the vehicle credentials. The court holds a motorist is not "unable" to produce a registration certificate within the meaning of the exception when the sole reason for such inability is a police officer's discretionary decision to prevent reentry. The court reasons that any contrary interpretation of the registration search exception would undermine, if not eviscerate, the protection of privacy rights afforded by the meaningful-opportunity element by leaving its application to the mercy of unreviewable police discretion. The court declines to create a categorical exemption to the meaningful-opportunity requirement when police determine, in the exercise of their discretion, the motorist should not be allowed to reenter the stopped vehicle for reasons of officer safety. Although the police in this case were permitted for their own safety to place defendant in the police car and prevent him from reentering the detained vehicle throughout the investigative detention, that decision had the effect of foreclosing a warrantless registration search. The court notes that strict enforcement of the meaningful-opportunity prerequisite in these circumstances would not deprive police the ability to investigate whether a car was stolen since they can obtain the information contained in the paper registration certificate by conducting a Motor Vehicle Commission database look-up. The court also addresses significant recent revisions to N.J.S.A. 39:3-29—the statute that prescribes a motorist's duty to possess and exhibit a registration certificate to police during a motor vehicle stop and that undergirds the registration search exception to the warrant requirement. Under the revised statutory framework, motorists are no longer required to possess a paper copy of the vehicle registration certificate. Rather, they are now permitted to keep and exhibit the registration certificate in either paper or electronic form. To avoid the futility and needless privacy intrusion of a physical search for a paper document that may not even exist, and that need not be kept in the vehicle in any event, the court holds, prospectively, that police may not enter a detained vehicle under the authority of the registration search exception to search for a paper document without first asking the motorist whether the registration is kept in paper rather electronic form.	Appellate
May 30, 2023	IN THE MATTER OF REGISTRANT R.K. (ML 991-800-17, SOMERSET COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-2937-21) R.K. appeals from the denial termination of his registration obligations imposed by Megan's Law. In June 2000, R.K. was convicted of endangering the welfare of a child and lewdness and was sentenced to a three-year term of probation conditioned upon 194 days in jail, which equaled time served, registration under Megan's Law, and Community Supervision for Life (CSL). In April 2001, R.K. was convicted of engaging in prostitution as a patron, arising from an incident that took place in November 2000, less than seven months after he was convicted of endangering the welfare of a child.	Appellate

	In February 2004, R.K.'s probation was revoked on multiple grounds, including committing the prostitution offense. He was resentenced to a four-year prison term, which he completed on April 26, 2006. He has not been convicted of any subsequent offense that has not been vacated. In December 2021, R.K. filed a motion to terminate his CSL and Megan's Law registration obligations. The State opposed the motion, arguing R.K. does not meet the criteria for termination of Megan's Law registration obligations and that he remains a danger to the safety of others. The trial court denied termination of his registration requirements. R.K. appeals that decision. The same order terminated CSL. On appeal, R.K. argues he is eligible under N.J.S.A. 2C:7-2(f) to terminate his Megan's Law registration requirements. The court rejects his argument, finding it directly contrary to the clear and unambiguous language of N.J.S.A. 2C:7-2(f), established public policy, and the spirit of Megan's Law. N.J.S.A. 2C:7-2(f) allows Megan's Law registrants to apply for termination of registration requirements "upon proof that the person has not committed an offense with 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others." Within months of being sentenced to probation and released from jail, R.K. committed a prostitution offense, was convicted, and was sentenced. The court holds that pursuant to the plain language of N.J.S.A. 2C:7-2(f), at the moment R.K. committed the new offense on November 27, 2000, he was permanently and categorically ineligible for termination of his Megan's Law registration requirements. The fact he was subsequently found in violation of probation and resentenced to a prison term, which he has served, did not restart the clock for eligibility for termination of his registration requirements.	
May 26, 2023	STATE OF NEW JERSEY VS. SHAHAAD I. JONES (22-07-1704 AND 22-07-1705, ESSEX COUNTY AND STATEWIDE) (A-1243-22) The court granted defendant Shahaad I. Jones leave to appeal from an order denying his motion to suppress evidence — a handgun and large capacity magazine — seized without a warrant from his person. The court finds the motion court erred by deciding the suppression motion without an evidentiary hearing because defendant's brief submitted in accordance with Rule 3:5-7(b) raised fact issues as to whether the warrantless search of defendant was justified under the plain view exception to the warrant requirement. The court also determined the motion court erred by concluding the statutory rebuttable presumption under N.J.S.A. 40A:14-118.5(q) — that, where law enforcement either fails to adhere to the statutory retention requirements found in N.J.S.A. 40A:14-118.3 to -118.5 for body worn camera (BWC) recordings, or intentionally interferes with a BWC's ability to accurately capture audio and video recordings, the law presumes exculpatory evidence was destroyed or not captured — applies only at trials and not at suppression hearings. The court finds the plain language of N.J.S.A. 40A:14-118 does not support the motion court's determination and holds that because the statute expressly states the presumption is applicable in "criminal prosecutions," the rebuttable presumption applies in suppression hearings. The court reverses the motion court's order denying defendant's suppression motion and remands for further proceedings, including for a determination of whether defendant demonstrates an entitlement to the rebuttable presumption under N.J.S.A. 40A:14-118.5(q), and, if so, whether the State rebuts the presumption.	Appellate
May 25, 2023	ARBUS, MAYBRUCH & GOODE, LLC VS. DANIEL COHEN, ET AL. (L-2646-20, MONMOUTH COUNTY AND STATEWIDE) (A-2168-21) In this appeal from summary judgment in a breach of contract action, defendants argue plaintiff law firm violated rules of professional conduct by failing to disclose in its retainer agreement the unit of incremental billing – one tenth of an hour – it would utilize during the course of representation. Plaintiff and defendants entered two retainer agreements, both of which disclosed a required initial deposit, the hourly rates of each attorney at the firm, and which party was responsible for certain administrative costs. Plaintiff represented defendants for more than two years pursuant to the parties' retainer agreements, sending monthly and bimonthly invoices throughout the duration demonstrating work billed in increments of one-tenth of an hour. When defendants refused to remain current with outstanding fees, plaintiff ceased representation and instituted the breach of contract action. The trial court granted summary judgment. Defendants urged reversal on appeal. The court affirmed summary judgment as properly granted, and held the retainer agreement was lawful and ethical where, among other things, it sufficiently apprised the clients of the express terms of the agreement in accordance with RPC 1.5(b), and the parties' course of conduct for two years demonstrated assent to those terms.	Appellate
May 25, 2023	STATE OF NEW JERSEY VS. ZAK A. MISSAK (W-2021-0485-1808, SOMERSET COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-0193-22) Law enforcement officers arrested defendant when he appeared for what he understood to be a sexual encounter with a fourteen-year-old girl with whom he believed he had exchanged text messages on the two preceding days. In fact, defendant exchanged the messages with a detective using two different cellular phone applications. After seizing defendant's phone, the officers obtained a search warrant for the phone and an order requiring defendant provide the	Appellate

	phone's passcode. The court reverses an order denying defendant's motion to quash the search warrant, which authorized a search of all the phone's data. The court holds the affidavit supporting issuance of the warrant did not establish probable cause to search all the phone's data. The court also determines probable cause to search all the data on a phone is not established by merely demonstrating the phone's data may include evidence of criminal activity. The court further concludes a search of data on a cell phone must be limited to only the particular data for which law enforcement establishes probable cause to believe includes evidence of criminal activity, and a search warrant affidavit must define the locations of such data on the phone to the extent possible based on available technology.	
May 25, 2023	IN THE MATTER OF REGISTRANT M.H. (ML-95-18-0024, SOMERSET COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1189-21) M.H., a Tier II registrant, filed a motion to terminate his Megan's Law obligations under N.J.S.A. 2C:7-2(f). The court affirmed the denial of registrant's application as he committed a failure to report offense within fifteen years of his conviction. The court also rejected M.H.'s facial and as applied due process and equal protection challenges to subsection (f). In doing so, the court relied principally on the reasoning set forth in Doe v. Poritz, 142 N.J. 1 (1995), which upheld as constitutional Megan's Law's registration and community notification provisions, and In re Registrant A.D., 441 N.J. Super. 403, 420 (App. Div. 2015). The court also rejected registrant's reliance on State in Interest of C.K., 233 N.J. 44 (2018), as that case addressed a juvenile's challenge to subsection (g), and the authority relied upon by the court in concluding subsection (g) was unconstitutional to juveniles is inapplicable to M.H.'s challenges to subsection (f).	Appellate
May 18, 2023	STATE OF NEW JERSEY VS. DONNIE E. HARRELL (19-12-0852, UNION COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1908-22) In this appeal, the court considers the propriety of a Law Division order, excluding several allegations of sexual abuse against defendant that were memorialized in the child-victim's videorecorded statement to law enforcement. The trial judge had admitted the entire statement under the tender-years exception to the hearsay rule, N.J.R.E. 803(c)(27). At that time, the judge found the statement trustworthy, noting the alleged victim, who was eight years old when she gave her statement, would be called as a witness at trial. Prior to trial, the State informed the defense the child was unable to recall all but one incident. During the ensuing N.J.R.E. 104 hearing, the alleged victim, now fifteen years old, acknowledged she no longer recalled certain sexual conduct asserted in her tender-years statement. The trial judge granted defendant's in limine motion, limiting the child's testimony to the only allegation she recalled, and ordered her videorecorded statement redacted accordingly. The judge determined the child's lack of memory rendered her unavailable for cross-examination on the incidents she could not recall, thereby violating defendant's right of confrontation. During jury selection in the now-adjourned trial, the court granted the State's emergent application to file a motion for leave to appeal, granted leave, and now reverses the Law Division order. The court holds defendant's right of confrontation is not violated by admission of the child's entire videorecorded statement under N.J.R.E. 803(c)(27), previously deemed trustworthy by the trial judge, provided the victim testifies at trial and is subject to cross-examination. The court therefore concludes the trial judge improperly parsed, and erroneously excluded, those alleged incidents the victim does not recall.	Appellate
May 18, 2023	WILLIAM PACE, ET AL. VS. HAMILTON COVE, ET AL. (L-1076-22, HUDSON COUNTY AND STATEWIDE) (A-0674-22) Plaintiffs are tenants at a luxury apartment building complex. They claim they were defrauded by defendant landlords' knowingly false promises in its advertisements, brochures, and oral statements to prospective tenants that the apartment complex would have "elevated, 24/7 security" and that security personnel would be stationed 24/7 at a podium near each building's entrance. Plaintiffs allege they relied on these representations in deciding to lease the apartments at the rent level charged. Upon moving into the apartments, plaintiffs learned that the apartment complex's security cameras did not function, and security personnel were only stationed at the front of the building from approximately 11:00 a.m. to 5:00 p.m. on weekdays, with shorter hours on weekends, as opposed to being present 24/7, and at times were present during those hours when performing other assigned tasks. The lease contained a three-day attorney review clause and had several addendums, including a waiver of the right to file a class action against the landlord. The lease did not contain an arbitration agreement. Plaintiffs filed a class action complaint alleging common law fraud and violations of the New Jersey Consumer Fraud Act against their landlord. Prior to discovery or class certification, defendants moved to dismiss the complaint for failure to state a claim upon which relief can be granted, or, in the alternative, to strike plaintiffs' class action allegations. Defendants argued the class action waiver in plaintiffs' lease agreements were clear and unambiguous and the lease was not a contract of adhesion. Plaintiffs argued the lease was a contract of adhesion, the class waiver was unconscionable, and the caselaw upholding class action waivers were inapplicable because the contracts in those cases included an arbitration provision. The trial court denied the motion in its entirety. Defendants'	Appellate

	motion for leave to appeal that interlocutory ruling was granted. The court affirmed the denial of defendants' motion, holding that a waiver of the right to maintain a class action is unenforceable absent an arbitration agreement. Noting that the class action waiver dismantled or disabled important procedures provided in our Part IV rules, and that the public policy of this state favors a class action where numerous claims involve a common nucleus of facts, the court adopts a bright-line rule that in the absence of an arbitration agreement, class action waivers are unenforceable as a matter of law and public policy.	
May 10, 2023	STATE OF NEW JERSEY VS. ANGELO MAURO (19-10-1682, MIDDLESEX COUNTY AND STATEWIDE) (CONSOLIDATED) (A-1900-22/A-2279-22) In Docket No. A-1900-22, the court first granted the State leave to appeal from the propriety of a Law Division judge's pretrial decision that barred the admission of location data from the alleged victim's cell phone and a voice mail purportedly sent from the defendant to his co-defendant. The motion judge barred the evidence because it was provided by the State after the judge's December 9, 2021 decision that mandated the production of any outstanding discovery by January 6, 2022. While that appeal was pending, in Docket No. A-2279-22, the court also granted the State leave to appeal from a February 21, 2023 Law Division order issued by the same judge, denying the State's motion for reconsideration of an October 7, 2022 order. That order had barred the admission of two text messages allegedly sent by defendant as cumulative to other stipulated N.J.R.E. 404(b) evidence and fraught with impermissible hearsay. The court considered the lengthy procedural history in view of the governing legal principles, including its discretionary standard of review. Unable to conclude on the record provided that the motion judge abused his discretion in either appeal, the court affirmed.	Appellate
May 9, 2023	ACCOUNTEKS.NET, INC., ETC. VS. CKR LAW, LLP, ET AL. (C-000017-18, ESSEX COUNTY AND STATEWIDE) (A-1067-20) Plaintiff information technology firm brought multiple claims against defendants, its former employee and the law firm that hired him as its in-house technology specialist. Among other claims, plaintiff alleged the former employee breached his non-compete agreement with plaintiff by taking the job with the law firm, a long-term client of plaintiff. Plaintiff also alleged the law firm tortiously interfered with the non-compete agreement between plaintiff and its former employee. After a trial, the Chancery Division enforced the non-compete agreement and found the law firm had tortiously interfered with the agreement between plaintiff and its former employee. The Chancery Division entered judgment against defendants for damages, including awarding of attorney's fees against the law firm as damages for its tortious interference. Defendants appealed. On appeal, the court held the Chancery Division properly awarded attorney's fees as damages for the law firm's tortious interference with contractual relations as an exception to the American Rule, pursuant to DiMisa v. Acquaviva, 198 N.J. 547 (2009).	Appellate
May 4, 2023	DCPP VS. A.P., L.R., T.C., AND J.P., IN THE MATTER OF D.P. AND T.R. (FN-13-0151-19, MONMOUTH COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-3514-21) Defendant appeals an order entered in the Family Part permitting the Division of Child Protection and Permanency to use expunged records obtained from the Monmouth County Prosecutor's Office in a Title 9 litigation concerning the alleged abuse and neglect of his son. Defendant argues the trial court erred by authorizing the Division to utilize records that were expunged, sealed automatically, and precluded any subsequent use. We conclude the Division was permitted to use the expunged records pursuant to N.J.S.A. 2C:52-19 because the statute allows the release and use of expunged records upon good cause shown and affirm.	Appellate
May 3, 2023	IN THE MATTER OF REGISTRANT R.H., ET AL. (ML-19-08-0084 AND ML-08-04-0076, GLOUCESTER AND CAMDEN COUNTIES AND STATEWIDE) (RECORD IMPOUNDED) (CONSOLIDATED) (A-3543-20/A-0203-22) Registrants filed motions to terminate their Megan's Law registration requirement under N.J.S.A. 2C:7-2(f), arguing the fifteen-year offense-free requirement on juveniles adjudicated delinquent of qualifying Megan's Law offenses did not apply. The court affirmed the denial of registrants' motions to terminate their Megan's Law obligations because both juveniles were age fifteen or older at the time of their sexual offenses and N.J.S.A. 2C:7-2(f) applies to every person required to register under Megan's Law, including juveniles.	Appellate
May 1, 2023	JEFFREY ACHEY, ET AL. VS. CELLCO PARTNERSHIP, ET AL. (L-0160-22, MIDDLESEX COUNTY AND STATEWIDE) (A-3639-21 ; A-3639-21) In this class action matter arising out of a contract dispute, plaintiffs appeal from a July 15, 2022 order granting defendants' motion to stay proceedings against Verizon and to compel arbitration in accordance with the arbitration	Appellate

