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ANTONIO BELL, JR., Plaintiff, vs. GEORGIE M. HARDY, PROGRESSIVE CASUALTY INSURANCE COMPANY and/or PROGRESSIVE SOUTHEASTERN INS. CO., JOHN DOES 1-10 (fictitiously named) and XYZ COMPANIES 1-10 (fictitiously named), Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001954-23 ON APPEAL FROM: LAW DIVISION: ESSEX COUNTY DOCKET NO.: ESX-L-6420-22 SAT BELOW: HON. JEFFREY B. BEACHAM, J.S.C. **Civil Action**

AMENDED BRIEF AND APPENDIX FOR APPELLANT ANTONIO BELL, JR.

Date: August 19, 2024

On the Brief
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PRELIMINARY STATEMENT

This is a personal injury action arising out of a motor vehicle accident. Plaintiff's claim was dismissed on summary judgment, and he now appeals on a very narrow issue.

The trial Court found that plaintiff was "culpably uninsured" in New Jersey because his insurance policy with Progressive indicated that his vehicle was garaged in the State of North Carolina. It is undisputed that, prior to the accident, plaintiff changed his insurance policy to reflect a MAILING address in the State of New Jersey. However, he failed to realize that he also had to change the GARAGING address on the policy from North Carolina to New Jersey.

As a result of this innocent oversight, Progressive seized upon this error and voided his automobile insurance policy based upon a material misrepresentation. The motor vehicle tortfeasor then moved for summary judgment on the grounds that plaintiff was "culpably uninsured" at the time of the accident and thus cannot sue for pain and suffering.

It is submitted that summary judgment was improperly granted because it is a fact issue for a jury as to whether the plaintiff made a material misrepresentation to Progressive which would justify its coverage denial, and the dismissal of plaintiff's pain and suffering claim.

It is submitted that the standard of review on this case is de novo as an Appellate Court is not bound by the trial Court's application of law to the facts. FFRF v. Morris Cty Bd, 232 N.J. 543, 553 (2018).

PROCEDURAL HISTORY

1. On October 28, 2022, plaintiff filed a Complaint against defendant Hardy. (PA001)

2. On November 3, 2022, plaintiff filed an Amended Complaint to include a declaratory judgment action against Progressive due to its denial of personal injury protection (PIP) benefits. (PA002)

3. On December 16, 2022, the defendant, Georgie M. Hardy, filed an Answer. (PA003)

4. On January 16, 2023, the defendant, Progressive, filed an Answer and a Counterclaim. (PA004)

5. On February 1, 2023, the defendant, Progressive, filed a Motion to Stay all actions in personal injury protection arbitrations. (PA005)

6. On March 3, 2023, the personal injury claim filed by the plaintiff was stayed pending the resolution of the declaratory action for PIP benefits. (PA006)

7. On September 15, 2023, the plaintiff settled his claim against Progressive under a Confidentiality Agreement. (PA007)

8. On October 12, 2023, a Stipulation of Dismissal with Prejudice as to Progressive was filed. (PA008)

9. Counsel for the plaintiff and defendant Progressive agree that at this

point the matter between them has been "unsettled". However, before the matter against Progressive was reinstated, the defendant/respondent, Georgie M. Hardy, filed a Motion for Summary Judgment alleging that plaintiff was culpably uninsured.

10. On March 1, 2024, the Court granted summary judgment as to defendant/respondent Hardy.

11. On April 29, 2024, the trial Court certified the Summary Judgment Order as a final order. (PA162-163)

12. It is noted that the decision by the trial Court in favor of defendant/respondent Hardy finds that there is no New Jersey coverage for the plaintiff, thus encompassing the issue raised by defendant/respondent Progressive and, therefore, all issues had been decided as a matter of law.

13. It is respectfully submitted that it is undisputed that defendant/respondent Progressive was licensed to do business in the State of New Jersey at the time of the accident.

STATEMENT OF FACTS

This is a personal injury action arising out of a motor vehicle accident which occurred on April 13, 2022. The plaintiff/appellant sets forth the following statement of facts which plaintiff/appellant asserts are undisputed:

On April 13, 2022, the plaintiff/appellant, Antonio Bell, Jr., was involved in an automobile accident with the defendant/respondent, Georgie M. Hardy. (See police report, PA164-165)

The police report lists the plaintiff's address 652 Forest Street, Orange, NJ. (PA164-165) At the time of the accident, the plaintiff/appellant was insured through an automobile insurance policy issued by the defendant, Progressive. (PA166-167)

Prior to the accident, in January 2022, plaintiff had applied for automobile insurance through Progressive. In the original declarations page issued in January 2022, the plaintiff's mailing address was in North Carolina and the garaging address of his vehicle was also in North Carolina. (PA166-167) At the time he applied for insurance with Progressive in 2022, plaintiff did have a Residential Lease Agreement in the State of Jersey for an apartment located at Forest Street in Orange, NJ. (PA170-174)

Plaintiff had an apartment in New Jersey and an apartment in North Carolina in January 2022 because he was going back and forth between North Carolina and New Jersey for business. (PA175-204, plaintiff's deposition pages 17-21)

In February 2022, prior to the April 2022 accident, plaintiff changed his Progressive insurance policy to reflect a New Jersey mailing address. He changed it because he was living in New Jersey full-time and had been doing a lot of business by Zoom. (PA175-204, plaintiff deposition pages 29-32) When plaintiff changed his mailing address, it was his intention to notify Progressive that he was in New Jersey, not North Carolina. (PA175-204, plaintiff deposition pages 43-44) It is undisputed that plaintiff did not change his garaging address on the policy. Plaintiff only changed his mailing address on the policy.

When plaintiff originally applied for insurance in January 2022, he applied online. (PA175-204, plaintiff's deposition pages 26-28) When plaintiff decided to move to New Jersey full-time in February 2022, he changed the mailing address on his Progressive policy. (PA175-204, plaintiff's deposition pages 31-32) When he changed the mailing address on his policy, he presumed that Progressive would understand that he was moving to New Jersey and that the car would be in New Jersey as well. (PA175-204, plaintiff's deposition pages 44 and 115-116) Plaintiff assumed that changing the mailing address on his insurance policy was notification to Progressive that both he and his vehicle would be located in the State of New Jersey, despite any paperwork to the contrary. (PA175-204, plaintiff's deposition page 48) Plaintiff did not understand that he had to change the "garaging" of his vehicle on the policy as well as the mailing address. He merely assumed that

changing the mailing address was notification to Progressive of the location of his vehicle. (PA175-204, plaintiff's deposition pages 112-113)

A Progressive claims representative, Gloribel Roque, indicated that if there is change to a Progressive policy reflecting a new mailing address, underwriting may receive a notification, but claims would not. (PA205-212, Roque deposition pages 15-16) After the accident, Progressive refused to pay personal injury protection benefits because it alleged that plaintiff Bell had committed a material misrepresentation by misrepresenting the location of the "garaging" of his vehicle at the time of the April 2022 accident.

During her deposition, Ms. Roque indicated that she was not in underwriting but worked in claims doing investigations. (PA205-212, Roque deposition page 11)

1. When plaintiff/appellant applied for insurance, he applied online. (PA175-204, plaintiff deposition pages 26-28)

2. When Mr. Bell changed his insurance policy to reflect a New Jersey mailing address, he did not recall whether it was by telephone or online. (PA175-204, plaintiff deposition pages 30-31)

3. He testified that he changed his mailing address because he was moving to New Jersey full-time. (PA175-204, plaintiff deposition pages 31-32)

4. When Mr. Bell changed his mailing address on the Progressive policy,

he presumed that Progressive would understand that he was moving to New Jersey and that the car would be in New Jersey. (PA175-204, plaintiff deposition page 44 and 115-116)

5. In his deposition, plaintiff testified that when he changed his mailing address on his policy that he believed that he was notifying Progressive that he was living in New Jersey along with his vehicles. (PA175-204, plaintiff deposition page 44)

6. In his deposition, plaintiff testified that when he moved to New Jersey and notified Progressive of his move that it was assumed that is where the vehicles would be garaged in spite of any paperwork to the contrary. (PA175-204, plaintiff deposition page 48)

7. During the course of his deposition, Mr. Bell did reiterate that he did not understand what the significance of "garaging" meant with regard to the policy. (PA175-204, plaintiff deposition pages 112-113)

LEGAL ARGUMENT

POINT I

SUMMARY JUDGMENT WAS IMPROPERLY GRANTED BECAUSE HE CHANGED HIS INSURANCE POLICY PRIOR TO THE APRIL 2022 ACCIDENT. (PA162-PA163)

All parties agree that the black letter case law states that a defendant is entitled to summary judgment in its favor when reasonable minds cannot differ about the outcome. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995).

The crux of defendant's summary judgment motion was that plaintiff failed to comply with Section 4.5 of the No-Fault Act because he had a North Carolina policy and his car was principally garaged in New Jersey. However, it is undisputed that plaintiff attempted to change his North Carolina insurance policy to a New Jersey insurance policy prior to the accident of April 2022.

It is undisputed that plaintiff changed the mailing address on his insurance policy to New Jersey prior to the April 2022 accident. However, he failed to properly navigate the computer and, thus, did not change the garaging of his vehicle to New Jersey. It, quite frankly, beggars belief that the average person would understand that changing their mailing address to New Jersey does not equate with notifying their insurance company that the vehicles are now garaged in New Jersey.

It is well-settled that for an insurer to void a policy because of a misrepresentation, the misrepresentation must be knowing and material. A mere oversight or honest mistake will not cost an insured his or her coverage; the lie must be willful. Longobardi v. Chubb Ins. Co., 121 N.J. 530 (1990). While Longobardi involved a homeowner's policy and allegations of a post-loss misrepresentation, its holding has been cited and approved in subsequent cases involving allegations of misrepresentations in automobile policies. See generally, Palisades Safety & Ins. v. Bastien, 175 N.J. 144 (2003).

In the case at bar, plaintiff should not be penalized because he incompetently navigated the computer system. As there is less and less human to human contact in business transactions, it is entirely predictable that misunderstandings like the one at bar are going to occur. It is posited that the average person has no idea what "principally garaged" means. Mr. Bell, like any normal person who is not a lawyer, advised his insurance company that his mailing address was New Jersey and, therefore, assumed that he would have a New Jersey policy. If Mr. Bell was attempting to game the system, then he is a relatively incompetent fraudster.

In sum, the evidence demonstrates that plaintiff attempted to comply with Section 4.5 by changing his insurance policy to a New Jersey policy prior to the accident. There is no question whatsoever that a genuine issue of material fact exists as to whether Progressive was justified in denying coverage to Mr. Bell and, thus, a

genuine issue of material fact as to whether plaintiff failed to comply with Section 4.5 of the No-Fault Act. In light of the foregoing, it is respectfully submitted that the defendant's motion should be denied.

POINT II

SUMMARY JUDGMENT WAS IMPROPERLY GRANTED BECAUSE DISCOVERY WAS INCOMPLETE. (PA162-PA163)

It is well-settled that a trial Court should not grant a summary judgment when the matter is not yet ripe for such consideration and discovery has not yet been completed. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189 (1988).

If it is defendant's intention to litigate the issue of whether plaintiff failed to maintain insurance benefits under the No-Fault Act, then plaintiff may want to conduct additional depositions of Progressive representatives. For instance, plaintiff may need an additional deposition on the issue of how underwriting is informed once a person changes a mailing address on his or her policy and what steps underwriting takes to investigate the change of address with relation to the garaging of the subject vehicle.

In the case at bar, defendant's summary judgment motion was granted in spite of plaintiff/appellant's need for additional depositions of defendant/respondent, Progressive's representative.

CONCLUSION

In conclusion, it is respectfully submitted that the Summary Judgment Order entered in favor of the defendants should be reversed and this matter remanded to the Law Division for continuing discovery and trial.