	agreement appearing in the Verizon Customer Agreement. In an oral opinion of the same date, the trial judge first severed a limitation on damages provision from the agreement before enforcing the arbitration clause. In reaching its decision, the court did not discuss any provision of the agreement other than the limitation on damages and severability clause. Nor did the trial judge address why the reasoning of MacClelland v. Cellco P'ship, 609 F. Supp. 3d 1024 (N.D. Cal. 2022), which found the exact same arbitration clause unenforceable as permeated with unconscionability, should not apply with equal force here. Exercising de novo review, the court held that the arbitration agreement is unenforceable in its entirety as it is permeated by provisions which are unconscionable and violative of New Jersey public policy. The court affirmed the trial judge's determination striking the agreement's limitation on damages, reversed the order staying the proceedings and compelling arbitration, and remanded for proceedings consistent with its decision.	
May 1, 2023	JOHN CAUCINO VS. BOARD OF TRUSTEES, ETC. (TEACHERS' PENSION AND ANNUITY FUND) (A-1733-21 ; A-1733-21) Pursuant to N.J.S.A. 18A:66-36 (Section 36), a member of the Teachers' Pension and Annuity Fund (TPAF) who has "completed [ten] years of service" and has "separated voluntarily or involuntarily from . . . service[] before reaching service retirement age" is eligible to receive deferred retirement benefits, provided the separation was "not by removal for conduct unbecoming a teacher or other just cause." N.J.S.A. 18A:6-7.1 permanently disqualifies teachers and other school employees who have been convicted of certain crimes from employment in all school systems under the supervision of the Department of Education. Petitioner had accumulated eleven years of service credit when his teaching certificate was revoked by the State Board of Education based on a disqualifying criminal conviction under N.J.S.A. 18A:6-7.1. The conviction was the result of crimes he committed while employed at a mortgage company before he became a teacher and were unrelated to his position as a teacher. The TPAF Board denied the petitioner's application for deferred retirement benefits, reasoning his separation from membership in the pension plan was based upon a "removal for conduct unbecoming a teacher." The court reversed, relying on In re Hess, where the court held that under the equivalent Public Employees' Retirement System statute forfeiture of deferred pension benefits was "conditioned on an involuntary removal due to misconduct related to employment." 422 N.J. Super. 27, 37 (App. Div. 2011). And, Masse v. Board of Trustees, Public Employees' Retirement System, where the Court distinguished between removal based on misconduct and forfeiture of pension rights "unrelated to [the employee's] service." 87 N.J. 252, 263 (1981).	Appellate
May 1, 2023	MERCK & CO., INC., ET AL. VS. ACE AMERICAN INSURANCE COMPANY, ET AL. (L-2682-18, UNION COUNTY AND STATEWIDE) (CONSOLIDATED) (A-1879-21/A-1882-21 ; A-1879-21/A-1882-21) In 2017, a malware/cyberattack infected Merck's computer and network systems. Prior to that date, someone had gained access to the computer systems of a Ukrainian company that had developed an accounting software called M.E. Doc used by Merck and other companies in Ukraine. The malware was delivered into the accounting software. Ultimately, over 40,000 machines in Merck's network were infected, resulting in "massive disruptions" to Merck's global operations. The malware spread to at least sixty-four different countries, including Russia. Merck sought coverage for its losses under defendants' "all risks" property insurance policies. Defendants denied coverage under the "Hostile/Warlike Action" exclusion included in all their policies. Although defendants conceded the word "warlike" might not be applicable, they asserted the word "hostile" should be read in the broadest possible sense, as meaning "adverse," "showing ill will or a desire to harm," "antagonistic," or "unfriendly." Defendants contend that any action that "reflects ill will or a desire to harm by the actor" falls within the hostile/warlike action exclusion, as long as the actor was a government or sovereign power. The court found the plain language of the exclusion does not support defendants' interpretation. The exclusion of damages caused by hostile or warlike action by a government or sovereign power in times of war or peace requires the involvement of military action. The exclusion does not state the policy precluded coverage for damages arising out of a government action motivated by ill will. The court also considered the history of the war exclusion, which has been included in policies for more than a century. The few applicable cases reaffirm that similar exclusions have never been applied outside the context of a clear war or concerted military action. The court concludes the exclusion did not include a cyberattack on a non-military company that provided accounting software for commercial purposes to non-military consumers, regardless of whether the attack was instigated by a private actor or a "government or sovereign power." Defendants could not assert the exclusion to bar coverage for Merck's losses.	Appellate
April 18, 2023	ESTATE OF RICHARD M. LASIW, ET AL. VS. PEDRO M. PEREIRA M.D., ET AL. (L-0387-20, BERGEN COUNTY AND STATEWIDE) (A-1231-21) In this medical malpractice litigation, plaintiff, individually and as executrix of her late husband's estate, moved to compel defendants to permit her expert to conduct an onsite inspection of decedent's electronic medical record (EMR). Plaintiff contended that pursuant to Rule 4:18-1, she had the right to inspect and examine the "metadata" associated with the EMR, which exceeded more than 2,000 pages and had already been produced in PDF format by defendants. Plaintiff agreed that defendants would control the log in to the computer system and the mouse guiding the expert's review. Plaintiff also agreed not to access the system through the use of thumb drives or discs to copy any information. Plaintiff also sought production of an "audit trail" of the EMR for nearly a full year after decedent's discharge.	Appellate

	Defendants objected, arguing the discovery request was unduly burdensome and posed security risks and the risk of exposing other patient's EMR. They argued that plaintiff should identify specific entries in the record for which she sought metadata, and they would produce it, subject to assertions of confidentiality or privilege. Defendants also objected to producing the audit trail, claiming it, too, was unduly burdensome and irrelevant. The Law Division judge granted plaintiff's motion, and the court granted defendants leave to appeal. The court concluded that plaintiff was entitled to access metadata in decedent's EMR pursuant to Rules 4:10-2(f) and 4:18-1, and that defendants bore the burden of demonstrating the discovery request was unduly burdensome. The court agreed with the motion judge's conclusion that defendants failed to do so, and the proposed inspection was reasonable. The court affirmed that portion of the judge's order granting the inspection as modified by reasonable restrictions, including a time limit for the inspection of four hours. The court, however, reversed that portion of the judge's order requiring defendants to produce a post-discharge audit trail that extended beyond the date of the last entries made to decedent's EMR, finding plaintiff failed to demonstrate the potential for relevant information from such a broad request.	
April 6, 2023	STEPHANIE ANGUS VS. BOARD OF EDUCATION, ETC. (NEW JERSEY COMMISSIONER OF EDUCATION) (A-1979-21) The court affirms the New Jersey Commissioner of Education's final agency decision finding petitioner Stephanie Angus is entitled to sick leave under N.J.S.A. 18A:30-1 during the period the Board of Education of the Borough of Metuchen excluded Angus from working in her position as a tenured teacher, pursuant to a directive from the New Jersey Department of Health, because of her exposure to a person who tested positive for COVID-19. The court determined Angus qualified for sick leave under N.J.S.A. 18A:30-1's plain language, which in part defines sick leave to include an absence from an employee's "post of duty . . . because he or she has been excluded from school by the school district's medical authorities on account of a contagious disease." The court rejected the Board of Education's claim N.J.S.A. 18A:30-1 qualifies an employee for sick leave when the employee is excluded from school "on account of a contagious disease" only where the employee personally suffers from the disease. The court reasoned the Board's interpretation is not supported by the statute's plain language. The court also determined acceptance of the Board of Education's interpretation of N.J.S.A. 18A:30-1 would render the exclusion-from-work-on-account-of-a-contagious-disease sick leave qualification superfluous because the statute otherwise separately defines sick leave to include an employee's absence from work where the employee suffers a personal disability due to an illness.	Appellate
April 6, 2023	J.D. VS. A.M.W. (FV-04-0695-22, CAMDEN COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1269-21) Plaintiff appeals from the order of the Superior Court, Chancery Division, Family Part, Camden County's dismissing her domestic violence complaint against defendant. The Family Part found plaintiff failed to satisfy her burden under the second prong of Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006). On appeal, plaintiff argued the trial court misapplied the facts to the law regarding Silver's "second inquiry." The court concluded plaintiff satisfied her burden under both prongs of Silver, and also held the Family Part erred when it considered whether plaintiff's current husband and defendant's father could protect her in the future, when the proper focus of a Silver "second inquiry" should be on defendant's likelihood to continue his course of abusive behavior, not whether external factors exist which might thwart defendant's efforts to continue the abuse. The court reversed and remanded to the Family Part for entry of a final restraining order against defendant.	Appellate
April 5, 2023	STATE OF NEW JERSEY VS. MARESE WASHINGTON, JR. (22-05-0340, CUMBERLAND COUNTY AND STATEWIDE) (A-0733-22) At issue in this appeal is whether a warrant is required to seize a vehicle pursuant to the plain-view exception. The court granted the State leave to appeal from a Law Division order, which suppressed evidence seized from a motor vehicle that police believed defendant used during the commission of a fatal shooting. The motion judge essentially reasoned police improperly impounded the car because probable cause did not arise spontaneously prior to the warrantless seizure. The judge suppressed the evidence seized, following issuance of a warrant to search the car, as fruit of the poisonous tree. The State argued police were permitted to seize the vehicle pursuant to the plain-view exception to the warrant requirement while they awaited issuance of the search warrant. The State further contended the "unforeseeability and spontaneity" requirement espoused in State v. Witt, 223 N.J. 409 (2015), applies to the automobile – not the plain-view – exception to the warrant requirement. The court concludes the motion judge mistakenly conflated the discrete rules for the warrantless search and seizure of an automobile, and erroneously reintroduced the inadvertence prong of the plain-view exception to the warrant requirement, eliminated by our Supreme Court in State v. Gonzales, 227 N.J. 77 (2016). The court therefore reverses the Law Division order and remands for further proceedings.	Appellate

April 4, 2023	DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, ET AL. VS. GEORGE HARMS CONSTRUCTION CO., INC., ET AL. (L-2394-16, MERCER COUNTY AND STATEWIDE) (A-1484-20) Plaintiff Delaware River Joint Toll Bridge Commission (Commission) is a bi-state entity created by an interstate compact between the State of New Jersey and the Commonwealth of Pennsylvania and approved by the United States Congress. In this matter, arising out of a construction project to replace the Scudder Falls Bridge that connects the two states, the court considered whether the Commission was authorized to approve, use, and enforce a project labor agreement (PLA) as a mandatory requirement in its bid specifications. This mandate required all bidding contractors and subcontractors to enter into a PLA with certain named unions affiliated with the local building and construction trades councils, recognizing those unions as the sole and exclusive bargaining representatives of the bidder's project workforce. Defendant George Harms Construction Co. was prevented from bidding on the project because it was a party to a collective bargaining agreement with United Steel Workers (USW), which was excluded from the PLA. Harms threatened to seek an injunction if the Commission did not add USW as a signatory union to the PLA. Only one company bid on the project, submitting a bid $69 million over the projected cost of the project and $71 million more than Harms' projected bid. The Commission sought a declaratory judgment permitting it to award the contract, including the PLA, to the successful bidder. Harms answered and asserted numerous counterclaims, including a violation of competitive bidding laws. The trial court dismissed the complaint as moot (the project was completed during the litigation) and granted summary judgment to the Commission on the counterclaims. The court preliminarily determined the issue was not moot because of the importance of interstate compacts and the high likelihood that the Commission would use a PLA in a future contract. The issue, then, was whether the Commission had the authority under its compact to approve and use a PLA in its bidding process. The compact itself is silent on PLAs. Therefore, the panel looked to the two states' treatment of PLAs. The court engaged in an extensive analysis of the case law and legislative history in New Jersey and Pennsylvania regarding PLAs. Currently New Jersey has a statute governing PLAs, N.J.S.A. 52:38-1 to -7. Pennsylvania does not have any legislation. The case law, emanating from the Commonwealth Court disfavors PLAs unless the project involves "extraordinary circumstances" and the PLA treats union and nonunion contractors evenly. Therefore, New Jersey and Pennsylvania do not have parallel or substantially similar state legislation or common law regarding the use of PLAs. The court concluded the Commission did not have the power to create and authorize use of the mandatory PLA for its project because: (1) there is no express authority for unilateral action in the compact; (2) New Jersey and Pennsylvania have not enacted complementary or parallel legislation and do not have similar common law on PLAs; and (3) the Commission has not consented to exercise of single-state jurisdiction. The court affirmed the dismissal of the declaratory judgment complaint, albeit for different reasons than articulated by the trial court. The court reversed the dismissal of the counterclaims and remanded to the trial court.	Appellate
April 3, 2023	JEFFREY SANTANA VS. SMILEDIRECTCLUB, LLC (L-3156-21, HUDSON COUNTY AND STATEWIDE) (A-2433-21 ; A-2433-21) Plaintiff filed a products-liability complaint against defendant, alleging the invisible tooth aligners he purchased on-line damaged his teeth and resulted in lasting injuries. Defendant moved to dismiss the complaint, citing an arbitration provision that was embedded in the first of three hyperlinked underlined documents that appeared in different colored font. The hyperlinked document, entitled "Informed Consent," included not only the arbitration agreement but also explanations of the benefits and risks of using the aligners, representations by plaintiff regarding his oral health, and his consent to the treatment. Users could not proceed to open an account and order the aligners unless they clicked on a box next to the three hyperlinked documents, "I Agree," and another button, "FINISH MY ACCOUNT." The Law Division denied defendant's motion, relying extensively on our recent decision in Wollen v. Gulf Stream Restoration & Cleaning, LLC, 468 N.J. Super. 483 (App. Div. 2021). The court reversed, drawing distinctions between the "browsewrap" agreement at issue in Wollen, and the "clickwrap" agreement in this case. See, e.g., Skuse v. Pfizer, Inc., 244 N.J. 30, 55 n.2 (2020) ("Contracts that require 'that a user consent to any terms or conditions by clicking on a dialog box on the screen in order to proceed with the internet transaction' are sometimes called 'clickwrap' agreements," and "are 'routinely enforced by the courts.'" Skuse, 244 N.J. at 55 n.2 (first quoting Feldman v. Google, Inc., 513 F. Supp. 2d 229, 236 (E.D. Pa. 2007); and then quoting HealthPlanCRM, LLC v. AvMed, Inc., 458 F. Supp. 3d 308, 334–35 (W.D. Pa. 2020)).	Appellate
March 31, 2023	PEGGY BIRMINGHAM, ET AL. VS. TRAVELERS NEW JERSEY INS. CO., ET AL. (L-1009-20, GLOUCESTER COUNTY AND STATEWIDE) (A-0429-21 ; A-0429-21) The court determined an insured's satisfaction of its deductible or copayment obligation under a standard	Appellate

	automobile policy does not operate to also reduce the $15,000 statutory Personal Injury Protection (PIP) limits of liability. In reaching its decision, the court examined the policies' declaration pages, PIP policy provisions, and the incorporated Buyer's Guide, and concluded Travelers did not clearly express to reasonable insureds, like plaintiffs, that the limits of liability would be reduced if their claims exceeded $15,000. The court also evaluated the legislative history of New Jersey's no-fault scheme and determined its decision did not violate the Legislature's overarching goal of reducing the costs of auto insurance. Further, the court held absent legislative and regulatory approval, defendant was likely precluded from providing less than $15,000 of PIP medical expense benefits, regardless of the clarity of its policies or declaration pages. Finally, the court distinguished our previous decision in IMO Industries Inc. v. Transamerica Corp., 437 N.J. Super. 577, 622 (App. Div. 2014), as that case involved a commercial general liability policy between sophisticated parties and relied in part on Benjamin Moore & Co. v. Aetna Co., 179 N.J. 87, 93 (2004), which involved a commercial general liability policy whose express language clearly indicated to the insured that the insurer's limit was reduced by the policy's deductible.	
March 29, 2023	STATE OF NEW JERSEY VS. JERRY ROSADO (2022-0076-0514, CAPE MAY COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-0516-22 ; A-0516-22) The court holds that the January 3, 2002 amendment to the criminal statute of limitations, N.J.S.A. 2C:1-6, does not apply retroactively to an offense when the limitations period in effect when the offense was committed had expired. Accordingly, the court reverses an order denying defendant's motion to dismiss an April 2022 criminal complaint charging him with a May 1990 second-degree sexual assault, N.J.S.A. 2C:14-2(c)(2). The criminal statute of limitations in effect in May 1990 provided that a prosecution for a sexual assault had to be commenced "within five years after it is committed." N.J.S.A. 2C:1-6(b)(1) (1989). Effective January 3, 2002, the statute was amended to carve out an exception for circumstances in which the prosecution includes DNA or fingerprint evidence. L. 2001, c. 308, § 1. The amendment provides that the limitations period "does not start to run until the State is in possession of both the physical evidence and the DNA or fingerprint evidence necessary to establish the identification of the actor by means of comparison to the physical evidence." The State argued that the 2002 amendment "tolled" the running of the statute of limitations related to defendant's May 1990 alleged sexual assault until May 2021, when it collected DNA from defendant. The court rejects the State's construction of the 2002 amendment. The court's interpretation of the amendment as applying prospectively avoids a violation of the ex post facto clauses of both the federal and New Jersey constitutions. U.S. Const. art. I, § 10, cl. 1; N.J. Const. art. IV, § 7, ¶ 3. The court, therefore, reverses the order denying defendant's motion and remands with direction that the trial court enter an order dismissing, with prejudice, the criminal complaint in this matter.	Appellate
March 28, 2023	GOLD TREE SPA, INC., ET AL. VS. PD NAIL CORP., ET AL. (L-3007-20, MONMOUTH COUNTY AND STATEWIDE) (A-3748-21) The court affirms Law Division's orders denying defendants' motion to enforce an unsigned settlement agreement arising from a voluntarily entered mediation. The court agreed with the Law Division that, in accordance with Willingboro Mall, Ltd. v. 240/242 Franklin Ave., LLC, 215 N.J. 242, 262 (2013), no agreement was reached because the parties did not sign the agreement before the mediation concluded. The court, as did the Law Division, rejected defendants' argument that Willingboro's holding did not apply because, there, the mediation was court-ordered, and, in the present case, the mediation was voluntary. Based upon the principles set forth in Willingboro, whether mediation is court-ordered or voluntary is a distinction without a difference. Furthermore, the parties' post-mediation conduct evidence there was no meeting of the minds that a settlement was reached.	Appellate
March 24, 2023	STATE OF NEW JERSEY VS. ANDREW HIGGINBOTHAM (22-02-0502, CAMDEN COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-2548-21) Defendant appeals from the trial court's order denying his motion to dismiss an indictment, which charged him with fifteen counts of second-degree child endangerment, N.J.S.A. 2C:24-4(b)(4), (5)(a)(i), (5)(a)(ii); and one count of third-degree child endangerment, N.J.S.A. 2C:24-4(b)(5)(b)(iii). These provisions were enacted in 2018 as part of the child erotica amendment to the endangerment statute. L. 2017, c. 141 (the child erotica amendment). Finding that the statute is both unconstitutionally vague and overbroad, the court reversed. N.J.S.A. 2C:24-4(b)(4) makes it a second-degree crime to photograph or film a child in a sexually suggestive manner, which necessarily requires the viewing and possession of such material. N.J.S.A. 2C:24-4(5)(a)(ii) makes it a second-degree crime to possess child erotica with intent to distribute it. Finally, N.J.S.A. 2C:24-4(5)(b)(iii) makes it a third-degree crime to possess child erotica. The amendment's expanded definition of child pornography, which includes child erotica (i.e., images that "portray a child in a sexually suggestive manner"), is at odds with New York v. Ferber, 458 U.S. 747 (1982); Osborne v. Ohio, 495 U.S. 103 (1990); and Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002). The child erotica amendment is overbroad because it precludes the private possession of material the United States Supreme Court has said is protected by the First and Fourteenth Amendments. Based on the amendment's definition of "portray a child in a sexually suggestive manner," any image of a child could appeal to sexual interests and thus be proscribed. Therefore, the amendment is also vague because a person of ordinary intelligence would not understand the limits of permissible conduct.	Appellate

March 21, 2023	IN THE MATTER OF THE APPEAL OF THE DENIAL OF M.U.'S APPLICATION FOR A HANDGUN PURCHASE PERMIT, ETC. (GPA-0004-20, BERGEN COUNTY AND STATEWIDE) (A-2535-20 ; A-2535-20) In this case of first impression, the court determines that N.J.S.A. 2C:58-3(c)(5), which precludes the issuance of a handgun purchase permits (HPP) or a firearms purchaser identification card (FPIC) "where the issuance would not be in the interest of the public health, safety or welfare" is constitutional, applying the analytic paradigm adopted by the United States Supreme Court's recent Second Amendment decision in New York State Rifle & Pistol Association v. Bruen, 597 U.S. ___, 142 S. Ct. 2111 (2022). Considering the historical traditions and analogues present leading up to and during the ratification of the Second Amendment, the court holds that N.J.S.A. 2C:58-3(c)(5) "is consistent with this Nation's historical tradition of firearm regulation," and that individuals who engaged in repetitive misconduct without being convicted of a crime or felony-equivalent offense, are not "law-abiding citizens" whom the Second Amendment protects. The court also holds that expunged records may be considered when determining whether to grant a HPP or revoke a FPIC. The court affirms the denial of appellant's HPP application and revocation of his previously issued FPIC. The court reverses the forfeiture and compelled sale of appellant's firearms under N.J.S.A. 2C:58-3(f), which addresses revocation of FPICs and carry permits but provides no basis for the forfeiture of firearms already possessed.	Appellate
March 16, 2023	NORMA DAVIS VS. DISABILITY RIGHTS NEW JERSEY, ET AL. (L-4093-20, UNION COUNTY AND STATEWIDE) (CONSOLIDATED) (A-0269-22/A-0270-22) In these appeals, calendared back-to-back and consolidated to issue a single opinion, the court granted plaintiff Norma Davis leave to challenge two separate Law Division discovery orders arising from her lawsuit alleging that defendants Disability Rights New Jersey, Gwen Orlowski, and Ellen Catanese terminated her employment in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50. The orders were stayed pending these appeals. In A-0269-22, the trial court order (cell phone record order) granted in part and denied in part plaintiff's motion to quash defendants' subpoena to her cellular provider seeking her cell phone records. Plaintiff used her cell phone to perform her work duties while allowed to work from home. The order required plaintiff: (1) to produce a redacted copy of her personal cell phone records indicating work-related calls and texts made and received during her normal workday from January 1, 2018 to January 31, 2020; and (2) to submit to the court a copy of the redacted records provided to defendants, as well as a Vaughn[1] index of an unredacted copy of the records showing all calls and texts made and received during that period. National Employment Lawyers Association/New Jersey (NELA) filed an amicus brief in support of plaintiff. In A-0270-22, the trial court order (social media posts order) granted in part and denied in part defendants' motion to compel plaintiff to provide copies of her private social media posts, profiles, and comments (collectively "social media posts" or "social media content") from January 1, 2020 to August 29, 2022, depicting an emotion, attaching a picture of herself, or mentioning: Disability Rights or her lawsuit's allegations; her vacations or celebrations; her being ill or worrying about being ill; and her work. NELA and New Jersey Association of Justice (NJAJ) filed amicus briefs in support of plaintiff. The court is unpersuaded by plaintiff's and amici's arguments that the trial judge abused his discretion in entering orders which abridged her privacy interests. The court concludes the judge appropriately considered plaintiff's privacy interests in her social media posts and cell phone bills and did not err in allowing defendants' discovery of limited private social media posts and cell phone bills to defend against her claims that her termination violated the LAD, causing her emotional distress. The court, however, remands for the judge to add the requirement in the social media posts order — similar to the cell phone record order — that plaintiff submit a redacted copy of her private social media posts to defendants and the trial court as well as an unredacted copy of the posts with a Vaughn index to the trial court. [1] As pronounced in Vaughn v. Rosen, 484 F.2d 820, 826-28 (D.C. Cir. 1973).	Appellate
March 16, 2023	Y.H. AND K.W.C. VS. T.C., ET AL. (L-2488-20, HUDSON COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1966-21) In this interlocutory appeal, the court considered the protective breadth of the Expungement of Records statute, N.J.S.A. 2C:52-1 to -31.1 (the expungement statute), against the statutory provisions regulating Transportation Network Companies N.J.S.A. 39:5H-1 to -27 (the TNC statute), where a conviction for aggravated assault bars employment as a rideshare driver and Uber's potential culpability under a theory of negligent hiring or employment. T.C., an Uber driver, had a previous conviction for aggravated assault of a law enforcement officer. Uber had knowledge of T.C.'s prior conviction for aggravated assault—in the form of the two background checks—for some period of time prior to the entry of an order of expungement.	Appellate