Respectfully submitted,
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Dated: August 19, 2024

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ANTONIO BELL, JR., Plaintiff/Appellant, v. GEORGIE M. HARDY, PROGRESSIVE CASUALTY INSURANCE COMPANY and/or PROGRESSIVE SOUTHEASTERN INS. CO., JOHN DOES 1-10 (fictitiously named) and XYZ COMPAINES 1-10 (fictitiously named), Defendant/Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001954-23 Civil Action ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO.: ESX-L-6420-22 SAT BELOW: THE HON. JEFFREY B. BEACHAM, J.S.C

RESPONDENT/DEFENDANT GEORGIE M. HARDY'S BRIEF IN OPPOSITION TO APPELLANT/PLAINTIFF ANTONIO BELL, JR.'S APPEAL OF THE APRIL 29, 2024 ORDER GRANTING SUMMARY JUDGEMENT AND DISMISSING THE COMPLAINT WITH PREJUDICE AND APPENDIX

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PRELIMINARY STATEMENT

This Appeal stems from the dismissal on summary judgment of Appellant/plaintiff Bell's complaint for personal injury against respondent/defendant Hardy because he failed to maintain the required insurance coverage for vehicles principally garaged in New Jersey as required by N.J.S.A. 39:6A-4 when he was involved in an accident in New Jersey on April 13, 2022.

On March 1, 2024, the trial court granted respondent/defendant Hardy's motion for summary judgment dismissing the claims of appellant/plaintiff Bell for economic and non-economic loss, on the grounds that the appellant/plaintiff Bell failed to maintain insurance as required by N.J.S.A. 39:6A-4, was "culpably uninsured," and therefore could not maintain an action for economic and non-economic loss against respondent/defendant Hardy pursuant to N.J.S.A. 39:6A-4.5. This Order was Certified by the trial court as a Final Order and Entered on April 29, 2024.

The appellant/plaintiff Bell argues in this appeal that, due to his "innocent oversight" confusing the importance of his "mailing address" with the "garaging address" when he purchased the Progressive Southeastern Insurance Company ("Progressive Southeastern") policy in January 2022, after he moved to New Jersey in April 2021, such "innocent oversight" was not a material misrepresentation. He also argues that discovery was incomplete when summary judgment was granted.

Neither argument is relevant to his failure to maintain the required N.J.S.A. 39:6A-4 coverage.

The appellant/plaintiff Bell's PIP claim and defendant Progressive Southeastern's Counterclaim for Declaratory Judgment were temporarily settled under a confidentiality agreement when the trial court granted respondent/defendant Hardy's motion for summary judgment.

The trial court subsequently granted defendant Progressive Southeastern's unopposed motion for summary judgment, concluding that, "plaintiff's vehicles were garaged in New Jersey so there is no coverage under the North Carolina policy." Accordingly, any claim that a fact dispute existed, or that discovery was required, to resolve appellant/plaintiff Bell's failure to obtain coverage on his vehicles required by N.J.S.A. 39:6A-4 has been concluded. The appellant/plaintiff Bell's opposition to respondent/defendant Hardy's motion for summary judgment had no merit when the motion was decided on March 1, 2024 and has less merit now that the trial court found that the "vehicles were garaged in New Jersey…"

For the reasons set forth herein, respondent/defendant Hardy respectfully requests the decision of the trial court granting summary judgment and dismissing appellant/plaintiff Bell's complaint pursuant to N.J.S.A. 39:6A-4.5 be affirmed.

RESPONDENT'S PROCEDURAL HISTORY

Respondent/defendant Georgie M. Hardy adopts and incorporates the procedural history of appellant/plaintiff Bell.

Appellant/plaintiff filed an Amended Complaint to include a Count for PIP benefits against Progressive Southeastern Insurance Company. (PA002)

Progressive Southeastern Insurance Company filed an Answer and a Counterclaim seeking a Declaratory Judgment and denial of coverage to appellant/ plaintiff Bell. (PA004)

The personal injury action of appellant/plaintiff Bell against respondent/ defendant Hardy was severed from the insurance coverage claims and stayed on March 3, 2023. (PA006)

Appellant/plaintiff Bell and Progressive Southeastern Insurance Company settled their claims in principle on September 15, 2023. (PA007) The claims of appellant/plaintiff Bell against Progressive Southeastern Insurance Company were dismissed by Stipulation on October 12, 2023. (PA008). However, the settlement between appellant/plaintiff Bell and Progressive Southeastern Insurance Company ultimately failed to materialize.

Defendant Progressive Southeastern Insurance Company filed a Notice of Motion for summary judgment in its Declaratory Judgment action to confirm the denial of coverage based upon appellant/plaintiff Bell's material misrepresentation. (DR01)

On June 7, 2024, the trial Court granted defendant Progressive Southeastern Insurance Company's unopposed motion for summary judgment, finding that "plaintiff's vehicles were garaged in New Jersey so there is no coverage under the North Carolina policy." (DR03)

STATEMENT OF FACTS

The Statement of Facts submitted with the moving papers on behalf of appellant/plaintiff Bell is only disputed to the extent that they contain legal conclusions rather than Statements of Fact.

This action arises from a motor vehicle accident between appellant/plaintiff Antonio Bell and respondent/defendant Georgie Hardy on April 13, 2022. (PA002). Prior to moving to New Jersey, appellant/plaintiff Bell was a resident of North Carolina. (PA055-056, T67:L25-T69:L14). For at least eight (8) months prior to April 13, 2022, appellant/plaintiff Bell permanently resided in New Jersey. (PA043, T18:L23-30; PA046, T31:L13-24). Appellant/plaintiff Bell obtained a lease agreement for an apartment in New Jersey in August 2021. (PA090).

Appellant/plaintiff Bell applied for, and obtained, a Progressive Southeastern Insurance policy on January 30, 2022, which became effective February 4, 2022. (PA073-077; PA079-080). At the time appellant/plaintiff Bell applied for the Progressive Southeastern Insurance policy on January 30, 2022, he was a resident of New Jersey. (PA073-077; PA046, T28:L14-26; PA048, T37:L5-9). At the time appellant/plaintiff Bell applied for the Progressive Southeastern Insurance policy on January 30, 2022, his apartment lease in Charlotte, North Carolina had expired. (PA056-057, T72:L19-T76:L24).

Despite his New Jersey residence when he applied for, and obtained the Progressive Southeastern Insurance policy, appellant/plaintiff Bell's Progressive

Southeastern Insurance policy was written as a North Carolina policy. (PA073-077; PA079-080; PA085, 4:30-4:40). Appellant/plaintiff Bell's Progressive Southeastern Insurance policy was written using an insured address in Charlotte, North Carolina. (PA073-077; PA079-080).

Appellant/plaintiff Bell's Progressive Southeastern Insurance policy insured two vehicles: a 1999 Toyota Corolla and a 2002 Kia Sportage. (PA079-080). The 1999 Toyota and the 2002 Kia insured under appellant/plaintiff Bell's Progressive Southeastern Insurance policy were identified as having a "garaging zip code" of 28262 (a zip code from North Carolina). (PA073-077; PA079-080). The Progressive Southeastern Insurance policy provided "Medical Payments" coverage in the amount of $1,000. (PA079-080).

Prior to April 13, 2022, appellant/plaintiff Bell obtained a New Jersey driver's license. (PA070-071; PA051, T51:L13-23). Appellant/plaintiff Bell's driver's license reflects the address/residency in Orange, New Jersey. (PA070-071; PA051, T50:L8-19). Prior to April 13, 2022, appellant/plaintiff Bell principally garaged his 2002 Kia Sportage in Orange, New Jersey. (PA048, T38:L25-T39:L10; PA048, T40:L7-10; PA070-071).

Plaintiff Bell never updated his insurance policy to reflect "garaging zip codes" in New Jersey. (PA048, T38:L11-24; PA049, T43:L11-22). Plaintiff Bell never informed his insurance carrier that plaintiff was a resident of New Jersey. (PA048, T37:L5-22; PA048, T39:L11-20).

Prior to and on April 13, 2022, plaintiff Bell was insured by the Progressive Southeastern insurance policy (Policy Number: 955655710) which was written in North Carolina. (PA070-071; PA073-077; PA079-080). Prior to and on April 13, 2022, plaintiff Bell's address/residency was in Orange, New Jersey 07050. (PA070-071; PA041, T10:L2-6; PA051, T49:L11-15).

On April 13, 2022, appellant/plaintiff Bell was operating a 2002 Kia Sportage, which vehicle was involved in an accident with respondent/defendant Hardy. (PA070-071). Progressive Southeastern denied appellant/plaintiff Bell's claims related to the April 13, 2022, accident due to "material misrepresentation." (PA082-083).

LEGAL ARGUMENT

POINT 1

STANDARD OF REVIEW

It is well-settled that on appeal deference is given to credibility findings. "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) *quoting* State v. Gamble, 218 N.J. 412, 424 (2014). In furtherance of this, "appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) *quoting* Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974). Appellate courts also apply that deferential standard of review to a trial court's fact-finding based on video or documentary evidence. McNeil-Thomas, 238 N.J. 256, 271 (2019); State v. S.S., 229 N.J. 360, 379 (2017); State v. Hubbard, 222 N.J. 249, 270 (2015).

In addition, when interpreting a statute, the standard for New Jersey Courts is to determine the "intent of the Legislature[,]" Hardy v. Abdul-Matin, 198 N.J. 95, 101 (2009) and must first consider the plain language of the statute because that is the best indicator of legislative intent. DiProspero v. Penn, 183 N.J. 477, 492 (2005). Specifically, the Court is to,

> 'ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole.' [Hardy, 198 N.J. at 101.] . . . Courts are cautioned against 'rewrit[ing] a plainly-written enactment of the Legislature or presum[ing] that the Legislature intended something other than that expressed by way of the plain language.' [Ibid.] If the language is 'clear on its face,' courts should 'enforce [the statute] according to its terms.'
>
> However, 'where a literal interpretation would create a manifestly absurd result, contrary to public policy, the spirit of the law should control.' [Hubbard v. Reed, 168 N.J. 387, 392 (2001).] . . . Accordingly, 'when a 'literal interpretation of individual statutory terms or provisions' would lead to results 'inconsistent with the overall purpose of the statute,' that interpretation should be rejected.' [Id. at 392-93.]
>
> Perrelli v. Pastorelle, 206 N.J. 193, 200-01 (2006).

Here, appellant/plaintiff Bell principally garaged his vehicles in New Jersey and was required to maintain New Jersey's Compulsory Automobile Insurance, specifically required by N.J.S.A. 39:6A-4 *et. seq*. He failed to do so, and therefore his claims are barred pursuant to N.J.S.A. 39:6A-4.5. Moreover, the appellant/plaintiff's coverage dispute with defendant Progressive Southeastern Insurance Company was concluded on Progressive Southeastern Insurance Company's unopposed motion for summary judgment. The trial Court concluded that "plaintiff's vehicles were garaged in New Jersey so there is no coverage under the North Carolina policy."

The June 7, 2024 Order confirmed that the appellant/plaintiff Bell was required to and failed to maintain insurance meeting the requirements of N.J.S.A. 39:6A-4.

Therefore, his claims for economic and non-economic loss were properly dismissed pursuant to N.J.S.A 39:6A-4.5.

Here, the doctrine of *res judicata* is applicable. Velasquez v. Franz, 123 N.J. 498, 505 (1991). The doctrine "provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding." Ibid.; see also, Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 409 (1991) ("[b]y insulating courts from the relitigation of claims, res judicata prevents the judicial inefficiency inherent in multiplicitous litigation[,]" ensures the finality of judgments, and advances the interest of fairness "[b]y preventing harassment of parties[.]). For an action to be barred based on the application of *res judicata* there must be (1) a final judgment by a court of competent jurisdiction, (2) identity of parties, and (3) substantially similar or identical causes of action. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460-61 (1989). These elements are present in this action, warranting the application of *res judicata*.

Thus, even if appellant/plaintiff's alleged fact dispute concerning his claims against his insurance carrier had a bearing on the application of N.J.S.A. 39:6A-4.5, here, any dispute concerning the analysis of those claims is now concluded, by an order that found his vehicles were garaged in New Jersey and were not insured. Therefore, appellant/plaintiff failed to maintain insurance meeting the requirements of N.J.S.A. 39:6A-4 on April 13, 2022 and barred from making a claim for economic and non-economic loss against defendant Hardy.

POINT II

PLAINTIFF'S "ATTEMPTS" TO "CHANGE" HIS AUTOMOBILE POLICY DOES NOT EXCUSE HIS FAILURE TO COMPLY WITH NEW JERSEY INSURANCE LAWS

N.J.S.A. 39:6A-4 provides as follows:

> Except as provided by section 45 of P.L.2003, c.89 (C.39:6A-3.3) and section 4 of P.L.1998, c.21 (C.39:6A-3.1), every standard automobile liability insurance policy issued or renewed on or after the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall contain personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustain bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile, and to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with permission of the named insured.

The appellant/plaintiff Bell's primary residence was unquestionably in New Jersey at the time he obtained a Progressive Southeastern Insurance policy from North Carolina. When he applied for Progressive Southeastern Insurance Company policy, he affirmatively listed his insured address as North Carolina. He also affirmatively chose North Carolina zip codes for his "garaging zip codes." (PA073-077; PA048, T37:L5-22, T38:L11-24; PA049, T43:L11-22; PA050, T45:L8-21).

The appellant/plaintiff Bell did not notify Progressive Southeastern Insurance Company of his true residency; rather, he used a North Carolina address for an

apartment for which the lease had expired and that he no longer occupied. (PA056-057, T72:L1-T76:L24).

The appellant/plaintiff Bell also failed to obtain automobile insurance required by New Jersey law. Specifically, his policy with Progressive afforded only $1,000 for "Medical Payments" far below the $250,000 in PIP coverage afforded under a New Jersey "Standard" policy (or $15,000, with $250,000 in coverage for certain emergency treatments, under a "Basic" policy). (PA078-080) See N.J.S.A. 39:6A-4 and N.J.S.A. 39:6A-3.1. His intent to have the proper insurance is not relevant, and his claims against his own insurance carrier are, although now resolved against him, likewise irrelevant. It is therefore submitted that appellant/plaintiff Bell's economic and non-economic claims are barred pursuant to N.J.S.A. 39:6A-4.5.

N.J.S.A. 39:6A-4.5(a) provides:

> Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by [N.J.S.A. 39:6A-4], [N.J.S.A. 39:6A-3.1], or [N.J.S.A. 39:6A-3.3] shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.

There is no question that appellant/plaintiff failed to maintain the mandated medical expense benefits coverage required under N.J.S.A. 39:6A-4 and consequently, his claims against respondent/defendant Hardy are barred.

N.J.S.A. 39:6A-4.5(a) expressly provides that a person, such as plaintiff, who "fails to maintain medical expense benefits coverage . . . shall have no cause of action for recovery of economic or noneconomic loss[.]" N.J.S.A. 39:6A-4.5(a). Appellant/plaintiff does not argue the language is ambiguous. It is undisputed that his vehicles were garaged in New Jersey and that he failed to obtain insurance compliant with N.J.S.A. 39:6A-4. Therefore, the trial court correctly concluded that the plain language of N.J.S.A. 39:6A-4.5(a) required the dismissal of appellant/plaintiff's claims.

"N.J.S.A. 39:6A-4.5[(a)] advances a policy of cost containment by ensuring that an injured, uninsured driver does not draw on the pool of accident-victim insurance funds to which he did not contribute." Caviglia v. Royal Tours of Am., 178 N.J. 460, 471 (2004). In finding the statute was constitutional, the Court in Caviglia declined "to second-guess the Legislature's common-sense reasoning that section 4.5[(a)] has the potential to produce greater compliance with compulsory insurance laws and in turn, reduce litigation, and result in savings to insurance carriers and ultimately the consuming public." Id. at 477.

N.J.S.A. 39:6A-4.5(a) does not include a requirement that an uninsured motorist have a culpable state of mind and does not exempt motorists who have a good faith belief that they have medical expense benefits coverage. The requirements of N.J.S.A. 39:6A-4.5(a) are triggered where the "owner or registrant

of an automobile registered or principally garaged in this State that was being operated without personal injury protection coverage[.]" N.J.S.A. 39:6A-7(b)(1).

With regard to residency and timing, N.J.S.A. 39:3-17.1(b) requires that:

> Any person who becomes a resident of this State and who immediately prior thereto was authorized to operate and drive a motor vehicle . . . in this State as a nonresident pursuant to [N.J.S.A. 39:3-15] and [N.J.S.A. 39:3-17], shall register any vehicle operated on the public highways of this State within [sixty] days of so becoming a resident of New Jersey, pursuant to [N.J.S.A. 39:3-4] or [N.J.S.A. 39:3-8.1].

In short, "[N.J.S.A. 39:6A-4.5(a)] bars the culpably uninsured (those vehicle owners required by statute to maintain PIP coverage but who have failed to do so) when injured while operating an uninsured vehicle." Craig & Pomeroy, New Jersey Auto Insurance Law, § 15:5-2 (2024); Perrelli, 206 N.J. at 208 (declining to accept plaintiff's argument that her belief the vehicle was insured was enough to preclude the operation of N.J.S.A. 39:6A-4.5(a)).

a. *N.J.S.A.* 39:6A-4.5 does not have a "scienter" requirement.

The appellant/plaintiff Bell argues he should be exempted from New Jersey law due to assumptions he made. Appellant/plaintiff Bell's ill-fated intentions and "fail[ure] to properly navigate the computer" to properly change his insurance policy garaging address is irrelevant. (Pg.9 - Appellant Brief). Likewise, his alleged confusion regarding the significance of the mailing address versus the garaging address is also irrelevant. Ibid. The Appellate Division has already addressed this issue: **"N.J.S.A. 39:6A-4.5(a) does not include a requirement that**

an uninsured motorist have a culpable state of mind and does not exempt motorists who have a good faith belief that they have medical expense benefits coverage." Bencosme v. Kannankara, A-1672-14T3, 2016 N.J. Super. Unpub. LEXIS 614, *6 (App. Div. Mar. 22, 2016). (DR05). There is no "exemption for individuals who acted in good faith to obtain insurance but failed to do so" under N.J.S.A. 39:6A-4.5. Bencosme, at *6.

Thus, even assuming the "evidence demonstrates that [appellant/]plaintiff *attempted* to comply with Section 4.5," this argument is also irrelevant. (Emphasis added) (Pg.10 - Appellant Brief).

b. Even if N.J.S.A. 39:6A-4.5 had an "intent" requirement, the evidence clearly demonstrates appellant/plaintiff Bell's intentional failure to insure his vehicle with a New Jersey policy.

It does not matter that appellant/plaintiff is "a normal person who is not a lawyer" – millions of "normal" New Jersey residents are able to properly procure the requisite New Jersey automobile insurance without issue. Appellant/plaintiff Bell is not exempt from those laws. It is also disingenuous for him to suggest he was some non-sophisticated operator who simply misunderstood his online application. In fact, plaintiff holds a bachelor's degree in management with a focus in marketing and is self-employed in his own business teaching "trade currencies, indexes, commodities, [and] metals" in "foreign exchange markets." (PA041-042, T12:L1-T13:L14).

Appellant/plaintiff understood what he did, which was to obtain a North Carolina policy while residing in New Jersey. The evidence is overwhelming and demonstrated by plaintiff's exchange with the police officers at the scene of the accident (PA085, 4:30 - 4:40):

> Police: Is [the automobile insurance] New Jersey Progressive?
>
> Appellant/Plaintiff Bell: **North Carolina.**

Appellant/plaintiff Bell relocated from North Carolina to Orange, New Jersey prior to the subject accident of April 13, 2022. (PA051, T49:L11-15). He relinquished his rented property in North Carolina by the time he signed up for the Progressive Southeastern Insurance policy. (PA057, T76:L9-24). He changed his driver's license to New Jersey using the address of Orange, New Jersey 07050. (PA040, T5:L16-24; PA051, T50:L8-T51:L23). He identified this address as his on his Complaint, in Interrogatories, and at deposition. (PA002, Count 1, ¶1; PA026, No. 1; PA040, T5:L16-24). He confirmed this New Jersey address at the time of the accident in his deposition. (PA041, T10:L2-6). This New Jersey address is recorded on the police report for the April 13, 2022 accident. (PA070-071). His relocation to New Jersey was a "permanent" move. (PA046, T31:L13-24). He considered the Orange, New Jersey address, his "home." (PA052, T56:L7-21).

The appellant/plaintiff garaged his 2002 Kia Sportage (the vehicle involved in the accident) in Orange, New Jersey 07050 at the time he applied for the

Progressive Southeastern policy. (PA048, T37:L5-9, T38:L25-T39:L10, T40:L7-10).

Appellant/plaintiff's address was in New Jersey, and that plaintiff garaged his vehicles in New Jersey, for at least one year prior to the accident of April 13, 2022:

- On April 7, 2021, appellant/plaintiff was charged with "driving or parking [an] unregistered motor vehicle" in the jurisdiction of Orange City, New Jersey. (PA087-088);
- In August of 2021, appellant/plaintiff obtained a lease agreement in his name for residence located at 652 Forest St. in Orange, New Jersey 07050. (PA089);
- At the scene of the accident, when police asked whether appellant/plaintiff lived in North Carolina, plaintiff replied "No, I just moved up here last year." (PA085, 18:23-18:30); and,
- Investigation reports show that appellant/plaintiff's vehicle was present in the City of Orange, New Jersey consistently: dates include May 18, 2021, September 6, 2021, November 7, 2021, January 22, 2022, and February 8, 2022. (PA096-120).

The appellant/plaintiff Bell failed to apprise Progressive Southeastern that he lived in New Jersey and garaged his vehicles in New Jersey. He failed to provide his New Jersey address to his insurance carrier. (PA048, T37:L5-22; T38:L11-T40:L10; PA049, T43:L11-22. For that reason, Progressive Southeastern determined that appellant/plaintiff Bell had made a "Material Misrepresentation" on the insurance application and was denied coverage. (PA082-083) The trial court so concluded in its June 7, 2024 order (DR03).

The appellant/plaintiff Bell knew he had a North Carolina policy while he resided in New Jersey. He failed to maintain insurance meeting the requirements of

N.J.S.A. 39:6A-4 and his economic and non-economic claims are barred pursuant to N.J.S.A. 39:6A-4.5.

c. It is irrelevant whether appellant/plaintiff Bell had claims against his insurance carrier, Progressive Southeastern.

The appellant/plaintiff Bell claims that "a genuine issue of material fact exists as to whether Progressive [Southeastern] was justified in denying coverage to Mr. Bell . . .." (Pg.10 - Appellant Brief). He further claims that "material misrepresentations" must be "knowing and material." (Pg.10 - Appellant Brief).

First, it matters not that appellant plaintiff Bell had a dispute with his insurance carrier. The Appellate Division has already addressed in Bencosme v. Kannankara, *supra*, that a plaintiff's allegations against their insurance carrier have no bearing on the analysis under N.J.S.A. 39:6A-4.5. The Bencosme Court stated:

> the express language of N.J.S.A. 39:6A-4.5 does not support plaintiff's request for an exemption from the statutory bar for those that claim to be victims of insurance fraud. Recognizing such an exemption would be inconsistent with the Act's purpose of reducing auto insurance costs and would undermine one of the original goals of the statute...
>
> Bencosme, at *12.