	The court addressed the narrow issue of whether the expungement gives T.C.'s employer the ability to assert T.C.'s rights so as to imply ignorance of the prior assault conviction. The court read N.J.S.A. 2C:52-19 to prevent the evidence of an expunged record to be used against the person for whom the expungement is meant to benefit: the recipient of the expungement. The court does not read N.J.S.A. 2C:52-19 to give instant cover to third parties without further examination of that third-party's conduct, duty and responsibility in a negligent hiring claim. The court remanded for further development of the record.	
March 7, 2023	JANAN PFANNENSTEIN, ET AL. VS. CHRISTINE SURREY, D.O., ET AL. (L-0791-21, BURLINGTON COUNTY AND STATEWIDE) (A-3005-21) At issue in this medical negligence matter is the kind-for-kind specialty requirement embodied in the New Jersey Medical Care Access and Responsibility and Patients First Act (PFA), N.J.S.A. 2A:53A-37 to -42. This appeal requires the court to determine whether the affidavit of merit (AOM) of a board-certified hematology expert satisfied the PFA's equivalency requirement where neither defendant doctor specialized, nor was board certified, in hematology when they rendered care to the decedent. Instead, both defendants specialized in internal medicine at the time of the alleged treatment, and one was board certified in that specialty, but plaintiff's proffered expert did not specialize in internal medicine. The trial court denied defendants' motion to dismiss plaintiff's complaint for failure to provide a sufficient AOM, essentially concluding the affiant's hematology subspecialty was "subsumed" in defendants' internal medicine specialty and, as such, the affiant was qualified to opine that defendants deviated from the standards of medical care by improperly prescribing heparin to the decedent. The court granted defendants leave to appeal from the April 14, 2022 Law Division order. The court holds the PFA's kind-for-kind specialty requirement embodied in N.J.S.A. 2A:53A-41(a) is not satisfied when the AOM's affiant specialized in a subspecialty of the treating doctor's specialty but did not specialize, nor was board certified, in the physician's specialty when the alleged medical negligence occurred. The court therefore concludes plaintiff failed to satisfy the PFA's equivalency requirements and reverse the trial court's order denying defendants' dismissal motion. In doing so, the court rejects plaintiff's alternate argument that she satisfied the waiver exception to the PFA under N.J.S.A. 2A:53A-41(c), which would have rendered moot defendants' appeal.	Appellate
March 6, 2023	GEORGE CASTANO VS. WENDELL D. AUGUSTINE, ET AL. (L-0137-20, UNION COUNTY AND STATEWIDE) (A-3925-21) The court granted defendants leave to appeal from the Law Division's orders denying summary judgment and reconsideration. Plaintiff was injured while driving his motorcycle when defendants' tractor trailer pulled into plaintiff's lane of travel. Plaintiff admitted having several drinks throughout the day and that he was speeding at the time of the accident, but, at his deposition, equivocated as to whether he was intoxicated. Blood was drawn at the hospital, and defendants' expert extrapolated from that sample that plaintiff's BAC at the time of the accident was between .159 and .162. Police issued no motor vehicle summonses to plaintiff. In moving for summary judgment, defendants relied upon N.J.S.A. 39:6A-4.5(b), which provides: Any person who is convicted of, or pleads guilty to, operating a motor vehicle in violation of [N.J.S.A.] 39:4-50, [N.J.S.A. 39:4-50.4a], or a similar statute from any other jurisdiction, in connection with an accident, shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of the accident. [(Emphasis added).] The motion judge denied the motion, concluding that the statute did not apply to plaintiff because he was not convicted of DWI and also because there were material disputed facts as to whether plaintiff was legally intoxicated at the time of the accident. The court affirmed, agreeing with the motion judge that there were material factual disputes as to plaintiff's state of intoxication at the time of the accident. More importantly, the court concluded the plain language of the statute denied a cause of action only to those plaintiffs actually convicted of DWI.	Appellate
March 6, 2023	LEONOR ALCANTARA, ET AL. VS. ANGELICA ALLEN-MCMILLAN, ET AL. (NEW JERSEY COMMISSIONER OF EDUCATION) (A-3693-20) Appellants, parents of children enrolled in the Lakewood Public School District (District or Lakewood), filed a petition alleging the District was not providing its public-school students a thorough and efficient education as required by our State's Constitution. N.J. Const. art. VIII, § 4, ¶ 1. They contend this is due to the failure of the New Jersey Department of Education (DOE) to adequately fund the District. To that end, they assert the School Funding Reform Act (SFRA), N.J.S.A. 18A:7F-43 to -70, which sets certain standards for the DOE, is unconstitutional as applied to Lakewood. The record demonstrates Lakewood's school district is in a unique and precarious position. Due, in large part, to demographic trends in the area. Lakewood Township has seen a population rise in recent decades, primarily resulting from a thriving Orthodox Jewish community. As a result of this demographic shift, the township has approximately 37,000 school-aged children, however, only about 6,000 are enrolled in the secular public schools. The majority—eighty-four percent—are enrolled in private religious schools. Testimony before the Administrative Law Judge (ALJ) established this demographic trend is likely to continue and accelerate.	Appellate

	Like other districts, Lakewood's state-issued school aid is calculated based upon its 6,000 enrolled public-school students. The total budget for the most recent school year at the time of that decision was $143.45 million. Of that, over half—$78 million—went to transportation and special education tuition for non-public students. This is an abnormal and unsustainable imbalance. The court concluded the record generated before the ALJ cannot fairly be said to support a finding Lakewood's students are receiving a constitutionally sound education. The court held the Commissioner utilized an incorrect standard in rejecting the ALJ's finding, and further held the Commissioner owed appellants a thorough review of their substantive argument: the funding structure of the SFRA was unconstitutional as applied to Lakewood's unique demographic situation. The court reversed and remanded for the agency to consider the substantive arguments pertaining to SFRA in light of our Supreme Court's previous directive in Abbott ex rel. Abbott v. Burke (Abbott XX), 199 N.J. 140, 146 (2009): the State has a continuing obligation to "keep SFRA operating at its optimal level" and "[t]here should be no doubt that we would require remediation of any deficiencies of a constitutional dimension, if such problems do emerge."	
March 3, 2023	KRISTIN K. M. STRICKLAND, ET AL. VS. FOULKE MANAGEMENT, CORP. (L-1800-21, CAMDEN COUNTY AND STATEWIDE) (A-0455-21 ; A-0455-21) In this matter arising out of the purchase of a vehicle, the court considered whether parties may expand the scope of judicial review of an arbitration agreement governed by the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1 to 16. The agreement here contained a clause that permitted a court to review an arbitrator's award for errors of New Jersey law. Guided by the United States Supreme Court's holding in Hall St. Assocs., LLC v. Mattel, Inc., 552 U.S. 576 (2008), the court concluded that when the FAA controls an arbitration agreement, its vacatur terms are exclusive and cannot be modified by contract. Therefore, the pertinent clause in the arbitration agreement is unenforceable and severable from the remainder of the agreement. The court affirmed the trial court's order dismissing plaintiffs' complaint seeking to vacate the arbitration award.	Appellate
March 1, 2023	CHRISTOPHER MAIA, ET AL. VS. IEW CONSTRUCTION GROUP (L-1842-22, MIDDLESEX COUNTY AND STATEWIDE) (A-4012-21 ; A-4012-21) On April 13, 2022, plaintiffs, individually and as representatives of a proposed class, filed a complaint seeking relief under the Wage Payment Law (WPL) and the Wage and Hour Law (WHL), alleging defendant failed to pay them for pre- and post-shift work. Defendant moved to partially dismiss the complaint, arguing plaintiffs sought the retroactive application of L. 2019, c. 212 (Chapter 212), which became effective August 6, 2019. Chapter 212 amended both statutes, permitting employees to seek liquidated damages equal to 200% of the wrongfully withheld wages. Additionally, Chapter 212 permitted successful WPL claimants to recover counsel fees and costs, previously allowed only under the WHL. And, Chapter 212 extended the "look-back" period under the WHL, i.e., that period of time for which an employee could seek unlawfully withheld wages, from two to six years, prior to the "commencement" of the action in court. The WPL has never had a similar provision, and Chapter 212 did not amend the WPL in this regard. The Law Division judge granted defendant's motion dismissing plaintiffs' WPL and WHL claim based on violations that occurred prior to August 6, 2019. The court granted leave to appeal and reversed. Relying largely on the Court's recent decision in W.S. v. Hildreth, 252 N.J. 506 (2023), the court held that plaintiffs were entitled to the statutory remedies available as of the date they "commenced" their action in court. See W.S., 252 N.J. 522 ("Applying the law in effect at the time a complaint is filed . . . is not applying a statute retroactively; it is applying a statute prospectively to cases filed after its effective date."). The court also held that based on the legislative history of Chapter 212, the Legislature clearly intended to permit a six-year look back period under the WPL.	Appellate
Feb. 27, 2023	NASIR MEMUDU, ETC. VS. JOSHUA M. GONZALEZ, ET AL. (L-8102-20, MIDDLESEX COUNTY AND STATEWIDE) (A-0110-22 ; A-0110-22) This appeal raises the novel issue of whether the statutory bar set forth in N.J.S.A. 39:6A-4.5(a) precludes plaintiff's wrongful death and survivor claims stemming from the second of two separate motor vehicle accidents occurring a half hour apart at the same location, the latter of which resulted in the death of the uninsured driver as he attempted to retrieve a cell phone from his disabled vehicle. In considering this question, the court addressed whether decedent was "operating" his uninsured vehicle at the time of the second accident for the purposes of N.J.S.A. 39:6A-4.5(a). The court further distinguished Perrelli v. Pastorelle, where the Supreme Court determined the statutory bar to recovering damages under N.J.S.A. 39:6A-4.5(a) applied to the owner of an uninsured vehicle, even where the owner was injured while a passenger in the vehicle. 206 N.J. 193, 208 (2011). The court ultimately concluded the statutory bar pursuant to N.J.S.A. 39:6A-4.5(a) was not implicated because decedent was not operating his vehicle.	Appellate
Feb. 21, 2023	SCOTT W. ADAMS, ETC. VS. STEVEN YANG, M.D., ET AL. (L-1903-15, MERCER COUNTY AND STATEWIDE) (A-0052-22) In this medical malpractice matter, defendants Herve Boucard, M.D. and Hamilton Gastroenterology Group, PA appeal from a July 26, 2022 order, which denied defendants' motion to bar the standard of care opinions of plaintiff's expert, Dr. Andrew Bierhals, at trial. That expert opined that codefendant Yang, who settled prior to trial, did not deviate from the standard of care, contrary to plaintiff's prior position that Yang (as well as Boucard and others)	Appellate

	was negligent. On appeal, defendants argue that Glassman v. Friedel, 249 N.J. 199 (2021), which precludes a plaintiff from disavowing the negligence of an initial tortfeasor who settled in a later action against a successive tortfeasor, should be extended to cases involving a settling joint tortfeasor. The court concludes that Glassman is expressly limited to successive tortfeasors and an extension of its holding to joint tortfeasors is not warranted. Glassman sets forth a method of fixing damages caused by a first, independent source of injury to afford a credit to a successive tortfeasor who would otherwise have no remedy against the settling tortfeasor. Glassman's assignment of damages to a preceding event is not possible where, as here, plaintiff seeks to establish fault as to a single, indivisible injury where two or more persons are subject to common liability. Equally important is the fact that, unlike a successive tortfeasor, joint tortfeasors are not left without remedies against a settling codefendant. Whereas Glassman expressly prohibits an allocation of fault against an initial tortfeasor, a joint tortfeasor may seek an allocation of liability against the settling codefendant at trial. Any percentage of fault thus allocated "operates as a credit to the remaining defendants." In addition, the right of contribution assures that a joint tortfeasor can seek a remedy for the fault allocated to settling codefendants. It is plain that the equitable concerns underpinning Glassman do not exist in the joint tortfeasor context. Finally, the court is unpersuaded by defendant's argument that it would be unfair to allow plaintiff to disavow its prior position that Yang was negligent. Defendant bears the burden of proving Yang's negligence for purposes of an allocation. That plaintiff will not assist him in that endeavor does not evince any intent to manipulate or mislead the court; rather, the court finds it to be sound trial strategy. Given the remedies available to defendant, the court concludes it is unwarranted to invoke the extraordinary remedy of judicial estoppel as it is not "necessary to secure substantial equity." Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 365 (3d Cir. 1996) (quoting Gleason v. United States, 458 F.2d 171, 175 (3d Cir. 1972)).	
Feb. 21, 2023	IN RE PROTEST OF CONTRACT FOR RETAIL PHARMACY DESIGN, ETC. (UNIVERSITY HOSPITAL) (A-1667-20) The question presented on this appeal is whether University Hospital is a state administrative agency whose final decisions are directly appealable to this court under Rule 2:2-3(a)(2). University Hospital is an acute care facility and trauma center located in Newark. It was established in 2012, when the Legislature enacted and the Governor signed the New Jersey Medical and Health Sciences Education Restructuring Act (the Act), N.J.S.A. 18A:64M-1 to -43. The Act states that University Hospital was established "as a body corporate and politic [that] shall be treated and accounted for as a separate non-profit legal entity from Rutgers, The State University," and as "an instrumentality of the State." N.J.S.A. 18A:64G-6.1a(a). In 2019, University Hospital issued a request for proposals (RFP) to design, construct, and operate a pharmacy at its hospital. Sumukha, LLC (Sumukha), one of the unsuccessful bidders, appeals from University Hospital's denial of its protest of the award of the contract to Shields Pharmacy of University, LLC (Shields). The court holds that the Legislature did not intend to make University Hospital a state administrative agency when it created the Hospital "as a body corporate and politic" that is not situated in an executive branch department. Consequently, we dismiss this appeal without prejudice to Sumukha's right to file an action in the Law Division.	Appellate
Feb. 21, 2023	C.W. VS. ROSELLE BOARD OF EDUCATION, ET AL. (L-0153-20, UNION COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-3187-21) We consider whether plaintiff, an alleged victim of sexual abuse by a teacher, is barred from seeking pain and suffering damages under the Tort Claims Act (TCA), N.J.S.A. 59:1-1 to -12.3, because he has not incurred the requisite amount of medical expenses. Despite the Legislature's recent amendments to the TCA regarding child sexual abuse claims, it did not eliminate the statutory threshold regarding medical expenses. Therefore, we affirm the trial court's order barring plaintiff from seeking pain and suffering damages.	Appellate
Feb. 15, 2023	STATE OF NEW JERSEY VS. JOHN C. VANNESS (13-01-0050 AND 15-01-0057, MONMOUTH COUNTY AND STATEWIDE) (A-3775-20 ; A-3775-20) At issue in this post-conviction relief matter is whether defendant's "open" guilty plea during trial was premised on his attorney's "guarantee" that the judge would sentence him to a time-served sentence pursuant to an alleged agreement reached in chambers. Citing the transcript of the plea hearing to the contrary, the PCR judge – who was not the trial judge – denied defendant's petition. Thereafter, PCR counsel moved for reconsideration based on the certification of plea counsel, which supported defendant's assertions, but was acquired beyond the twenty-day time limitation prescribed by Rule 1:7-4(b) and Rule 4:49-2. The PCR judge denied the motion as untimely and did not reach the merits of defendant's motion. Because plea counsel's certification was belatedly provided to the PCR judge, this court affirms the denial of defendant's petition and his motion for reconsideration. However, the court concludes PCR counsel provided ineffective assistance following receipt of plea counsel's certification. Although PCR counsel's obligation to defendant was discharged upon filing an appeal with this court, PCR counsel filed an untimely reconsideration motion. PCR counsel had other available options that would have led to a timely-filed second PCR petition under Rule 3:22-12(a)(2)(B). PCR counsel could have sought authority from the Office of the Public Defender to file a second PCR petition on defendant's behalf, or he could have provided plea counsel's certification to defendant to file a pro se second petition.	Appellate