So, even if Progressive Southeastern made incorrect determinations about appellant/plaintiff Bell's coverage, the material facts for purposes of N.J.S.A. 39:6A-4.5 are that he resided in New Jersey and principally garaged his vehicles here; he had a North Carolina policy which did not provide coverage required by N.J.S.A. 39:6A-4. There is no "exemption for individuals who acted in good faith

to obtain insurance but failed to do so" under N.J.S.A. 39:6A-4.5. Bencosme, *supra*, at *6.

d. There is no question of fact in this matter which is bolstered by appellant/plaintiff's failure to oppose his insurance carrier's summary judgment motion.

The appellant/plaintiff's Declaratory Judgement Complaint against Progressive Southeastern was dismissed on an unopposed Motion for Summary Judgment, filed by Progressive Southeastern, on June 7, 2024. (DR03). The appellant/plaintiff cannot now claim a fact issue existed on the decision of his insurer to deny his claim for insurance based on a "material misrepresentation." The insurance coverage claims have concluded and were properly dismissed on an unopposed motion for summary judgment conclusively establishing that plaintiff failed to maintain insurance required by N.J.S.A. 39:6A-4 and was in violation of N.J.S.A. 39:6A-4.5 on April 13, 2022.

Thus, even if appellant/plaintiff Bell's claims against his insurance carrier were relevant to the application of N.J.S.A. 39:6A-4, the litigation of those claims was concluded in favor of Progressive Southeastern Insurance Company on an unopposed motion for summary judgment. The trial court found that "plaintiff's vehicles were garaged in New Jersey so there is no coverage under the North Carolina policy" and dismissed with prejudice.

Summary judgment is granted as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-529 (1995). Interpretations and application of

statutes are the province of law for the Court to decide – not a jury. See e.g., State v. S.B., 230 N.J. 62, 67 (2017); State v. Cagno, 211 N.J. 488, 505 (2012). Here, there was no "fact" question as to whether appellant/plaintiff Bell failed to comply with the law, N.J.S.A. 39:6A-4. The appellant/plaintiff Bell's Complaint was properly dismissed pursuant to N.J.S.A. 39:6A-4.5.

POINT III

DISCOVERY WAS NOT INCOMPLETE AND FURTHER DISCOVERY WOULD NOT HAVE PREVENTED SUMMARY JUDGMENT

Opposition to a summary judgment motion requires the opposition to specify exactly what new discovery will reveal – otherwise, the moving party is entitled to summary judgment. Trinity Church v. Lawson-Bell, 394 N.J. Super. 159, 166 (App. Div. 2007). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome [a] motion [for summary judgment]." Puder v. Buechel, 183 N.J. 428, 440-441 (2005) (internal quotations and citations omitted).

Appellant/plaintiff Bell argues that summary judgment was improperly granted because further discovery was required. He identified potential depositions of Progressive Southeastern witnesses concerning underwriting knowledge. However, when respondent/defendant Hardy's motion was decided, depositions of the Progressive Southeastern representatives were completed. Appellant/plaintiff Bell could have, but did not, conduct additional depositions within the time provided by the Court Rules; rather, he temporarily settled his coverage claim, so

there was no active litigation on the coverage dispute (i.e., the Declaratory Judgement action) when respondent/defendant Hardy's N.J.S.A. 39:6A-4.5 motion was granted.

Notably, appellant/plaintiff Bell's Declaratory Judgment Complaint against Progressive Southeastern was dismissed on an unopposed motion for summary judgment on June 7, 2024. The decision of the motion judge specifically held that appellant/plaintiff Bell's vehicles were garaged in New Jersey, so there is no coverage under the North Carolina policy. (DR03). If garaged in New Jersey, appellant/plaintiff Bell was required to have coverage mandated by N.J.S.A. 39:6A-4 on his vehicles. He did not. Consequently, the unopposed Order granting summary judgment effectively eliminates any claim that a "fact issue existed" when the Court granted respondent/defendant Hardy's N.J.S.A. 39:6A-4.5 summary judgment motion.

Regardless, neither appellant/plaintiff Bell's opposition to the summary judgment motion nor his Brief on this appeal contain a statement of what further discovery was needed. The motion filed by Progressive Southeastern conclusively demonstrates that there was no discovery required which would alter the analysis that he failed to maintain insurance meeting the requirements of N.J.S.A. 39:6A-4 on April 13, 2022.

Moreover, as respondent/defendant argued herein, the claims against Progressive Southeastern and its internal policies and decisions, are irrelevant to the

analysis of N.J.S.A. 39:6A-4.5 in the context of appellant/plaintiff Bell's ability to recover damages for personal injury.

Even if relevant, the doctrine of *res judicata* is applicable. Velasquez v. Franz, 123 N.J.498, 505 (1991). Under the doctrine, "a cause of action between parties that has been finally determined [ ] cannot be relitigated by those parties or their privies in a new proceeding." Ibid.; see also, Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 409 (1991) (*res judicata* "insulat[es] courts from the relitigation of claims [ ] and prevents the judicial inefficiency inherent in multiplicitous litigation." For an action to be barred based on the application of *res judicata* there must be (1) a final judgment by a court of competent jurisdiction, (2) identity of parties, and (3) substantially similar or identical causes of action. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460-61 (1989). These elements are present in this action, warranting the application of the doctrine.

CONCLUSION

Appellant/plaintiff Bell was required to maintain New Jersey's Compulsory Automobile Insurance required by N.J.S.A. 39:6A-4 He failed to do so, and therefore his claims are barred by N.J.S.A. 39:6A-4.5.

It is therefore respectfully requested that this Honorable Court AFFIRM the April 29, 2024, Order of lower court granting respondent/defendant Hardy's motion for Summary Judgment and dismissing the Complaint against him with prejudice.

Respectfully submitted,
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ANTONIO BELL, JR., Plaintiff, vs. GEORGIE M. HARDY, PROGRESSIVE CASUALTY INSURANCE COMPANY and/or PROGRESSIVE SOUTHEASTERN INS. CO., JOHN DOES 1-10 (fictitiously named) and XYZ COMPANIES 1-10 (fictitiously named), Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001954-23 ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-6420-22 SAT BELOW: HON. JEFFREY B. BEACHAM, JSC

RESPONDENTS/DEFENDANTS PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY, ET AL.'S BRIEF AND APPENDIX (AMENDED)

Date: October 4, 2024

On the Brief:

David L. Kowzun, Esq.

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PRELIMINARY STATEMENT

Appellant/plaintiff Antonio Bell Jr.'s (hereinafter referred to as "Bell") Appeal arises from the dismissal on summary judgment of his complaint for personal injury related to a motor vehicle accident that occurred on April 13, 2022, seeking payment of No-Fault benefits. Appellant/plaintiff Bell's complaint against both defendants was ultimately dismissed on motion for summary judgment when the trial court found that plaintiff failed to insured vehicles principally garaged in New Jersey required by N.J.S.A. 39:6A-4. The trial court ultimately decided that because when appellant/plaintiff Bell applied for an insurance policy with respondent/defendant Progressive Southeastern Insurance Company (hereinafter referred to as "Progressive"), Bell indicated that he was living in, and his vehicles were garaged in the State of North Carolina. In actuality, Bell was living in New Jersey and his vehicles had been with him in New Jersey at all relevant times. The trial court decided that because appellant/plaintiff was living in and garaging his vehicles in New Jersey, instead of North Carolina, he was "culpably uninsured" at the time of the accident.

Appellant/Plaintiff on appeal is arguing that when he notified respondent/defendant Progressive of his change in mailing address prior to the accident on February 28, 2022, he failed to realize that he also had to change the "garaging address" of his vehicles. He argues that this a mere harmless error by

a layperson who did not understand the terminology. Appellant/Plaintiff knew that he was living in New Jersey and that his vehicles were kept in New Jersey when he applied for the North Carolina insurance policy. He indicated to Progressive that he was living at 1520 Overland Park Lane, Charlotte, North Carolina 28262 and his vehicles would be garaged at North Carolina ZIP code, even though he had was not residing in North Carolina at that time. Regardless of his reasoning, this amounted to a material misrepresentation to Progressive because a vehicle's garaging address is material in providing an insurance policy. By both the language in the auto policy and by law, respondent/defendant Progressive had a right to rescind Bell's automobile insurance policy due to the misrepresentations in his application that he resided in and that his vehicles were kept in North Carolina when in actuality they were, at all relevant times, kept in New Jersey

Appellant/Plaintiff has argued that his intent upon amending the policy was to notify respondent/defendant Progressive that he was living in New Jersey when he updated his mailing online address with Progressive and that a layman would not understand that changing a mailing address is not equivalent to chaining the garaging address. However, Bell has admitted that he did not read the Declarations pages of his insurance policy upon issuance. Had he read the Declarations page, it would have been clear that the garaging location of the

vehicle is separate from the mailing address. The motor vehicle accident that gave rise to this action occurred over a month after he amended the policy, giving him ample time to read a single page.

It should be noted that this appeal appears to only be for respondent/defendant Georgie M. Hardy's grant of summary judgment, even though Progressive was also granted summary judgment on June 7, 2024, through an unopposed motion. appellant/plaintiff has explained that there was an agreed-upon settlement between the parties and Stipulation of Dismissal was filed on October 12, 2003, but it was later revealed that plaintiff's counsel did not have complete settlement authority. As such, the settlement was deemed void, which appellant/plaintiff was aware of, and Progressive moved for Summary Judgment, which was unopposed.

Appellant/plaintiff have stated that, as form of right, all issues had been decided as a matter, thus allowing them the opportunity to appeal. This also seems to be disingenuous as they are also aware of the deficit settlement and respondent/defendant Progressive's motion and grant of summary judgment motion. Either Progressive's grant of Summary Judgment was valid, or, due to the settlement being void, this action is interlocutory, and should be remanded back to trial to correct these deficiencies.

Notwithstanding the procedural deficiencies, both respondent/defendant Progressive and Georgie M. Hardy's grant of summary judgment stem from the same set of facts and arguments Due to the overlap of issues, and in the interest of fairness, respondent/defendant Progressive respectfully requests that this Honorable court address appellant/plaintiff's Bell's appeal as if it was towards respondent/defendant Progressive's motion for summary judgment and affirm the decision of the trial court granting Progressive's summary judgment and dismissing appellant/plaintiff Bell's complaint pursuant to N.J.S.A. 39:6A-4.5 be affirmed.

RESPONDENT'S PROCEDURAL HISTORY

Respondent/defendant Progressive adopts and incorporates the procedural history of appellant/plaintiff Bell.

Appellant/plaintiff filed a Complaint against respondent/defendant Georgie M. Hardy on October 28, 2022. (PA001)

Appellant/plaintiff filed an Amended Complaint to seek a declaratory judgment that respondent/defendant Progressive was required to pay No-Fault benefits to appellant/plaintiff Bell on November 3, 2022. (PA002)

Respondent/defendant Georgie M. Hardy filed an Answer on December 16, 2022. (PA003).

Respondent/defendant Progressive filed an answer with counterclaim

seeking a declaratory judgment that appellant/plaintiff was not entitled to No-Fault Benefits on January 16, 2023. (PA004).

Respondent/defendant, Progressive, filed a motion to stay all actions in personal injury protection arbitrations on February 1, 2023. (PA005)

Appellant/plaintiff Bell and respondent/defendant Progressive agreed to settle Bell's claim in principle on September 15, 2023. The claims of appellant/plaintiff Bell against Respondent/defendant Progressive were dismissed by a Stipulation of Dismissal on October 12, 2023. However, this matter was "unsettled".

Respondent/defendant Georgie M. Hardy was granted summary judgment against Bell on March 1, 2024, and certified the Summary Judgment Order on April 29, 2024. (PA162-163).

Respondent/defendant Progressive was granted summary judgment against Bell on June 7, 2024, on an unopposed motion. (DR05)

In both summary judgment decisions, the trial court found that there is no coverage for the plaintiff/respondent because the Bell's vehicles were garaged in New Jersey. (DR05, PA162-163)

STATEMENT OF FACTS

The Statement of Facts submitted with the moving papers on behalf of appellant/plaintiff Bell is only disputed to the extent that they contain legal

conclusions rather than statements of facts.

On January 30, 2022, appellant/plaintiff Bell applied for automobile insurance with Progressive via the Jerry Insurance Agency website. One day prior, on January 29, 2022, Bell sought a price quote for automobile insurance policy with respondent/defendant Progressive via the website of Jerry Insurance Agency. (DR01-DR05 L:16-32). Bell requested multiple price quotes of this agency, initially giving a New Jersey address and then giving a North Carolina address. (DR01-DR05 L:36-47, 70-78, 110-120).

On Bell's application for insurance with Progressive, he indicated that he resided at 1520 Overland Park Lane, Charlotte, North Carolina 28262. He sought to insure a 1999 Toyota Corolla and 2002 Kia Sportage. (PA079-080). Appellant/plaintiff indicated that the vehicles would be garaged at a North Carolina ZIP code: 28262. (PA073-077; PA079-080). When filling out his application for insurance, plaintiff used IP address "96.225.51.9.", which is located in East Orange, New Jersey. When Bell filled out the application for insurance, he was living in New Jersey as his North Carolina lease had expired. (PA073-077; PA046, T28:L14-26; PA048, T37:L5-9). Upon signing the application for insurance, appellant/plaintiff indicated that the information he provided to Progressive was true and accurate. Progressive issued a policy of

insurance covering appellant/plaintiff's vehicles which took effect on February 4, 2022. (PA073-077; PA079-080).

On February 28, 2022, appellant/plaintiff amended his policy online to change his mailing address to 652 Forest Drive, Orange, New Jersey. (PA174-204, T:29-32). He did not change the garaging location of the Progressive insured vehicles, nor did he inform respondent/defendant Progressive that he was a resident of New Jersey. (PA048, T38:L25-T39:L10; PA048, T40:L7-10; PA070-071).

On April 13, 2022, plaintiff was involved in a motor vehicle accident with respondent/defendant Georgie M. Hardy in West Orange, New Jersey. (PA002). According to the Police Report, Bell resided at 652 Forest Drive, Orange, New Jersey and was operating the Progressive insured 2002 Kia Sportage. (PA069-71). The report also indicated that Bell had a policy of insurance issued in North Carolina and the Kia Sportage had North Carolina license plates. (PA069-71). Prior to the accident, appellant/plaintiff Bell acquired a New Jersey Driver's License. (PA070-071; PA051, T51:L13-23).

After an investigation into the accident and related claims, respondent/defendant Progressive disclaimed coverage because at the time of the policy inception, the insured vehicles were garaged in New Jersey, not in North Carolina.

LEGAL ARGUMENT

POINT I

RESPONDENT/PLAINTIFF BELL'S FAILURE TO INFORM PROGRESSIVE THAT THE VEHICLES INSURED UNDER POLICY WAS NOT A MERE OVERSIGHT OR HONEST MISTAKE

Bell's failure to inform Progressive that the vehicles that were insured under the Progressive policy were garaged in New Jersey when he amended the policy was not an honest mistake or oversight. A question in an insurance application that asks where a vehicle is to be garaged is an objective question. Kerpchak v. John Hancock Mut. Life Ins. Co., 97 N.J.L. 196, 198 (1922) (question in application requiring applicant to provide address of physician last consulted with was not ambiguous and called for a statement of fact, not an expression of an opinion). Objective questions call for information within the applicant's knowledge, "such as whether the applicant has been examined or treated by physician." Ledley v. William Penn Life Ins. Co., 138 N.J. 627, 636 (1995). "In contrast, subjective questions seek to probe the applicant's state of mind' Ibid. they are concerned with more ambiguous issues, such as 'what is the state of the applicant's health or whether the applicant has or has had a specified disease or illness.' Id. If a defendant provided a false answer to an objective question, his state of mind as to how to interpret the question is not material and is not relevant in determining its falsity." State v Nasir, 355 N.J. Super 96, 106

(App. Div. 2002).

The physical location where the automobile is primarily kept is the pivotal factor in determining where the automobile is principally garaged. Chalef v Ryerson, 277 N.J. Super. 22, 28 (app. Div. 1994). The Appellate Division in this case agree with the trial court in that "[i]t is not the intention of the owner or the registered owner of the automobile as to where it should be principally garaged, it's a physical fact as to where it is principally garaged". Id. at 28. The Appellate Division held that "[w]e construe the term "principally garaged" to mean the physical location where an automobile is primarily or chief kept or where it is kept most of the time." Id. at 27. Thus, questions about where a vehicle is principally or primarily garaged is an objective question.

1. PLAINTIFF WAS LIVING IN NEW JERSEY WHEN HE TOOK OUT THE PROGRESSIVE POLICY

When Bell applied for the policy of automobile insurance, he no longer had a residence in North Carolina via lease or ownership and considered the New Jersey address as his home. Thus, the facts in the case at bar strongly call for the conclusion that appellant/plaintiff Bell's residence at the time he applied for insurance with Progressive was New Jersey as opposed to North Carolina.

When applying for his Progressive policy of insurance, Bell requested multiple price quotes from Jerry Insurance Agency. First, Bell requested insurance quotes utilizing first New Jersey address and then later for a North

Carolina address. If claimant was residing in North Carolina at the time, he filled out this insurance application, there would have been no need for him to request an insurance price quotation with the New Jersey address. When applying for the insurance policy on January 30, 2022, he used a New Jersey IP address. When he filled out the application, he indicated that he resided at 1520 Overland Park Lane, Charlotte, North Carolina 28262, even though he was living in New Jersey at the time.

After the motor vehicle accident on May 25, 2022, Progressive took Bell's recorded statement, where he stated that he had been living at 652 Forest Street, Orange, New Jersey for "close to a year ago". He testified that he moved out from Charlotte, North Carolina "almost a year ago" and that he lived in North Carolina "almost a year ago". He testified that the move to New Jersey was a permanent move.

2. THE POLICY VEHICLES WERE GARAGED IN NEW JERSEY WHEN THE POLICY WAS CREATED AND AT ALL RELEVANT TIMES AFTER

The vehicles insured under the policy were in New Jersey for the entire year that Bell was in New Jersey. Plaintiff signed a lease for his apartment in New Jersey since August 9, 2022, which was approximately eight months prior to the accident. He testified that that since January 2, 2021, his Toyota Corolla was garaged at the apartment in New Jersey.

Bell testified that since January 2, 2021, the Toyota Corolla was principally garaged at 652 Forest Street, Orange, New Jersey. As of May 25, 2022, plaintiff stated that the vehicles insured under the policy have been in New Jersey for the entire year he has been in New Jersey.

3. APPELLANT/PLAINTIFF'S FAILURE TO NOTIFY PROGRESSIVE WAS NOT OVERSIGHT OR MISTAKE

Appellant/plaintiff Bell argues that by changing his mailing address, he believed to be informing Progressive that he was moving to New Jersey and that his car would be kept in New Jersey. He further argues that this was an oversight or harmless mistake that should not cost him coverage. Plaintiff argues that they should not be penalized because he failed to navigate the computer system.

Appellant/plaintiff also argued that h did not know what "principally garaged" means. However, Bell's omission of not telling Progressive that the motor vehicles were insured under the policy was not an honest mistake or mere oversight. A question in an insurance application that asks where a vehicle is to be garaged is an objective question. *See* Kerpchak v. John Hancock Mut. Life Ins. Co., 97 N.J.L, 196, 198 (1922) (question in application requiring applicant to provide address of physician las consulted was not ambiguous and called for a statement of fact, not an expression of an option. Appellant/plaintiff subject state of mind as to interpret the question is not material and is not relevant in determining its falsity. State v. Nasir, 355 N.J. Super. 96, 106 (App. Div. 2002).

Furthermore, had appellant/plaintiff reviewed the insurance declaration page after the policy was amended, he would have seen that the vehicles were still reflected under the policy as being garaged in North Carolina. The motor vehicle accident occurred over a month after the accident. This was more than enough time for him to review the insurance declaration page and realize that changing his mailing address did not amend to reflect that vehicles were garaged in New Jersey. (PA124-12). But for this misrepresentation, Progressive would not have issued a North Carolina policy of automobile insurance to a New Jersey resident who garaged his motor vehicle in New Jersey.

POINT II

SUMMARY JUDGMENT WAS PROPER BECAUSE DISCOVERY WAS COMPLETED AND ANY FURTHER DISCOVERY WOULD NOT CHANGE THE OUTCOME OF THE SUMMARY JUDGMENT

A respondent on a summary judgment motion who resist the motion on the ground of incomplete discovery is obliged to specify the discovery still required. Trinity Church v. Lawson-Bell, 394 N.J. Super. 159, 166 (App. Div. 2007). Appellant/plaintiff argues that summary judgment was improperly granted because further discovery was needed. Bell lists the need for additional depositions of respondent/defendant Georgie M. Hardy and depositions of Progressive representatives. The appellant/plaintiff failed to express with

specificity why he needs further depositions and how they could further help decide this action.

Prior to defendant/respondent Progressive's motion for Summary Judgment on May 8, 2024. Plaintiff/respondent could have conducted additional depositions but failed to do so. As stated previously, Appellant/plaintiff Bell and defendant/respondent Progressive did agree to settle plaintiffs' claims and a Stipulation of Dismissal was filed on October 12, 2023. However, counsel for Bell and Progressive agree that this matter was "unsettled". Plaintiff was notified on or about March 6, 2024, that the settlement between Bell and Progressive was void. Furthermore, appellant/plaintiff Bell's Complaint against defendant/respondent Progressive was dismissed on an unopposed motion for summary judgment on June 7, 2024.

Notwithstanding that Bell had ample opportunity to seek further discovery and failed to do so, the motion judge for Progressive's motion for summary judgment held that Bell's vehicles were garaged in New Jersey, so there is no coverage under the North Carolina Policy. (DR03). Further discovery is not needed if it will patently not change the outcome, Badiali v. New Jersey Mfrs. Ins., 220 N.J. 544, 555, 563, 563 (2015). As discussed herein, there is ample evidence to show that Bell was a New Jersey resident, and the policy vehicles were garaged in New Jersey and was required to have insurance coverage as

required by N.J.S.A. 39:6A-4. There is no further discovery that would have changed the decision made by the trial Court in deciding respondent/defendant Progressive's motion for summary judgment.

POINT III

SUMMARY JUDGMENT WAS PROPER BECAUSE THERE IS NO GENUINE ISSUE OF MATERIAL FACT

In reviewing an order for summary judgment, the Appellate Division employs the same standard that governs the trial court. Busciglio v. DellaFave, 366 N.J. Super. 135, 139 (App. Div. 2004). Under this standard, the Court should "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." State v. Perini Corp., 221 N.J. 412, 425 (2015) (citing Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995)). The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial" in viewing the facts in the light most favorable to the non-moving party. Henry v. N.J. Dept. of Human Services, 204 N.J. 320, 330 (2010) (citing Brill, 142 N.J. at 540). "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together

with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Henry, 204 N.J. at 329-330.

In the case at bar, it is clear that there is no genuine issue of material fact that precluded a summary judgment. The evidential material shows that appellant/plaintiff made material misrepresentations in applying for the policy and this Court has found that the apparent/plaintiff violated the law when he failed to obtain New Jersey Automobile Insurance.

CONCLUSION

It is respectfully requested that this Honorable Court affirm the lower court's decision to grant defendant Progressive's Motion for Summary Judgment and dismissing the Complaint against Progressive with prejudice.

Dated: Melville, New York
October 4, 2024

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ANTONIO BELL, JR., Plaintiff, vs. GEORGIE M. HARDY, PROGRESSIVE CASUALTY INSURANCE COMPANY and/or PROGRESSIVE SOUTHEASTERN INS. CO., JOHN DOES 1-10 (fictitiously named) and XYZ COMPANIES 1-10 (fictitiously named), Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001954-23 ON APPEAL FROM: LAW DIVISION: ESSEX COUNTY DOCKET NO.: ESX-L-6420-22 SAT BELOW: HON. JEFFREY B. BEACHAM, J.S.C. **Civil Action**

AMENDED REPLY BRIEF FOR PLAINTIFF/APPELLANT ANTONIO BELL, JR.