	Because the court concludes PCR counsel's representation was deficient, defendant is entitled to a new PCR proceeding. Because defendant's assertions against plea counsel are now supported by the sworn statements of that same attorney, the court concludes defendant's claims cannot be resolved on the existing record. The court therefore affirms both orders under review. In light of PCR counsel's ineffectiveness, however, the court remands the matter for an evidentiary hearing.	
Feb. 13, 2023	STATE OF NEW JERSEY VS. ISAAC A. YOUNG (13-09-0524, SALEM COUNTY AND STATEWIDE) (A-2314-20) Defendant appeals from the denial of his petition for post-conviction relief (PCR) without a hearing. The petition alleges ineffective assistance of counsel regarding both his prior attorneys. Defendant's claim is primarily based on counsels' representation of him during two statements he gave to police, prior to the filing of any charges. Defendant lied to the police during his first statement, at which he was represented by his first attorney. He then retained a different attorney and gave a second statement in which he admitted to but tried to explain the prior misrepresentations. Defendant was charged with hindering apprehension by false statements and false swearing by inconsistent statements, in addition to the substantive offense of permitting or encouraging the release of a child abuse record. Defendant testified during the first jury trial, which ended in a mistrial based on defense counsel's failure to provide the State notice of his retraction defense. Defendant exercised his right to remain silent during the second trial, which resulted in convictions on all counts. On direct appeal, the court affirmed the convictions for false swearing and hindering apprehension and vacated the conviction for unlawful disclosure of a child abuse record. In support of his petition for PCR, defendant provided an expert report from a veteran criminal attorney which opined that counsels' representation fell below the constitutional standard. The PCR judge declined to consider the report because the petition presented mixed questions of law and fact which were for the court to determine, and she did not need the assistance of an expert report to decide the issues. Under both the federal and state constitutions, it is well established that the right to effective counsel does not attach until the filing of charges. Defendant sought to expand this right to representation occurring during the investigation. The court found a defendant may not bring a PCR petition based on ineffective assistance of counsel for representation that occurred prior to being charged. The court also found defendant failed to demonstrate either counsel was ineffective, and the PCR judge did not abuse her discretion in declining to consider defendant's expert report.	Appellate
Feb. 13, 2023	STATE OF NEW JERSEY VS. RAYMOND INGRAM (19-01-0028, MERCER COUNTY AND STATEWIDE) (A-1500-20) The court considers whether a police officer, who walked onto the driveway of a home without permission or a warrant, was lawfully there when he observed illegal narcotics in a hole in the home's front porch. Because the driveway was part of the home's curtilage, the court holds that the officer conducted an unlawful search and his subsequent observation of contraband in the hole in the porch did not satisfy the plain-view exception. Accordingly, the court reverses the trial court's denial of defendant's motion to suppress the seized contraband.	Appellate
Feb. 9, 2023	JAMES KENNEDY, II VS. WEICHERT CO. (L-2266-19, ESSEX COUNTY AND STATEWIDE) (A-0518-19-Published) Plaintiff, a fully commissioned real estate salesperson, alleged on behalf of himself and a putative class of those similarly situated that defendant, a licensed real estate broker, had violated the Wage Payment Law (WPL), N.J.S.A. 34:11-4.1 to -4.14. This court's prior opinion, Kennedy v. Weichert Co., No. A-0518-19 (App. Div. July 2, 2021), affirmed the trial court's order: denying defendant's motion to dismiss for failure to state a claim; and declaring pursuant to Hargrove v. Sleepy's, LLC, 220 N.J. 289, 302 (2015), that the "ABC test," N.J.S.A. 43:21-19(i)(6)(A), (B), and (C), applied to determine plaintiff's employment status as an employee or independent contractor. The Supreme Court granted defendant's motion for leave to appeal but then remanded the matter for this court to consider recent amendments to the Real Estate Brokers and Salesmen Act (the Brokers Act), N.J.S.A. 45:15-1 to -29.5, enacted after this court's prior opinion. On remand, the court concluded the recent amendments foreclosed application of the ABC test to determine the employment status of fully commissioned real estate salespersons. The court also concluded that pursuant to binding precedent from the Court, the written agreement between the parties did not, as a matter of law, define plaintiff's status. See, e.g., MacDougall v. Weichert, 144 N.J. 380, 388 (1996). However, given the paucity of the record, the court declined to adopt a specific test to apply in deciding plaintiff's status pending "the development of a more complete record that permits exposition of the actual business relationship between the parties."	Appellate
Feb. 9, 2023	CHRISTA ROBEY, ET AL. VS. SPARC GROUP LLC (L-3772-21, BERGEN COUNTY AND STATEWIDE) (A-1384-21 ; A-1384-21) In their complaint, plaintiffs alleged defendant falsely advertised clothing at two of its Aeropostale stores as being discounted when, in fact, according to plaintiffs, the clothing had never been sold in those stores at a higher price.	Appellate

	Plaintiffs asserted that this "markup to markdown" practice violated both the Consumer Fraud Act, N.J.S.A. 56:8-1 to -227, and the Truth in Consumer Contract, Warranty, and Notice Act (the Truth Act), N.J.S.A. 56:12-14 to -18. The trial judge dismissed the complaint for failure to state a claim upon which relief can be granted, mainly because the judge determined plaintiffs failed to allege an ascertainable loss. Plaintiffs' ascertainable-loss theory – to use a simple example – is that defendant offered an item that never sold for anything more than $50, at a 50% discount below a new $100 price tag. Defendant successfully argued in the trial court that there was no ascertainable loss because plaintiffs purchased a $50 item for $50. The court rejected this and held, among other things, that the facts alleged an ascertainable loss because they alleged the discount was illusory and plaintiffs did not receive the benefit of the bargain because one element of the bargain was a 50% discount. Judge Berdote Byrne filed a concurring opinion.	
Feb. 8, 2023	SHLOMO HYMAN, ET AL. VS. ROSENBAUM YESHIVA, ET AL. (L-8214-19, BERGEN COUNTY AND STATEWIDE) (A-2650-20) Plaintiff, Shlomo Hyman, is a rabbi formerly employed by defendants as a Judaica studies teacher. After an investigation concluded defendant had engaged in behavior that violated Orthodox Jewish standards of conduct, defendants terminated him. Defendants then sent an email to the parents of the Yeshiva students informing them that Rabbi Hyman would not be returning as "[his] conduct had been neither acceptable nor consistent with how a rebbe in our Yeshiva should interact with students." Plaintiff alleged the communication defamed him and served to label him as a pedophile, impairing his future employment prospects. Plaintiff now appeals from an April 16, 2021 order granting defendants' motion for summary judgment dismissing his claim for defamation based on the ministerial and ecclesiastic abstention doctrines. Plaintiff argues the court erred in dismissing his defamation claim because the ministerial exception recognized in Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 181 (2012) applies only to employment discrimination claims, and because further discovery was required to determine whether the motivation behind the dissemination of a letter concerning the termination was ecclesiastic in nature. The court affirmed the dismissal of the lawsuit, concluding, as a matter of first impression, that the ministerial exception operates to bar any tort claim provided (1) the injured party is a minister formerly employed by a religious institution and (2) the claims are related to the religious institution's employment decision. Because both conditions are satisfied in this case, the ministerial exception alone bars plaintiff's defamation claim. Therefore, the court found it unnecessary to address whether the ecclesiastic abstention doctrine was an independent basis to dismiss the action.	Appellate
Feb. 8, 2023	NORTH BERGEN MUNICIPAL UTILITIES AUTHORITY VS. I.B.T.C.W.H.A. LOCAL 125 (C-000025-22, HUDSON COUNTY AND STATEWIDE) (A-3163-21) A public employer appealed from two Chancery Division orders denying its request to restrain a grievance arbitration filed by the union. The issue before the court was whether a union grievance based on language from an expired collective negotiations agreement is arbitrable when a successor collective negotiations agreement clearly and unambiguously addresses the disputed issue raised in the grievance. The court concluded that the language contained in the successor collective agreement superseded the language in the expired agreement. The language in the successor agreement limited compensation for work performed during a weather-related State of Emergency declared by the Governor, contrary to the union's interpretation the language applied to COVID-19. Since the grievance was not within the scope of the successor agreement implemented after impasse, it was not arbitrable. The court reversed the orders requiring grievance arbitration.	Appellate
Feb. 8, 2023	COUNTY OF PASSAIC VS. HORIZON HEALTHCARE SERVICES, INC. (L-1385-21, PASSAIC COUNTY AND STATEWIDE) (A-0952-21) In this appeal of an order compelling arbitration, the court held that the requirement imposed by Atalese v. U.S. Legal Services Group, L.P., 219 N.J. 430 (2014) – that, to be enforceable, an arbitration provision must contain an express waiver of the right to seek relief in a court of law – was not intended to apply to sophisticated commercial litigants possessing comparatively equal bargaining power.	Appellate
Jan. 31, 2023	STATE OF NEW JERSEY VS. WILLIAM L. SCOTT (20-02-0189 AND 20-03-0215, HUDSON COUNTY AND STATEWIDE) (A-0529-21) Defendant contends he was subjected to discriminatory policing when he was stopped and frisked based on the be-on-the-lookout (BOLO) description of the person who committed an armed robbery in the vicinity minutes earlier. The BOLO alert described the robber as a Black male wearing a dark raincoat. However, the victim did not provide the race of the perpetrator when she reported the crime. The State acknowledges it does not know why the police dispatcher assumed the robber was Black. The court address three issues of first impression. As a threshold matter, the court holds that decisions made and actions taken by a dispatcher can be attributed to police for purposes of determining whether a defendant has been subjected to unlawful discrimination in violation of Article I, Paragraphs 1 and 5 of the New Jersey Constitution. Second, the court holds that "implicit bias" can be a basis for establishing a prima facie case of police discrimination under the burden-shifting paradigm adopted in State v. Segars, 172 N.J. 481 (2002). Reasoning that	Appellate

	the problem of implicit bias in the context of policing is both real and intolerable, the court holds evidence that supports an inference of implicit bias shifts a burden of production to the State to provide a race-neutral explanation. The State's inability to offer a race-neutral explanation for the dispatcher's assumption that the robbery was committed by a Black man constitutes a failure to rebut the presumption of unlawful discrimination under Segars. Third, the court addresses whether and in what circumstances the independent source and inevitable discovery exceptions to the exclusionary rule apply to the suppression remedy for a violation of Article I, Paragraphs 1 and 5. After balancing the cost of suppression against the need to deter discriminatory policing and uphold public confidence in the judiciary's commitment to safeguard equal protection rights, the court concludes the independent source doctrine does not apply in these circumstances. That exception allows a reviewing court to redact unlawfully obtained information to determine whether the remaining information is sufficient to justify a search. The court concludes that any such redaction remedy would undermine the deterrence of discriminatory policing and send a message to the public that reviewing courts are permitted to essentially disregard an equal protection violation so long as police also relied on information that was lawfully disseminated. The court reasons that if simple redaction were permitted in these circumstances, the independent source exception might swallow the exclusionary rule. With respect to the inevitable discovery doctrine, the court holds it may apply in racial discrimination cases only if the State establishes by clear and convincing evidence that the discriminatory conduct was not flagrant. Because the State concedes it does not know why the dispatcher assumed the robber was Black, it cannot meet that burden. The court, therefore, reverses the denial of defendant's motion to suppress.	
Jan. 26, 2023	MATTHEW J. PLATKIN, ET AL. VS. SMITH & WESSON SALES CO., INC. (C-000025-21, ESSEX COUNTY AND STATEWIDE) (A-3292-20) Defendant, Smith & Wesson, appeals from a June 30, 2021 Chancery Division order directing it to respond to a subpoena issued the Attorney General and the Acting Director of the New Jersey Division of Consumer Affairs. Defendant also appeals a second June 30, 2021, Chancery Division order denying its cross-motion to dismiss, stay, or quash the subpoena. Faced with defendant's first-filed federal complaint against plaintiffs' motion to quash the subpoena, and with plaintiffs' subsequently filed order to show cause to enforce the subpoena, the Chancery Division judge assumed jurisdiction, finding special equities which justified avoiding the first-filed doctrine. The judge then found the subpoena valid. Defendant appealed, arguing the judge erred by misapplying the first-filed doctrine and by rejecting its constitutional attacks on the subpoena. The court held that: special equities exist which support avoidance of the first filed doctrine; NAACP v. Alabama does not require resolution of defendant's constitutional claims at this stage of the litigation; defendant's federal constitutional claims are not ripe for consideration; and the subpoena is valid. Affirmed.	Appellate
Jan. 23, 2023	EVOLUTION AB (PUBL.), ET AL. VS. RALPH J. MARRA, JR., ESQUIRE, ET AL. (L-0616-22, ATLANTIC COUNTY AND STATEWIDE) (A-3341-21) Defendants – an attorney and law firm – have a client that produced a report, which asserts plaintiffs unlawfully conducted gambling-related business in forbidden countries. At the client's behest, the defendant attorneys forwarded the report to the New Jersey Division of Gaming Enforcement. When the media learned of the report, plaintiffs sued the defendant attorneys, as well as their anonymous client and other fictitious persons, alleging defamation and other torts. Plaintiffs successfully obtained an order compelling the defendant attorneys to provide their client's identity. The court granted the defendant attorneys' motion for leave to appeal. Although RPC 1.6 generally imposes on attorneys the ethical obligation to refrain from disclosing a client's identity without the client's consent, the court held that this interest in preserving confidentiality cannot be used to thwart justice and, in appropriate circumstances, a client's right to anonymity may be overcome in favor of an injured party's right to seek redress in our courts. To resolve the conflict between these interests, there must be a deeper examination of the claim's merits than occurred here. The court, therefore, vacated the disclosure order and remanded for the judge's inquiry into the veracity of the report that lies at the heart of plaintiffs' civil action, leaving to the judge's discretion the methodology to be employed.	Appellate
Jan. 23, 2023	STATE OF NEW JERSEY VS. WILLIAM HILL (19-09-0946, HUDSON COUNTY AND STATEWIDE) (A-4544-19 (redacted)) Defendant was initially charged with carjacking. While he was awaiting trial, he sent a letter to the victim's home address, urging her to reconsider her identification of him as the robber. That resulted in an additional charge of witness tampering. The court rejects defendant's contention that the witness tampering statute, N.J.S.A. 2C:28-5(a), is overbroad and impermissibly vague on its face. A person commits witness tampering if he or she knowingly engages in conduct which a reasonable person would believe would cause a witness or informant to do one or more specified actions, such as testify falsely or withhold testimony. Defendant contends the "reasonable person" feature renders the statute unconstitutional and, to avoid constitutional infirmity, the statute must be construed to require the State to prove he	Appellate

	knew his conduct would cause a prohibited result. First addressing defendant's overbreadth challenge, the court reaffirms that preventing the intimidation of, and interference with, potential witnesses or informers in criminal matters is an important governmental objective. The court also notes a defendant who is awaiting trial for a violent crime has no First Amendment right to communicate directly with the victim. Were it otherwise, a court setting the conditions of pretrial release under the Criminal Justice Reform Act, N.J.S.A. 2A:162-15 to -26, might be foreclosed from imposing a "no contact" order. The court concludes the witness tampering statute is not overbroad weighing the importance of the exercise of speech against the gravity and probability of harm resulting from that speech. With respect to defendant's vagueness challenge, the court declines to embrace a new rule that would categorically prohibit the Legislature from using a reasonable-person test to determine a defendant's culpability. The court rejects the argument that the "reasonable person" feature in the witness tampering statute is analytically indistinguishable from the portion of the bias intimidation statute, N.J.S.A. 2C:16-1(a)(3), that was struck down on vagueness grounds in State v. Pomianek, 221 N.J. 66 (2015). The invalidated portion of the bias intimidation statute employed a subjective test under which a defendant's culpability was determined from the perspective of the specific victim who was targeted. That led the Supreme Court to conclude that "guilt may depend on facts beyond the knowledge of the defendant or not readily ascertainable by him [or her]." Pomianek, 221 N.J. at 89. The "reasonable person" standard employed in the witness tampering statute, in contrast, does not account for, much less depend on, what the victim actually perceived or believed. Rather, the witness tampering statute uses an objective standard, effectively eliminating the concern expressed in Pomianek regarding idiosyncratic personal characteristics of the victim about which a defendant might be unaware. The court also notes the bias intimidation statute employed a convoluted culpability provision that focused on the victim's speculation as to the defendant's purpose. That formulation had not been used in any preexisting statute and was never replicated in New Jersey or any other jurisdiction. The objective "reasonable person" formulation employed in the witness tampering statute, in contrast, appears throughout the New Jersey Code of Criminal Justice.	
Jan. 18, 2023	RICHARD LIPSKY, ET AL. VS. THE NEW JERSEY ASSOCIATION OF HEALTH PLANS, INC., ET AL. (L-3723-16, HUDSON COUNTY AND STATEWIDE) (A-1611-21) In this opinion, the court addresses the novel issue of whether a party to a pending litigation may compel a non-party State agency to turn over its employees' State-issued and personal cell phones to that party's expert for forensic examination, even when the agency has already produced the relevant records from the devices. Having reviewed this issue in light of the record, the arguments of the parties, and the applicable law, the court concludes that the trial court misapplied its discretion when it required the New Jersey Department of Health (Department) to give the cell phones to plaintiffs' expert for evaluation. The trial court's order violated civil discovery rules and case law by requiring the production of materials not in the Department's possession, custody, or control, not allowing for privilege and confidentiality review, and being unnecessary and unduly burdensome. The order also contravened the employees' constitutional right to privacy. Therefore, the court reverses the trial court's order mandating that the Department turn over any State-issued or personal electronic devices for examination by plaintiffs' expert, and remands the matter for resolution of any outstanding issues relating to the completeness of the Department's response to plaintiffs' subpoena.	Appellate
Jan. 12, 2023	JOHN ROBERT SCADUTO, ET AL. VS. STATE OF NEW JERSEY, DEPARTMENT OF ENRIVONMENTAL PROTECTION (L-2301-20, L-2302-20, L-2305-20, L-2307-20, L-2308-20, L-2311-20 AND L-2314-20, OCEAN COUNTY AND STATEWIDE) (A-3240-20) The court affirms Law Division orders consolidating and dismissing seven inverse condemnation actions against the Department of Environmental Protection under the entire controversy doctrine, leaving plaintiffs to their remedies in the DEP's condemnation action against their homeowners association, in which plaintiffs have been participating since 2019. The case arises out of the State's acquisition of a perpetual storm damage reduction easement by eminent domain in the Association's unbuildable, two-and-a-half-acre beach lot along the Atlantic Ocean in Point Pleasant Beach as part of the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project. Plaintiffs are seven of the twenty-two homeowner members of the Association, each holding a non-exclusive easement appurtenant for recreational purposes in the Association's beach. When the court declared DEP had the authority to partially condemn the Association's beach for shore protection in 2016, it entered orders permitting members of the Association to present claims for severance damages allegedly caused to their homes by the partial taking of the beach lot before the condemnation commissioners. Plaintiffs appeared at the commissioners' hearing in 2019 and have appealed from the commissioners' report and award. They have an order in the condemnation action ensuring that among the issues to be tried to a jury will be "the separate just compensation due to each of the respective [plaintiffs] by reason of the taking . . . of property of each . . . and any damages to their respective residential lots." Because plaintiffs' rights to separate awards for just compensation for the loss of value to their homes, if any, resulting from DEP's exercise of eminent domain as to the beach lot are fully protected through their participation in the earlier filed condemnation action, the court affirms dismissal of their inverse condemnation actions under the entire controversy doctrine. The court also affirms rejection of plaintiffs' claim that their recreational easements provided them the right	Appellate

	to exclude non-Association members from the Association's beach, as neither the express wording of the easement nor the Association's reservation of the right to operate the beach commercially in a 2005 settlement of public trust litigation supports that claim.	
Jan. 5, 2023	RICHARD FREEDMAN, II VS. COLLEEN FREEDMAN (FM-04-0314-09, CAMDEN COUNTY AND STATEWIDE) (A-3425-20 ; A-3425-20) In this appeal from proceeding filed in the Family Part involving the cremation remains and personal effects of the parties' son, who died unexpectedly and suddenly at age twenty, the mother unilaterally decided to have the body cremated without informing the father that their son had died, preventing him from participating in that decision and attending the memorial service. The mother has sole possession of the cremation remains and the son's remaining personal effects and refuses to divide them with the father. The court concluded the father had ample opportunity to litigate Colleen's alleged alienation of their son's affection and interference with his parenting time and communication with his late son in the Family Part during the years leading up to his son's eighteenth birthday. He chose not to do so, and instead waited until the dispute over the cremation remains and personal effects erupted more than two years after their son turned eighteen to first raise those issues. The court deemed those issues waived and, in turn, concluded that a plenary hearing regarding the parties conduct during the last five years of their son's life is not required as the evidence overwhelming demonstrated the mother had a closer relationship with their son. Applying a four-prong test, the court held the mother shall have control over the cremation remains. The court affirmed the termination of child support, retroactive to the date of death. The court also provides guidance on the proper procedure to be utilized in future similar disputes, by filing a complaint in the Probate Part, rather than applications in the Family Part.	Appellate
Dec. 30, 2022	JACQUELINE BERNAL MUELLER, ET AL. VS. KEAN UNIVERSITY, ET AL. (L-1538-20 AND L-2947-20, UNION AND ESSEX COUNTY AND STATEWIDE) (CONSOLIDATED) (A-1843-20/A-3091-20 ; A-1843-20/A-3091-20) These consolidated appeals present an issue of first impression – whether plaintiffs state viable claims for breach of contract, unjust enrichment, conversion, or money had and received, because the universities they attended transitioned to total online instruction rather than an in-person, on-campus education experience for which they paid, during the statewide health emergency caused by the COVID-19 pandemic. The universities contend they are immune from liability pursuant to the Emergency Health Powers Act (EHPA), N.J.S.A. 26:13-1 to -36, because their decisions to pause in-person instruction were made in compliance with the executive orders issued by the Governor during a public health emergency to limit the spread of COVID-19 among students, faculty, and the community. The court affirms the Rule 4:6-2(e) dismissal of plaintiffs' complaints for failure to state a claim upon which relief can be granted, concluding the universities are immune from liability under N.J.S.A. 26-13-19.	Appellate
Dec. 22, 2022	AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY VS. COUNTY PROSECUTORS ASSOCIATION OF NEW JERSEY (L-8169-19, ESSEX COUNTY AND STATEWIDE) (A-2572-20) In this appeal, plaintiff American Civil Liberties Union of New Jersey (ACLU) contended defendant County Prosecutors Association of New Jersey (CPANJ) is a public agency subject to records requests under the Open Public Records Act (OPRA) and the common law right of access. The ACLU requested CPANJ to produce documents regarding CPANJ's funding, the context and contents of its meetings and events (including dates, times, and locations), and the people performing its operating functions. CPANJ denied the records request in its entirety, contending it is "not a public agency subject to the dictates of OPRA or requests made under the common law right of access." The court held CPANJ is not a public agency subject to OPRA and is not a public entity subject to the common law right of access. Therefore, disclosure of the requested records was properly denied.	Appellate
Dec. 21, 2022	STATE OF NEW JERSEY VS. ERIC A. BURNHAM (21-02-0181, MIDDLESEX COUNTY AND STATEWIDE) (A-3519-20 ; A-3519-20) This case addresses the issue of whether sales tax should be included when calculating the "full retail value" of merchandise under New Jersey's shoplifting gradation statute. N.J.S.A. 2C:20-11(c). Defendant pled guilty to shoplifting an Xbox One with an advertised price of $499.99. Shoplifting constitutes a crime of the third degree "if the full retail value of the merchandise exceeds $500 but is less than $75,000" and a crime of the fourth degree "if the full retail value of the merchandise is at least $200 but does not exceed $500." N.J.S.A. 2C:20–11(c)(2) and (c)(3). The State utilized sales tax in grading defendant's offense, and he was therefore charged with a third-degree offense. The court analyzed the theft statute, which specifically utilizes sales tax to calculate the "amount involved" in its statutory gradation scheme. However, the court observed the shoplifting statute contains no such provision. The court concluded because the Legislature did not determine sales tax should be included in the valuation of full retail value in enacting the shoplifting gradation statute, it was improper for sales tax to have been utilized to increase	Appellate