Date: October 23, 2024

On the Brief
Brian R. Lehrer, Esq.

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LEGAL ARGUMENT

With regard to the above-captioned matter, our office represents the plaintiff/appellant, Antonio Bell, Jr., in the within captioned appeal. Kindly accept the within as a Reply Brief to the defendants/respondents' Opposition Briefs.

As stated in plaintiff/appellant's appeal, this case involves a very narrow issue: whether summary judgment should have been granted against plaintiff on the issue of failure to comply with New Jersey's mandatory insurance coverage laws where plaintiff was denied coverage based upon a material misrepresentation in spite of the fact that he notified his insurance company of a change of address to New Jersey prior to the accident.

In spite of all the deposition testimony and documents submitted to the Court in this matter, the relevant facts can be distilled to a handful of undisputed points – both good and bad – for plaintiff's position in this matter: (1) at the time he applied for his policy with Progressive, plaintiff indicated a North Carolina address and garaging location for his vehicle in spite of the fact that he had a lease in New Jersey; (2) prior to the accident in question, plaintiff changed his mailing address to New Jersey; (3) when plaintiff changed his mailing address to New Jersey, he did not click another box on the computer indicating that he was also changing the garaging address of his vehicle; (4) plaintiff's insurance policy was in effect at the time of the subject accident; and (5) after the accident, plaintiff's insurer, Progressive, denied

coverage for personal injury protection benefits based upon a material misrepresentation of residency and garaging of his vehicle.

Defendants' argument that N.J.S.A. 39:6A-4.5(a) does not contain a scienter requirement. That is, of course, absolutely correct. However, this is not a case where a person moved from one state to another and simply did not change his insurance policy to conform with New Jersey law. This is a case where plaintiff notified his insurance carrier that his new mailing address was located in New Jersey and – like any average human being – would expect the insurance company to insure him accordingly. Instead of providing customer service and a revision of his insurance policy, Progressive seized upon the fact that while he changed his mailing address, he did not change the garaging address of his vehicle and declared his policy void based upon a material misrepresentation.

In short, if Progressive's allegation of a material misrepresentation giving rise to a coverage denial cannot stand, then neither can the Section 4.5 bar stand to prohibit plaintiff's bodily injury claim. Plaintiff prevails on the argument that his coverage was enforceable under New Jersey law because he did not commit a material misrepresentation, then he would have a valid New Jersey policy and a right to a bodily injury claim.

Plaintiff claims he intended to advise Progressive that he was a New Jersey

resident at the time of the accident. Progressive contends that plaintiff admitted a material misrepresentation thus giving rise to the voiding of its policy. A jury may believe plaintiff. A jury may not believe plaintiff. However, it is for a jury, not a judge, to determine whether plaintiff committed a material misrepresentation justifying the voiding of his policy. That is really the only issue plaintiff submits is before this Court. With regard to additional discovery, depositions of Progressive representatives with knowledge should be allowed to proceed so that Progressive can explain why it believes that it had no obligation to reach out to its customer to find out why its customer would indicate a mailing address in one state and a garaging address in another.

One final point: defendants claim that Progressive's Motion for Summary Judgment was unopposed. This is simply disingenuous. At the time Progressive was granted summary judgment, plaintiff's appeal had already been filed. The Law Division had no jurisdiction to decide Progressive's motion. However, the issue of the coverage denial had effectively been decided by the trial Court when it granted defendant Hardy's summary judgment motion on the grounds that plaintiff had not complied with New Jersey insurance laws because he did not have a valid New Jersey policy. Counsel are well aware that plaintiff's appeal had been filed by the time Progressive's summary judgment motion was filed. Plaintiff had made very clear in the appeal that the entering of summary judgment on behalf of Hardy

resolved all issues in the case, including the coverage denial. In fact, the doctrines of collateral estoppel and res judicata rendered Progressive's motion moot and plaintiff's counsel gladly would have signed a Consent Order entering the same relief as the trial judge had already made the determination when he granted summary judgment on behalf of defendant Hardy and certified the Summary Judgment Order as final.

In light of the foregoing, it is respectfully submitted that summary judgment was improperly granted by the trial Court.

CONCLUSION

In light of the foregoing, it is respectfully submitted that summary judgment was improperly granted by the trial Court.

Respectfully submitted,
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ANTONIO BELL, JR., Plaintiff/Appellant, v. GEORGIE M. HARDY, PROGRESSIVE CASUALTY INSURANCE COMPANY and/or PROGRESSIVE SOUTHEASTERN INS. CO., JOHN DOES 1-10 (fictitiously named) and XYZ COMPAINES 1-10 (fictitiously named), Defendant/Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001954-23 Civil Action ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO.: ESX-L-6420-22 SAT BELOW: THE HON. JEFFREY B. BEACHAM, J.S.C

RESPONDENT/DEFENDANT GEORGIE M. HARDY'S BRIEF IN OPPOSITION TO APPELLANT/PLAINTIFF ANTONIO BELL, JR.'S APPEAL OF THE APRIL 29, 2024 ORDER GRANTING SUMMARY JUDGEMENT AND DISMISSING THE COMPLAINT WITH PREJUDICE AND APPENDIX

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OF COUNSEL AND ON THE BRIEF

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PRELIMINARY STATEMENT

This Appeal stems from the dismissal on summary judgment of Appellant/plaintiff Bell's complaint for personal injury against respondent/defendant Hardy because he failed to maintain the required insurance coverage for vehicles principally garaged in New Jersey as required by N.J.S.A. 39:6A-4 when he was involved in an accident in New Jersey on April 13, 2022.

On March 1, 2024, the trial court granted respondent/defendant Hardy's motion for summary judgment dismissing the claims of appellant/plaintiff Bell for economic and non-economic loss, on the grounds that the appellant/plaintiff Bell failed to maintain insurance as required by N.J.S.A. 39:6A-4, was "culpably uninsured," and therefore could not maintain an action for economic and non-economic loss against respondent/defendant Hardy pursuant to N.J.S.A. 39:6A-4.5. This Order was Certified by the trial court as a Final Order and Entered on April 29, 2024.

The appellant/plaintiff Bell argues in this appeal that, due to his "innocent oversight" confusing the importance of his "mailing address" with the "garaging address" when he purchased the Progressive Southeastern Insurance Company ("Progressive Southeastern") policy in January 2022, after he moved to New Jersey in April 2021, such "innocent oversight" was not a material misrepresentation. He also argues that discovery was incomplete when summary judgment was granted.

Neither argument is relevant to his failure to maintain the required N.J.S.A. 39:6A-4 coverage.

The appellant/plaintiff Bell's PIP claim and defendant Progressive Southeastern's Counterclaim for Declaratory Judgment were temporarily settled under a confidentiality agreement when the trial court granted respondent/defendant Hardy's motion for summary judgment.

The trial court subsequently granted defendant Progressive Southeastern's unopposed motion for summary judgment, concluding that, "plaintiff's vehicles were garaged in New Jersey so there is no coverage under the North Carolina policy." Accordingly, any claim that a fact dispute existed, or that discovery was required, to resolve appellant/plaintiff Bell's failure to obtain coverage on his vehicles required by N.J.S.A. 39:6A-4 has been concluded. The appellant/plaintiff Bell's opposition to respondent/defendant Hardy's motion for summary judgment had no merit when the motion was decided on March 1, 2024 and has less merit now that the trial court found that the "vehicles were garaged in New Jersey…"

For the reasons set forth herein, respondent/defendant Hardy respectfully requests the decision of the trial court granting summary judgment and dismissing appellant/plaintiff Bell's complaint pursuant to N.J.S.A. 39:6A-4.5 be affirmed.

RESPONDENT'S PROCEDURAL HISTORY

Respondent/defendant Georgie M. Hardy adopts and incorporates the procedural history of appellant/plaintiff Bell.

Appellant/plaintiff filed an Amended Complaint to include a Count for PIP benefits against Progressive Southeastern Insurance Company. (PA002)

Progressive Southeastern Insurance Company filed an Answer and a Counterclaim seeking a Declaratory Judgment and denial of coverage to appellant/ plaintiff Bell. (PA004)

The personal injury action of appellant/plaintiff Bell against respondent/ defendant Hardy was severed from the insurance coverage claims and stayed on March 3, 2023. (PA006)

Appellant/plaintiff Bell and Progressive Southeastern Insurance Company settled their claims in principle on September 15, 2023. (PA007) The claims of appellant/plaintiff Bell against Progressive Southeastern Insurance Company were dismissed by Stipulation on October 12, 2023. (PA008). However, the settlement between appellant/plaintiff Bell and Progressive Southeastern Insurance Company ultimately failed to materialize.

Defendant Progressive Southeastern Insurance Company filed a Notice of Motion for summary judgment in its Declaratory Judgment action to confirm the denial of coverage based upon appellant/plaintiff Bell's material misrepresentation. (DR01)

On June 7, 2024, the trial Court granted defendant Progressive Southeastern Insurance Company's unopposed motion for summary judgment, finding that "plaintiff's vehicles were garaged in New Jersey so there is no coverage under the North Carolina policy." (DR03)

STATEMENT OF FACTS

The Statement of Facts submitted with the moving papers on behalf of appellant/plaintiff Bell is only disputed to the extent that they contain legal conclusions rather than Statements of Fact.

This action arises from a motor vehicle accident between appellant/plaintiff Antonio Bell and respondent/defendant Georgie Hardy on April 13, 2022. (PA002). Prior to moving to New Jersey, appellant/plaintiff Bell was a resident of North Carolina. (PA055-056, T67:L25-T69:L14). For at least eight (8) months prior to April 13, 2022, appellant/plaintiff Bell permanently resided in New Jersey. (PA043, T18:L23-30; PA046, T31:L13-24). Appellant/plaintiff Bell obtained a lease agreement for an apartment in New Jersey in August 2021. (PA090).

Appellant/plaintiff Bell applied for, and obtained, a Progressive Southeastern Insurance policy on January 30, 2022, which became effective February 4, 2022. (PA073-077; PA079-080). At the time appellant/plaintiff Bell applied for the Progressive Southeastern Insurance policy on January 30, 2022, he was a resident of New Jersey. (PA073-077; PA046, T28:L14-26; PA048, T37:L5-9). At the time appellant/plaintiff Bell applied for the Progressive Southeastern Insurance policy on January 30, 2022, his apartment lease in Charlotte, North Carolina had expired. (PA056-057, T72:L19-T76:L24).

Despite his New Jersey residence when he applied for, and obtained the Progressive Southeastern Insurance policy, appellant/plaintiff Bell's Progressive

Southeastern Insurance policy was written as a North Carolina policy. (PA073-077; PA079-080; PA085, 4:30-4:40). Appellant/plaintiff Bell's Progressive Southeastern Insurance policy was written using an insured address in Charlotte, North Carolina. (PA073-077; PA079-080).

Appellant/plaintiff Bell's Progressive Southeastern Insurance policy insured two vehicles: a 1999 Toyota Corolla and a 2002 Kia Sportage. (PA079-080). The 1999 Toyota and the 2002 Kia insured under appellant/plaintiff Bell's Progressive Southeastern Insurance policy were identified as having a "garaging zip code" of 28262 (a zip code from North Carolina). (PA073-077; PA079-080). The Progressive Southeastern Insurance policy provided "Medical Payments" coverage in the amount of $1,000. (PA079-080).

Prior to April 13, 2022, appellant/plaintiff Bell obtained a New Jersey driver's license. (PA070-071; PA051, T51:L13-23). Appellant/plaintiff Bell's driver's license reflects the address/residency in Orange, New Jersey. (PA070-071; PA051, T50:L8-19). Prior to April 13, 2022, appellant/plaintiff Bell principally garaged his 2002 Kia Sportage in Orange, New Jersey. (PA048, T38:L25-T39:L10; PA048, T40:L7-10; PA070-071).

Plaintiff Bell never updated his insurance policy to reflect "garaging zip codes" in New Jersey. (PA048, T38:L11-24; PA049, T43:L11-22). Plaintiff Bell never informed his insurance carrier that plaintiff was a resident of New Jersey. (PA048, T37:L5-22; PA048, T39:L11-20).

Prior to and on April 13, 2022, plaintiff Bell was insured by the Progressive Southeastern insurance policy (Policy Number: 955655710) which was written in North Carolina. (PA070-071; PA073-077; PA079-080). Prior to and on April 13, 2022, plaintiff Bell's address/residency was in Orange, New Jersey 07050. (PA070-071; PA041, T10:L2-6; PA051, T49:L11-15).

On April 13, 2022, appellant/plaintiff Bell was operating a 2002 Kia Sportage, which vehicle was involved in an accident with respondent/defendant Hardy. (PA070-071). Progressive Southeastern denied appellant/plaintiff Bell's claims related to the April 13, 2022, accident due to "material misrepresentation." (PA082-083).

LEGAL ARGUMENT

POINT 1

STANDARD OF REVIEW

It is well-settled that on appeal deference is given to credibility findings. "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) *quoting* State v. Gamble, 218 N.J. 412, 424 (2014). In furtherance of this, "appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) *quoting* Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974). Appellate courts also apply that deferential standard of review to a trial court's fact-finding based on video or documentary evidence. McNeil-Thomas, 238 N.J. 256, 271 (2019); State v. S.S., 229 N.J. 360, 379 (2017); State v. Hubbard, 222 N.J. 249, 270 (2015).

In addition, when interpreting a statute, the standard for New Jersey Courts is to determine the "intent of the Legislature[,]" Hardy v. Abdul-Matin, 198 N.J. 95, 101 (2009) and must first consider the plain language of the statute because that is the best indicator of legislative intent. DiProspero v. Penn, 183 N.J. 477, 492 (2005). Specifically, the Court is to,

> 'ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole.' [Hardy, 198 N.J. at 101.] . . . Courts are cautioned against 'rewrit[ing] a plainly-written enactment of the Legislature or presum[ing] that the Legislature intended something other than that expressed by way of the plain language.' [Ibid.] If the language is 'clear on its face,' courts should 'enforce [the statute] according to its terms.'
>
> However, 'where a literal interpretation would create a manifestly absurd result, contrary to public policy, the spirit of the law should control.' [Hubbard v. Reed, 168 N.J. 387, 392 (2001).] . . . Accordingly, 'when a 'literal interpretation of individual statutory terms or provisions' would lead to results 'inconsistent with the overall purpose of the statute,' that interpretation should be rejected.' [Id. at 392-93.]
>
> Perrelli v. Pastorelle, 206 N.J. 193, 200-01 (2006).

Here, appellant/plaintiff Bell principally garaged his vehicles in New Jersey and was required to maintain New Jersey's Compulsory Automobile Insurance, specifically required by N.J.S.A. 39:6A-4 *et. seq*. He failed to do so, and therefore his claims are barred pursuant to N.J.S.A. 39:6A-4.5. Moreover, the appellant/plaintiff's coverage dispute with defendant Progressive Southeastern Insurance Company was concluded on Progressive Southeastern Insurance Company's unopposed motion for summary judgment. The trial Court concluded that "plaintiff's vehicles were garaged in New Jersey so there is no coverage under the North Carolina policy."

The June 7, 2024 Order confirmed that the appellant/plaintiff Bell was required to and failed to maintain insurance meeting the requirements of N.J.S.A. 39:6A-4.

Therefore, his claims for economic and non-economic loss were properly dismissed pursuant to N.J.S.A 39:6A-4.5.

Here, the doctrine of *res judicata* is applicable. Velasquez v. Franz, 123 N.J. 498, 505 (1991). The doctrine "provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding." Ibid.; see also, Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 409 (1991) ("[b]y insulating courts from the relitigation of claims, res judicata prevents the judicial inefficiency inherent in multiplicitous litigation[,]" ensures the finality of judgments, and advances the interest of fairness "[b]y preventing harassment of parties[.]). For an action to be barred based on the application of *res judicata* there must be (1) a final judgment by a court of competent jurisdiction, (2) identity of parties, and (3) substantially similar or identical causes of action. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460-61 (1989). These elements are present in this action, warranting the application of *res judicata*.

Thus, even if appellant/plaintiff's alleged fact dispute concerning his claims against his insurance carrier had a bearing on the application of N.J.S.A. 39:6A-4.5, here, any dispute concerning the analysis of those claims is now concluded, by an order that found his vehicles were garaged in New Jersey and were not insured. Therefore, appellant/plaintiff failed to maintain insurance meeting the requirements of N.J.S.A. 39:6A-4 on April 13, 2022 and barred from making a claim for economic and non-economic loss against defendant Hardy.

POINT II

PLAINTIFF'S "ATTEMPTS" TO "CHANGE" HIS AUTOMOBILE POLICY DOES NOT EXCUSE HIS FAILURE TO COMPLY WITH NEW JERSEY INSURANCE LAWS

N.J.S.A. 39:6A-4 provides as follows:

> Except as provided by section 45 of P.L.2003, c.89 (C.39:6A-3.3) and section 4 of P.L.1998, c.21 (C.39:6A-3.1), every standard automobile liability insurance policy issued or renewed on or after the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall contain personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustain bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile, and to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with permission of the named insured.

The appellant/plaintiff Bell's primary residence was unquestionably in New Jersey at the time he obtained a Progressive Southeastern Insurance policy from North Carolina. When he applied for Progressive Southeastern Insurance Company policy, he affirmatively listed his insured address as North Carolina. He also affirmatively chose North Carolina zip codes for his "garaging zip codes." (PA073-077; PA048, T37:L5-22, T38:L11-24; PA049, T43:L11-22; PA050, T45:L8-21).

The appellant/plaintiff Bell did not notify Progressive Southeastern Insurance Company of his true residency; rather, he used a North Carolina address for an

apartment for which the lease had expired and that he no longer occupied. (PA056-057, T72:L1-T76:L24).

The appellant/plaintiff Bell also failed to obtain automobile insurance required by New Jersey law. Specifically, his policy with Progressive afforded only $1,000 for "Medical Payments" far below the $250,000 in PIP coverage afforded under a New Jersey "Standard" policy (or $15,000, with $250,000 in coverage for certain emergency treatments, under a "Basic" policy). (PA078-080) See N.J.S.A. 39:6A-4 and N.J.S.A. 39:6A-3.1. His intent to have the proper insurance is not relevant, and his claims against his own insurance carrier are, although now resolved against him, likewise irrelevant. It is therefore submitted that appellant/plaintiff Bell's economic and non-economic claims are barred pursuant to N.J.S.A. 39:6A-4.5.

N.J.S.A. 39:6A-4.5(a) provides:

> Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by [N.J.S.A. 39:6A-4], [N.J.S.A. 39:6A-3.1], or [N.J.S.A. 39:6A-3.3] shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.

There is no question that appellant/plaintiff failed to maintain the mandated medical expense benefits coverage required under N.J.S.A. 39:6A-4 and consequently, his claims against respondent/defendant Hardy are barred.

N.J.S.A. 39:6A-4.5(a) expressly provides that a person, such as plaintiff, who "fails to maintain medical expense benefits coverage . . . shall have no cause of action for recovery of economic or noneconomic loss[.]" N.J.S.A. 39:6A-4.5(a). Appellant/plaintiff does not argue the language is ambiguous. It is undisputed that his vehicles were garaged in New Jersey and that he failed to obtain insurance compliant with N.J.S.A. 39:6A-4. Therefore, the trial court correctly concluded that the plain language of N.J.S.A. 39:6A-4.5(a) required the dismissal of appellant/plaintiff's claims.

"N.J.S.A. 39:6A-4.5[(a)] advances a policy of cost containment by ensuring that an injured, uninsured driver does not draw on the pool of accident-victim insurance funds to which he did not contribute." Caviglia v. Royal Tours of Am., 178 N.J. 460, 471 (2004). In finding the statute was constitutional, the Court in Caviglia declined "to second-guess the Legislature's common-sense reasoning that section 4.5[(a)] has the potential to produce greater compliance with compulsory insurance laws and in turn, reduce litigation, and result in savings to insurance carriers and ultimately the consuming public." Id. at 477.

N.J.S.A. 39:6A-4.5(a) does not include a requirement that an uninsured motorist have a culpable state of mind and does not exempt motorists who have a good faith belief that they have medical expense benefits coverage. The requirements of N.J.S.A. 39:6A-4.5(a) are triggered where the "owner or registrant

of an automobile registered or principally garaged in this State that was being operated without personal injury protection coverage[.]" N.J.S.A. 39:6A-7(b)(1).

With regard to residency and timing, N.J.S.A. 39:3-17.1(b) requires that:

> Any person who becomes a resident of this State and who immediately prior thereto was authorized to operate and drive a motor vehicle . . . in this State as a nonresident pursuant to [N.J.S.A. 39:3-15] and [N.J.S.A. 39:3-17], shall register any vehicle operated on the public highways of this State within [sixty] days of so becoming a resident of New Jersey, pursuant to [N.J.S.A. 39:3-4] or [N.J.S.A. 39:3-8.1].

In short, "[N.J.S.A. 39:6A-4.5(a)] bars the culpably uninsured (those vehicle owners required by statute to maintain PIP coverage but who have failed to do so) when injured while operating an uninsured vehicle." Craig & Pomeroy, New Jersey Auto Insurance Law, § 15:5-2 (2024); Perrelli, 206 N.J. at 208 (declining to accept plaintiff's argument that her belief the vehicle was insured was enough to preclude the operation of N.J.S.A. 39:6A-4.5(a)).

a. *N.J.S.A.* 39:6A-4.5 does not have a "scienter" requirement.

The appellant/plaintiff Bell argues he should be exempted from New Jersey law due to assumptions he made. Appellant/plaintiff Bell's ill-fated intentions and "fail[ure] to properly navigate the computer" to properly change his insurance policy garaging address is irrelevant. (Pg.9 - Appellant Brief). Likewise, his alleged confusion regarding the significance of the mailing address versus the garaging address is also irrelevant. Ibid. The Appellate Division has already addressed this issue: **"N.J.S.A. 39:6A-4.5(a) does not include a requirement that**

an uninsured motorist have a culpable state of mind and does not exempt motorists who have a good faith belief that they have medical expense benefits coverage." Bencosme v. Kannankara, A-1672-14T3, 2016 N.J. Super. Unpub. LEXIS 614, *6 (App. Div. Mar. 22, 2016). (DR05). There is no "exemption for individuals who acted in good faith to obtain insurance but failed to do so" under N.J.S.A. 39:6A-4.5. Bencosme, at *6.

Thus, even assuming the "evidence demonstrates that [appellant/]plaintiff *attempted* to comply with Section 4.5," this argument is also irrelevant. (Emphasis added) (Pg.10 - Appellant Brief).

b. Even if N.J.S.A. 39:6A-4.5 had an "intent" requirement, the evidence clearly demonstrates appellant/plaintiff Bell's intentional failure to insure his vehicle with a New Jersey policy.

It does not matter that appellant/plaintiff is "a normal person who is not a lawyer" – millions of "normal" New Jersey residents are able to properly procure the requisite New Jersey automobile insurance without issue. Appellant/plaintiff Bell is not exempt from those laws. It is also disingenuous for him to suggest he was some non-sophisticated operator who simply misunderstood his online application. In fact, plaintiff holds a bachelor's degree in management with a focus in marketing and is self-employed in his own business teaching "trade currencies, indexes, commodities, [and] metals" in "foreign exchange markets." (PA041-042, T12:L1-T13:L14).