	defendant's charge to a third-degree offense.	
Dec. 20, 2022	STATE OF NEW JERSEY VS. SHAREEF O. GRAY (19-10-1681, MIDDLESEX COUNTY AND STATEWIDE) (A-2843-19) Defendant's car was subjected to a warrantless search incident to an unrelated sting operation planned and carried out by New Jersey State Police. The State Police detained defendant after a parking lot melee involving three other persons, including the target of the sting operation. Due to the cold weather, state troopers detained defendant in his car. After a state trooper opened defendant's car door and placed him inside, the trooper smelled the odor of marijuana. Based on the trooper's detection of marijuana, the State Police sought defendant's consent to search the car. After initially refusing, defendant consented, and the State Police conducted a search of the car. The State Police found no marijuana in the car, but they recovered an illegal gun. Defendant filed a motion to suppress the gun, arguing the initial entry into his vehicle constituted an unconstitutional search. The trial court denied the motion, finding the State Police's justification that it was too cold to detain defendant outside was sufficient under the totality of the circumstances. The Court held that the trial court mistakenly applied State v. Woodson, 236 N.J. Super. 537 (App. Div. 1989), and State v. Conquest, 243 N.J. Super. 528 (App. Div. 1990), and that the opening of the car door constituted an impermissible search. Reversed and remanded.	Appellate
Dec. 19, 2022	STATE OF NEW JERSEY VS. WELDER D. MORENTE-DUBON (17-06-0450, UNION COUNTY AND STATEWIDE) (A-0459-20 ; A-0459-20) Defendant was charged with first-degree murder, two weapons offenses, and hindering apprehension. Tried to a jury, defendant was convicted of the lesser-included offense of second-degree passion-provocation manslaughter, third-degree possession of a weapon for an unlawful purpose, and fourth-degree unlawful possession of a weapon, and not guilty of hindering apprehension. The trial court found aggravating factors one, three, four, and nine, N.J.S.A. 2C:44-1(a)(1), (3), (4), and (9), and mitigating factor seven N.J.S.A. 2C:44-1(b)(7), but rejected mitigating factor nine, N.J.S.A. 2C:44-1(b)(9). Following merger of the weapons counts, he was sentenced to a nine-and-one-half-year term, subject to the parole ineligibility and parole supervision imposed by the No Early Release Act, N.J.S.A. 2C:43-7.2. The court addressed the judicial factfinding undertaken by the trial court as part of its sentencing analysis. The court concluded that the trial court's findings regarding the degree of provocation and sufficient time to cool off before delivering the fatal blows were contrary to the jury's verdict and violated the doctrine of fundamental fairness. The court also held that aggravating factor four applies to a defendant taking "advantage of a position of trust or confidence" relating to the victim "to commit the offense," not to a minor's subsequent participation in an attempted coverup of the homicide. The court also addressed the need for a trial court to provide a detailed explanation of how it reconciles its application of aggravating factor three and mitigating factor seven, the weight assigned to those factors, and how those factors are balanced with respect to a defendant who had no prior juvenile or criminal history and no subsequent criminal history in the decade that elapsed before his arrest. The court vacated defendant's sentence and remanded for resentencing, directing the trial court to not consider whether defendant was adequately provoked or had adequate time to cool off before inflicting the fatal blows, to not apply aggravating factor four, and to apply mitigating factor fourteen. The court further directed that the trial court reconsider whether aggravating factor three applies and if so, the weight to be given to it.	Appellate
Dec. 12, 2022	FRITZY RIVERA VS. CHERRY HILL TOWERS, LLC, ET AL. (L-2216-20, CAMDEN COUNTY AND STATEWIDE) (A-2394-21) Plaintiff Fritzy Rivera was shot by her estranged husband after leaving a friend's apartment at Cherry Hills Towers. She alledged defendant Vikco, Inc.'s negligence in failing to provide a safe environment as property manager of Cherry Hills Towers allowed him to enter the apartment complex through an open security gate. Defendant was not the property manager when the assault occurred, but plaintiff contends the open security gate was a practice established by defendant and continued by the new property management company. The motion court denied defendant's summary judgment motion to dismiss plaintiff's complaint. Having granted defendant leave to appeal, we reverse. We disagree with the court's reasoning that there was a genuine issue of material fact to be determined by the jury as to whether defendant owed plaintiff a duty to provide a safe environment at Cherry Hill Towers when it was not the apartment complex's property manager at the time of the shooting. Whether defendant owed plaintiff a duty is a question of law to be determined by the court, not by a jury at trial. Under the circumstances of this case, we conclude our common law does not support plaintiff's theory that defendant's duty to provide a safe and secure environment at Cherry Hill Towers continued after its management services were discontinued. Summary judgment is granted to	Appellate

	Vikco.	
Dec. 7, 2022	JPC MERGER SUB LLC VS. TRICON ENTERPRISES, INC., ET AL. (L-2885-21, UNION COUNTY AND STATEWIDE) (A-2893-21 ; A-2893-21) In this contract payment dispute between a general contractor and its subcontractor, the court held as a matter of first impression that a "pay-if-paid" provision in a construction contract is enforceable as a matter of law. The court adopted the construction industry's definition of "pay-if-paid" provisions as conditions precedent to payment that shift the risk of a project owner's nonpayment from the general contractor to the subcontractor, by virtue of which the subcontractor is paid by the general contractor only if the owner pays the general contractor for that subcontractor's work. The court held that subject to the parties' implied duty to not frustrate conditions precedent to performance, such provisions are neither unfair, unconscionable, nor against public policy so long as the contract specifies a clear and unambiguous intent to shift the risk of nonpayment. Given the court's holding regarding the enforceability of a "pay-if-paid" provision and determination that the subcontractor expressed a clear and unambiguous intent to be bound by such terms, the court concluded that a counterclaim relying on the "pay-if-paid" provision to bar payment to the subcontractor based on the owner's nonpayment for the subcontractor's work adequately suggested a cause of action for breach of contract to withstand dismissal under Rule 4:6-2(e) for failure to state a claim. Consequently, the court affirmed the motion judge's order denying the subcontractor's motion to dismiss the counterclaim pursuant to Rule 4:6-2(e). However, the court reversed the motion judge's order granting summary judgment dismissal of the subcontractor's claims for payment because there was a factual dispute as to whether the owner's nonpayment was precipitated by the general contractor's wrongful conduct.	Appellate
Dec. 7, 2022	AMERICAN ZURICH INSURANCE COMPANY, ETC. VS. MERIDIA DOWNTOWN URBAN RENEWAL BOUND BROOK, LLC, ET AL. (L-0527-20, SOMERSET COUNTY AND STATEWIDE) (A-1868-21 ; A-1868-21) Plaintiff brought a subrogation claim against defendants to recoup insurance benefits it paid to its insured on account of damage caused by a fire at a construction site. In an effort to obtain relevant information pertaining to the cause of the fire, the civil action parties served a subpoena duces tecum on the Somerset County Prosecutor's Office (SCPO), a non-party law enforcement agency, and moved to compel production of its criminal investigation file relating to the ongoing prosecution of the individual who was suspected of starting the fire. The trial judge rejected the SCPO's claim that the criminal investigation materials were privileged and confidential, and ordered it to turn over to the civil action parties: (1) videos and photographs depicting the events giving rise to the criminal prosecution, (2) the suspect's statement to police, and (3) witness statements, or alternatively, witness contact information. The court granted the SCPO's motion for leave to appeal and reversed the disclosure order. Because the materials sought were subject to a qualified privilege, the court determined that the trial judge failed to properly balance the competing interests at stake. The court held that the civil action parties' discovery interests were subordinate to the State's paramount interest in preserving the integrity of an ongoing criminal prosecution and the underlying evidential record. The court acknowledged that the privilege was not absolute but pointed out that the materials were not essential to the resolution of the subrogation claim and the presence of significant monetary damages did not of itself outweigh the SCPO's interests in protecting and maintaining the confidentiality of its criminal investigation materials. Further, the civil parties failed to meet their burden of demonstrating that at least some of the information could not be obtained from other sources.	Appellate
Dec. 6, 2022	SILVANA LANSIGAN DELVALLE, ET AL. VS. HENRY J. TRINO, ET AL. (L-5663-19, BERGEN COUNTY AND STATEWIDE) (CONSOLIDATED) (A-2248-21/A-2249-21 ; A-2248-21/ A-2249-21) Our Supreme Court granted leave to defendants Henry Trino, Charlene Trino, Airel Trino, and Kevin Garcia to appeal the denial of their summary judgment motions to dismiss the complaint by plaintiffs Silvana Lansigan Delvalle, as administrator of Raniel Hernandez's estate and individually, and Ralph Hernandez. These appeals were calendared back-to-back and consolidated to issue a single opinion. Plaintiffs' common law claims of negligence and intentional infliction of emotional distress, as well as the claim based on the principal of Portee v. Jaffee, 84 N.J. 88 (1980), arise from the accidental drowning of their son Raniel, while he was swimming, intoxicated, at a pool party hosted by the Trinos. The trial court denied summary judgment to defendants on the ground there were genuine issues of material facts in dispute with respect to their negligence. As to Garcia, the dispute involved his active role in Raniel's drowning. Concerning the Trinos, the dispute involved the common law duty owed to an intoxicated Raniel and the implementation of reasonable pool safety protections to prevent his drowning. The motion court did not address dismissal of plaintiffs' intentional infliction of emotional distress and Portee claims. We reverse. Garcia should have been granted summary judgment because the undisputed record indicates he had no role in Raniel's decision to enter the pool, nor did he have a duty to rescue Raniel. Furthermore, there is no indication Garcia failed to exercise good faith when he tried to save Raniel. The Trinos should have been granted summary judgment because the Social Host Liability Act, N.J.S.A. 2A:15-5.5 to 5.8, does not govern plaintiff's drowning and, under our current state law, they owed Raniel no common law duty to prevent him from swimming while	Appellate

	intoxicated. As for the intentional infliction of emotional distress and Portee claims, they fail as a matter of law. Defendants' conduct in not knowing or indicating how Raniel drowned did not constitute intentional infliction of emotional distress, and there is no viable Portee claim because plaintiffs did not witness the drowning.	
Dec. 2, 2022	IN THE MATTER OF REGISTRANT, C.J. (20130055, MONMOUTH COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1387-21) This appeal raises the novel issue of whether it is appropriate for a trial court to consider acquitted conduct to determine a registrant's Megan's Law tier designation. The court held the trial court properly considered acquitted conduct because of the non-punitive, civil nature of a Megan's Law proceeding, the public safety purpose underpinning the statute, and the less demanding standard utilized to make a tier designation. The court determined this situation was distinguishable from imposing an enhanced criminal sentence based on acquitted conduct, which our Supreme Court recently held to be improper. State v. Melvin, 248 N.J. 321, 352 (2021). This is because the trial court's utilization of acquitted conduct was not for the purpose of increasing the registrant's punishment, but for a legitimate public safety purpose consistent with In re Registrant C.A., 146 N.J. 71, 80 (1996). The court remanded, however, for the trial court to conduct a more comprehensive review of the record and to consider portions of the trial transcript and other documents identified by the registrant, which he contends rebuts the acquitted conduct relied upon by the court to increase his tier classification.	Appellate
Nov. 21, 2022	DARO M. LARGOZA, M.D., ET AL. VS. FKM REAL ESTATE HOLDINGS, INC., ET AL. (L-0531-20, SUSSEX COUNTY AND STATEWIDE) (A-2456-21 ; A-2456-21) The court granted leave to appeal to consider the enforceability of a forum selection clause contained in commercial loan agreements executed by sophisticated parties. The court concluded such provisions are enforceable despite allegations that the contracts in which they are embedded are unenforceable due to fraud, unless the alleged fraud improperly induced assent to the forum selection clause specifically. In doing so, the court relied upon the United States Supreme Court ruling in Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 403-04 (1967), and the New Jersey Supreme Court ruling in Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 216-17 (2019), both of which applied this principle to enforce arbitration provisions. The court also acknowledged authority from other jurisdictions that have applied this rule to uphold forum selection clauses and explained that its holding aligns with the majority approach. In addition, distinguishing McNeil v. Zoref, 297 N.J. Super. 213, 219 (App. Div. 1997), the court held the entire controversy doctrine does not vitiate an otherwise-enforceable forum selection clause when the enforcing party is severable from the litigation. Following Wilfred v. MacDonald Inc. v. Cushman Inc., 256 N.J. Super. 58, 65 (App. Div. 1992), the court also concluded no appreciable inconvenience would result from enforcing the forum selection clause, thereby requiring the parties to litigate their claims in Utah. Finally, the court held that the seven-factor analysis detailed by the New Jersey Supreme Court in Cole v. Jersey City Med. Ctr., 215 N.J. 265, 280-81 (2013) to determine whether a party waived the right to enforce an arbitration provision applies equally to the question of whether a party waived the right to enforce a forum selection clause. The court further explained that the analysis required under Cole is necessarily fact-intensive and therefore declined to exercise original jurisdiction under Rule 2:10-5.	Appellate
Nov. 14, 2022	ASPHALT PAVING SYSTEMS, INC. VS. THE BOROUGH OF STONE HARBOR, ET AL. (L-0345-20, CAPE MAY COUNTY AND STATEWIDE) (A-0712-20) The Legislature has declared that no business entity may be awarded a public contract unless, prior to or along with its bid, the business entity submits "a statement setting forth the names and addresses" of the individuals owning more than ten percent of the entity. N.J.S.A. 52:25-24.2 (emphasis added). In this appeal, the court held that the Legislature did not intend the word "addresses" to be synonymous with "home addresses" and that the statute's requirement is met when the bidder provides its owners' mailing addresses.	Appellate
Nov. 10, 2022	PAUL M. CARELLI VS. BOROUGH OF CALDWELL, ET AL. (L-5938-19, ESSEX COUNTY AND STATEWIDE) (A-1294-21) The court granted leave to appeal to consider the denial of cross-motions for summary judgment – based on stipulated facts – about whether plaintiff Paul M. Carelli was entitled to enforcement of a contractual provision, upon the early termination of his third four-year term as the Borough of Caldwell's administrator, that purported to allow him a severance package "equal to one month salary for each year of service." The court concluded that this contractual provision was unenforceable because, in allowing a severance package of more than eight months' salary, it was inconsistent with N.J.S.A. 40A:9-138, which imposes both a ceiling and a floor on a municipal administrator's severance to "any unpaid balance of his [or her] salary and his [or her] salary for the next 3 calendar months." For that reason, the court reversed and remanded for entry of summary judgment dismissing Carelli's complaint.	Appellate
Nov. 9, 2022	GUY GILLIGAN, ET AL. VS. SUSAN JUNOD, L.P.N., ET AL. (L-1473-20, BURLINGTON COUNTY AND STATEWIDE) (A-1907-21)	Appellate

	In this appeal the court addresses a question of first impression: is a licensed practical nurse a "licensed person" as defined in and covered by the Affidavit of Merit (AOM) statute, N.J.S.A. 2A:53A-26 to -29. Defendant Susan Junod, a licensed practical nurse, appeals from orders declaring that plaintiff did not need to file an AOM to pursue professional-negligence claims against her and denying her motion to dismiss the complaint for failure to provide an AOM. The court affirms both orders because the AOM statute applies only to certain specified "licensed person[s]" and a licensed practical nurse is not included in the statute.	
Oct. 28, 2022	ROBERT ALAM VS. AMERIBUILT CONTRACTORS (DIVISION OF WORKER'S COMPENSATION) (A-2114-21 ; A-2114-21) Ameribuilt Contractors appeals the workers' compensation judge's February 1, 2022 order rejecting a proposed settlement and disqualifying its assigned insurance counsel, Brown & Connery, LLP (B&C), on the basis of a perceived conflict between Ameribuilt's workers' compensation carrier, Travelers Property Casualty Insurance Co. (Travelers), and Travelers' ostensible insured, respondent Robert Alam. The court concludes that the judge erred in finding that a conflict existed and, thus, there was no basis for the disqualification. Accordingly, the court is constrained to reverse. A trial judge may order the removal of counsel where there is a violation of the Rules of Professional Conduct. Here, the judge disqualified B&C based on a violation of R.P.C. 1.7, which states, in pertinent part, that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." In evaluating whether a conflict exists, however, we are mindful that "[a] corporation is regarded as an entity separate and distinct from its shareholders." Tully v. Mirz, 457 N.J. Super. 114, 123 (App. Div. 2018) (quoting Strasenburgh v. Straubmuller, 146 N.J. 527, 549 (1996)). Additionally, "a corporation is regarded in law as an entity distinct from its individual officers, directors, and agents." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 761 (1989) (citation omitted). Guided by these well-established legal principles, the court concludes that the trial judge erred in finding a conflict between Travelers and Alam. In reaching that conclusion, we hold that the judge failed to distinguish Ameribuilt, the corporation, from Alam, an owner and shareholder.	Appellate
Oct. 27, 2022	DCPP VS. D.C.A. AND J.J.C.B., IN THE MATTER OF THE GUARDIANSHIP OF I.A.C.C., J.S.C.C., A.I.C.C. AND I.C.C. (FG-06-0025-20, CUMBERLAND COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-0735-21 ; A-0735-21) Defendant appealed from a judgment of guardianship after trial, terminating her parental rights to four of her children. The panel addressed whether the trial court improperly considered evidence of the children's relationship with their foster parents in violation of prong two of the best-interests test. That prong was recently amended by the Legislature, which removed the sentence: "[s]uch harm may include evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child." N.J.S.A. 30:4C-15.1(a)(2) (amended 2021). The Legislature did not alter the other components of the best-interests standard. The panel rejected the argument that, by deleting the above language from prong two, the Legislature intended to bar all evidence concerning a child's relationship with resource caregivers, even in the context of the other prongs of the best-interest standard. Prong two as amended emphasizes consideration of whether a parent is able to overcome harm to the child as well as whether the parent can cease causing future harm. The amendment clearly isolates those specific inquiries from consideration of the bonds a child has forged with resource caregivers. Nevertheless, the amendments to prong two do not mean that such a bond may never be considered within any part of the best-interests analysis. Neither the legislative history nor the plain text necessitates such a sweeping conclusion. The panel construed the deletion from prong two to give greater effect to the alteration, in a manner that remains coherent with prong four. The amended statute requires a court to make a finding under prong two that does not include considerations of caregiver bonding, and then weigh that finding against all the evidence that may be considered under prong four—including the harm that would result from disrupting whatever bonds the child has formed.	Appellate
Oct. 25, 2022	JAMES MEYERS VS. STATE HEALTH BENEFITS COMMISSION (STATE HEALTH BENEFITS COMMISSION) (A-0312-21 ; A-0312-21) Petitioner, James Meyers, a retired New Jersey State Police captain, appeals from a final decision of the State Health Benefits Commission (SHBC) which discontinued his fully paid health care insurance coverage under the State Health Benefits Plan, and imposed a premium deduction against his monthly retirement check. Petitioner administratively appealed the deduction, contending the SHBC was estopped from terminating his free health care insurance coverage. In an initial decision, an administrative law judge (ALJ) found that the SHBC was estopped from deducting monthly health insurance premiums from petitioner's retirement payments. In a final decision, the SHBC rejected the ALJ's findings and concluded that it had the right to deduct a premium contribution from petitioner's monthly retirement payments to pay for his family's health insurance coverage. Petitioner appealed the final decision, arguing that the SHBC was equitably estopped from discontinuing no-cost health insurance coverage. The court held that petitioner was not eligible to receive no-cost health care coverage in retirement under N.J.S.A. 52:14-17.28d(b)(3), because he did not have the requisite creditable service time as of the effective date of the	Appellate

	statute. The court also held that principles of equitable estoppel could not be applied on these facts, where petitioner was statutorily ineligible for such coverage.	
Oct. 20, 2022	JIGNYASA DESAI, D.O., LLC, ETC. VS. NEW JERSEY MANUFACTURERS INSURANCE COMPANY (L-5247-21, BERGEN COUNTY AND STATEWIDE) (A-0221-21 ; A-0221-21) N.J.A.C. 11:3-29.4(e) limits an insurer's liability for a medical expense benefit not set forth in the fee schedules established by the New Jersey Department of Banking and Insurance to a reasonable amount considering the fee schedule amount for similar services. The regulation further states when a current procedural terminology (CPT) code for the service performed has been changed since the fee schedule was last amended, the provider shall bill the actual and correct code found in the most recent version of the CPT book, and the insurer shall pay the amount. The process of matching the current code with the most recent version of the fee schedule is referred to as "cross-walking." Where cross-walking is not possible because the fee schedule does not contain a reference to similar services, the insurer's liability for the medical expenses is limited to the usual, customary, and reasonable (UCR) fee. Plaintiff treated a patient using electromyography and nerve conduction velocity (NCV) tests and received approval from defendant under CPT code 95913, which is defined as thirteen or more nerve studies. This code replaced CPT codes 95903, 95904, and 95934. Plaintiff conducted twenty separate NCV tests, billed defendant using CPT code 95913, but cross-walked the types of tests back to the prior codes, 95903, 95904, and 95934. Defendant reimbursed plaintiff using the more expensive prior CPT code, 95903, and capped the reimbursement at thirteen tests. The parties arbitrated their dispute and a dispute resolution professional (DRP) ruled in favor of defendant. A majority of a DRP appellate panel affirmed. The trial court also affirmed the reimbursement, applying the UCR methodology. On appeal, the court exercised its supervisory authority to resolve a split in the interpretation of CPT code 95913 among DRPs and conducted a de novo review of the parties' arguments interpreting N.J.A.C. 11:3-29.4(e). The court reversed the trial court's application of the UCR methodology, holding that under N.J.A.C. 11:3-29.4(e), the appropriate methodology, absent an updated fee schedule, for reimbursements sought under CPT code 95913, was to cross-walk the tests performed back to CPT codes 95903, 95904, and 95934.	Appellate
Oct. 17, 2022	C.L. VS. DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, ET AL. (NEW JERSEY DEPARTMENT OF HUMAN SERVICES) (A-4284-19 ; A-4284-19) This appeal stems from a final agency decision by the Division of Medical Assistance and Health Services (DMAHS) denying C.L.'s request for Medicaid benefits due to excess resources. DMAHS determined an annuity C.L. purchased from the Croatian Fraternal Union of America (CFUA), which she understood to be irrevocable, was revocable and counted as a resource, thereby disqualifying her from Medicaid benefits. DMAHS further determined the federal injunction against it regarding the identical annuity contract for a different annuitant did not apply in this case because C.L. purchased the annuity prior to the injunction being entered. The court reversed and determined the annuity contract language was unambiguous and the annuity was irrevocable, notwithstanding language in the contract, which allowed CFUA to amend the contract. The court held the plain, ordinary meaning of the contract language expressly stated it was irrevocable, and DMAHS's interpretation would render those provisions meaningless contrary to established contract law and misleading pursuant to New Jersey Department of Banking and Insurance regulations.	Appellate
Sept. 29, 2022	L.R. VS. CHERRY HILL BOARD OF EDUCATION, ET AL. (L-5609-11, CAMDEN COUNTY AND STATEWIDE) (A-1819-20 ; A-1819-20) Plaintiff L.R. is the mother of a disabled student attending the Camden City Public Schools. She served defendant Cherry Hill Board of Education and its record custodian with an Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -17, request for all settlement agreements from all lawsuits in which defendant was sued by a student and/or their parent. The request asked defendant to redact the parent and student names leaving only their initials. Defendant produced the documents sought but redacted all personally identifiable information (PII), including initials. Plaintiff appealed. Following the decisions in L.R. v. Camden City Public School District (L.R. I), 452 N.J. Super. 56 (App. Div. 2017), and L.R. v. Camden City Public School District (L.R. II), 238 N.J. 547 (2019), the trial judge dismissed the complaint finding plaintiff was not entitled to the initials because she: (1) Was not authorized to obtain the information by means of a court order; and (2) lacked a common law right of access to student records because defendant had a legitimate claim of confidentiality under the Family Educational Records and Privacy Act, 20 U.S.C. 1232g, and the New Jersey Pupil Records Act, N.J.S.A. 18A:36-19. Following this appeal, the Department of Education promulgated new regulations governing public access to student records under OPRA in response to L.R. II. The regulations define PII and student records that may be released pursuant to a court order provided the records do not contain any PII. N.J.A.C. 6A:32-2.1. They also state student "records removed of all [PII]" may be released without consent. N.J.A.C. 6A:32-7.5(g)(1). On appeal, the court affirmed, holding the new regulations were not retroactive, and even if they were defendant's	Appellate

	redaction of the initials was consistent with the regulations and the trial judge's ruling that plaintiff was not entitled to unredacted records. The court held plaintiff's reliance on Keddie v. Rutgers, 148 N.J. 36, 40 (1997), establishing the public's common law right to records, and C.E. v. Elizabeth Public School District, 472 N.J. Super. 253 (App. Div. 2022), establishing the right to settlements entered before the Office of Administrative Law under OPRA, were inapposite because those cases involved the failure to produce documents not whether a defendant should have redacted the PII altogether.	
Sept. 27, 2022	SCOTT C. MALZBERG VS. CAREN L. JOSEY, ET AL. (L-7858-17, ESSEX COUNTY AND STATEWIDE) (A-2883-20 ; A-2883-20) This case presents a question of first impression regarding the scope of the Transportation Network Company Safety and Regulatory Act (TNCSRA or Act), N.J.S.A. 39:5H-1 to -27. The TNCSRA, which was enacted in 2017, comprehensively regulates companies and drivers that use a digital network such as a mobile phone application (app) to connect a "rider" to a "prearranged ride." Plaintiff was injured in a motor vehicle accident while he was operating his motorcycle as an Uber Eats delivery driver. The novel legal issue raised in this appeal is whether the Act—which requires "transportation network companies" to provide at least $1.5 million in underinsured motorist coverage—protects drivers while they are delivering food and not just when they are in the process of transporting passengers. The court concludes that the Act by its literal terms applies only to the prearranged transport of riders and not to the prearranged delivery of food. In determining the scope of the statute's intended reach, that is, its "overall meaning," the court pays special attention to the definition section, noting that the very existence—or non-existence—of specific definitions reveals the basic concepts and principles the Legislature deemed to be especially important, warranting precise and explicit formulations. The Legislature's decision to define certain terms but not others, the court reasons, can provide insight into the overall meaning of the statutory scheme and the scope of its reach. In this instance, nothing in the definition section—or any other section of the Act for that matter—refers to the delivery of food. The absence of any reference to food delivery in the definition section stands in stark contrast to the interrelated definitions that refer explicitly and repeatedly to "rides" and "riders," which clearly denote the transport of human passengers. Because the primary question posed in this case is easily resolved under a plain-text analysis, the court acknowledges that it need not consider extrinsic sources to determine legislative intent. The court nonetheless adds in the interest of completeness that nothing in the legislative history supports plaintiff's contention that the Act applies to food delivery services. The court further notes that regulations promulgated by the Motor Vehicle Commission support the court's interpretation as to the scope of the Act. The court acknowledges that by enacting the TNCSRA, the Legislature recognized the commercial and societal value of new technologies that use mobile digital networks to connect customers with service providers. But while the use of an app is necessary to trigger the Act's provisions, that alone is not sufficient. The court concludes that to fall within the Act's jurisdiction—and thus to invoke the protections of its minimum insurance coverage provisions—the app-based connection must be used to arrange a ride for a human passenger. The court further acknowledges that while the TNCSRA is of comparatively recent vintage, it was enacted before the COVID-19 pandemic, during which the imperative for social distancing simultaneously increased the demand for home delivery of food and reduced the demand for ridesharing. The court emphasizes that the evolution of the supply and demand marketplace since the TNCSRA was enacted does not change its plain text. While there may be circumstances, not present here, where it is necessary and appropriate to teach an old law to do new tricks, a statute's text does not evolve sua sponte. Reviewing courts, moreover, must afford due deference to the legislative process. Accordingly, the court stresses, it is for the political branches, not the Judiciary, to amend a statute to account for new developments and to fill any "holes" in the statute's scope and reach.	Appellate
Sept. 7, 2022	STATE OF NEW JERSEY VS. PAK L. CHAU (11-01-0223 AND 12-09-2133, ATLANTIC COUNTY AND STATEWIDE) (A-1069-20) The court reverses the trial court's order dismissing defendant's PCR petition as time-barred following guilty pleas to shoplifting and receiving stolen property entered post-Padilla v. Kentucky and remands for an evidentiary hearing. The court finds defendant established excusable neglect as his Texas immigration counsel, who has represented defendant since shortly after he was placed in ICE detention in 2014, certified he failed to advise defendant until September 2019 of the availability of a PCR application in New Jersey, and that there is a reasonable probability if defendant's factual assertions that he pleaded guilty to receiving stolen property, not because he was guilty, but based on incorrect advice about the immigration consequences of risking trial and a jail term, are found to be true, "enforcement of the time bar would result in a fundamental injustice." R.3:22-12(a)(1)(A).	Appellate
Sept. 7, 2022	STATE OF NEW JERSEY VS. VICTOR ALVAREZ (18-03-0172, HUDSON COUNTY AND STATEWIDE) (RECORD IMPOUNDED) (A-1453-19) Indicted on charges of first- and second-degree sexual assault, Victor Alvarez, a lawful permanent resident, rejected an offer to plead guilty to fourth-degree criminal sexual contact or third-degree criminal restraint in exchange for a recommended sentence of two years' probation based on likely erroneous immigration advice. He testified at trial that he is innocent of any non-consensual contact with the victim and only prevented her from driving to ensure her safety. The jury convicted him of first -degree aggravated sexual assault, and he was sentenced to a fifteen-year NERA term.	Appellate

	The court affirms the dismissal of his PCR petition based on his trial testimony, finding he cannot, as a matter of law, establish he suffered any prejudice from immigration counsel's or plea counsel's deficient advice about the plea because it was a plea he'd have to perjure himself to accept.	