Appellant/plaintiff understood what he did, which was to obtain a North Carolina policy while residing in New Jersey. The evidence is overwhelming and demonstrated by plaintiff's exchange with the police officers at the scene of the accident (PA085, 4:30 - 4:40):

> Police: Is [the automobile insurance] New Jersey Progressive?
>
> Appellant/Plaintiff Bell: **North Carolina.**

Appellant/plaintiff Bell relocated from North Carolina to Orange, New Jersey prior to the subject accident of April 13, 2022. (PA051, T49:L11-15). He relinquished his rented property in North Carolina by the time he signed up for the Progressive Southeastern Insurance policy. (PA057, T76:L9-24). He changed his driver's license to New Jersey using the address of Orange, New Jersey 07050. (PA040, T5:L16-24; PA051, T50:L8-T51:L23). He identified this address as his on his Complaint, in Interrogatories, and at deposition. (PA002, Count 1, ¶1; PA026, No. 1; PA040, T5:L16-24). He confirmed this New Jersey address at the time of the accident in his deposition. (PA041, T10:L2-6). This New Jersey address is recorded on the police report for the April 13, 2022 accident. (PA070-071). His relocation to New Jersey was a "permanent" move. (PA046, T31:L13-24). He considered the Orange, New Jersey address, his "home." (PA052, T56:L7-21).

The appellant/plaintiff garaged his 2002 Kia Sportage (the vehicle involved in the accident) in Orange, New Jersey 07050 at the time he applied for the

Progressive Southeastern policy. (PA048, T37:L5-9, T38:L25-T39:L10, T40:L7-10).

Appellant/plaintiff's address was in New Jersey, and that plaintiff garaged his vehicles in New Jersey, for at least one year prior to the accident of April 13, 2022:

- On April 7, 2021, appellant/plaintiff was charged with "driving or parking [an] unregistered motor vehicle" in the jurisdiction of Orange City, New Jersey. (PA087-088);
- In August of 2021, appellant/plaintiff obtained a lease agreement in his name for residence located at 652 Forest St. in Orange, New Jersey 07050. (PA089);
- At the scene of the accident, when police asked whether appellant/plaintiff lived in North Carolina, plaintiff replied "No, I just moved up here last year." (PA085, 18:23-18:30); and,
- Investigation reports show that appellant/plaintiff's vehicle was present in the City of Orange, New Jersey consistently: dates include May 18, 2021, September 6, 2021, November 7, 2021, January 22, 2022, and February 8, 2022. (PA096-120).

The appellant/plaintiff Bell failed to apprise Progressive Southeastern that he lived in New Jersey and garaged his vehicles in New Jersey. He failed to provide his New Jersey address to his insurance carrier. (PA048, T37:L5-22; T38:L11-T40:L10; PA049, T43:L11-22. For that reason, Progressive Southeastern determined that appellant/plaintiff Bell had made a "Material Misrepresentation" on the insurance application and was denied coverage. (PA082-083) The trial court so concluded in its June 7, 2024 order (DR03).

The appellant/plaintiff Bell knew he had a North Carolina policy while he resided in New Jersey. He failed to maintain insurance meeting the requirements of

N.J.S.A. 39:6A-4 and his economic and non-economic claims are barred pursuant to N.J.S.A. 39:6A-4.5.

c. It is irrelevant whether appellant/plaintiff Bell had claims against his insurance carrier, Progressive Southeastern.

The appellant/plaintiff Bell claims that "a genuine issue of material fact exists as to whether Progressive [Southeastern] was justified in denying coverage to Mr. Bell . . .." (Pg.10 - Appellant Brief). He further claims that "material misrepresentations" must be "knowing and material." (Pg.10 - Appellant Brief).

First, it matters not that appellant plaintiff Bell had a dispute with his insurance carrier. The Appellate Division has already addressed in Bencosme v. Kannankara, *supra*, that a plaintiff's allegations against their insurance carrier have no bearing on the analysis under N.J.S.A. 39:6A-4.5. The Bencosme Court stated:

> the express language of N.J.S.A. 39:6A-4.5 does not support plaintiff's request for an exemption from the statutory bar for those that claim to be victims of insurance fraud. Recognizing such an exemption would be inconsistent with the Act's purpose of reducing auto insurance costs and would undermine one of the original goals of the statute...
>
> Bencosme, at *12.

So, even if Progressive Southeastern made incorrect determinations about appellant/plaintiff Bell's coverage, the material facts for purposes of N.J.S.A. 39:6A-4.5 are that he resided in New Jersey and principally garaged his vehicles here; he had a North Carolina policy which did not provide coverage required by N.J.S.A. 39:6A-4. There is no "exemption for individuals who acted in good faith

to obtain insurance but failed to do so" under N.J.S.A. 39:6A-4.5. Bencosme, *supra*, at *6.

d. There is no question of fact in this matter which is bolstered by appellant/plaintiff's failure to oppose his insurance carrier's summary judgment motion.

The appellant/plaintiff's Declaratory Judgement Complaint against Progressive Southeastern was dismissed on an unopposed Motion for Summary Judgment, filed by Progressive Southeastern, on June 7, 2024. (DR03). The appellant/plaintiff cannot now claim a fact issue existed on the decision of his insurer to deny his claim for insurance based on a "material misrepresentation." The insurance coverage claims have concluded and were properly dismissed on an unopposed motion for summary judgment conclusively establishing that plaintiff failed to maintain insurance required by N.J.S.A. 39:6A-4 and was in violation of N.J.S.A. 39:6A-4.5 on April 13, 2022.

Thus, even if appellant/plaintiff Bell's claims against his insurance carrier were relevant to the application of N.J.S.A. 39:6A-4, the litigation of those claims was concluded in favor of Progressive Southeastern Insurance Company on an unopposed motion for summary judgment. The trial court found that "plaintiff's vehicles were garaged in New Jersey so there is no coverage under the North Carolina policy" and dismissed with prejudice.

Summary judgment is granted as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-529 (1995). Interpretations and application of

statutes are the province of law for the Court to decide – not a jury. See e.g., State v. S.B., 230 N.J. 62, 67 (2017); State v. Cagno, 211 N.J. 488, 505 (2012). Here, there was no "fact" question as to whether appellant/plaintiff Bell failed to comply with the law, N.J.S.A. 39:6A-4. The appellant/plaintiff Bell's Complaint was properly dismissed pursuant to N.J.S.A. 39:6A-4.5.

POINT III

DISCOVERY WAS NOT INCOMPLETE AND FURTHER DISCOVERY WOULD NOT HAVE PREVENTED SUMMARY JUDGMENT

Opposition to a summary judgment motion requires the opposition to specify exactly what new discovery will reveal – otherwise, the moving party is entitled to summary judgment. Trinity Church v. Lawson-Bell, 394 N.J. Super. 159, 166 (App. Div. 2007). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome [a] motion [for summary judgment]." Puder v. Buechel, 183 N.J. 428, 440-441 (2005) (internal quotations and citations omitted).

Appellant/plaintiff Bell argues that summary judgment was improperly granted because further discovery was required. He identified potential depositions of Progressive Southeastern witnesses concerning underwriting knowledge. However, when respondent/defendant Hardy's motion was decided, depositions of the Progressive Southeastern representatives were completed. Appellant/plaintiff Bell could have, but did not, conduct additional depositions within the time provided by the Court Rules; rather, he temporarily settled his coverage claim, so

there was no active litigation on the coverage dispute (i.e., the Declaratory Judgement action) when respondent/defendant Hardy's N.J.S.A. 39:6A-4.5 motion was granted.

Notably, appellant/plaintiff Bell's Declaratory Judgment Complaint against Progressive Southeastern was dismissed on an unopposed motion for summary judgment on June 7, 2024. The decision of the motion judge specifically held that appellant/plaintiff Bell's vehicles were garaged in New Jersey, so there is no coverage under the North Carolina policy. (DR03). If garaged in New Jersey, appellant/plaintiff Bell was required to have coverage mandated by N.J.S.A. 39:6A-4 on his vehicles. He did not. Consequently, the unopposed Order granting summary judgment effectively eliminates any claim that a "fact issue existed" when the Court granted respondent/defendant Hardy's N.J.S.A. 39:6A-4.5 summary judgment motion.

Regardless, neither appellant/plaintiff Bell's opposition to the summary judgment motion nor his Brief on this appeal contain a statement of what further discovery was needed. The motion filed by Progressive Southeastern conclusively demonstrates that there was no discovery required which would alter the analysis that he failed to maintain insurance meeting the requirements of N.J.S.A. 39:6A-4 on April 13, 2022.

Moreover, as respondent/defendant argued herein, the claims against Progressive Southeastern and its internal policies and decisions, are irrelevant to the

analysis of N.J.S.A. 39:6A-4.5 in the context of appellant/plaintiff Bell's ability to recover damages for personal injury.

Even if relevant, the doctrine of *res judicata* is applicable. Velasquez v. Franz, 123 N.J.498, 505 (1991). Under the doctrine, "a cause of action between parties that has been finally determined [ ] cannot be relitigated by those parties or their privies in a new proceeding." Ibid.; see also, Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 409 (1991) (*res judicata* "insulat[es] courts from the relitigation of claims [ ] and prevents the judicial inefficiency inherent in multiplicitous litigation." For an action to be barred based on the application of *res judicata* there must be (1) a final judgment by a court of competent jurisdiction, (2) identity of parties, and (3) substantially similar or identical causes of action. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460-61 (1989). These elements are present in this action, warranting the application of the doctrine.

CONCLUSION

Appellant/plaintiff Bell was required to maintain New Jersey's Compulsory Automobile Insurance required by N.J.S.A. 39:6A-4 He failed to do so, and therefore his claims are barred by N.J.S.A. 39:6A-4.5.

It is therefore respectfully requested that this Honorable Court AFFIRM the April 29, 2024, Order of lower court granting respondent/defendant Hardy's motion for Summary Judgment and dismissing the Complaint against him with prejudice.

Respectfully submitted,
SELLAR RICHARDSON, P.C.

JOHN M. KEARNEY, ESQ.

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ANTONIO BELL, JR.,	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Plaintiff/Appellant,	DOCKET NO.: A-001954-23
v.	
	Civil Action
GEORGIE M. HARDY, PROGRESSIVE CASUALTY INSURANCE COMPANY and/or PROGRESSIVE SOUTHEASTERN INS. CO., JOHN DOES 1-10 (fictitiously named) and XYZ COMPAINES 1-10 (fictitiously named),	ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO.: ESX-L-6420-22
Defendant/Respondent.	SAT BELOW:
	THE HON. JEFFREY B. BEACHAM, J.S.C

RESPONDENT/DEFENDANT APPENDIX (DR01-DR10)

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OF COUNSEL AND ON THE BRIEF

TABLE OF APPENDIX

Progressive Southeastern Notice of Motion for Summary Judgment	DR01
Order dated 06/10/2024 Granting Progressive Southeastern Motion for Summary Judgment	DR03
Unpublished Decision Bencosme v. Kannankara 2016 N.J. Super. Unpub. LEXIS 614 (March 22, 2016)	DR05

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Attorney for Defendant,
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Attorney No.: 034231988
BGS&A File No.: NJ-44-3023

ANTONIO BELL, JR., Plaintiff, vs. GEORGIE M. HARDY, PROGRESSIVE CASUALTY INSURANCE COMPANY and/or PROGRESSIVE SOUTHEASTERN INS. CO., JOHN DOES 1-10 (fictitiously named) and XYZ COMPANIES 1-10 (fictitiously named), Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-6420-22 Civil Action **NOTICE OF MOTION FOR SUMMARY JUDGMENT**

TO: Brian R. Lehrer, Esq.
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Attorneys for Defendant,
Georgie M. Hardy

PLEASE TAKE NOTICE that on June 7, 2024, at 9:00 a.m., or as soon thereafter as counsel may be heard, the undersigned will apply to the Superior Court of New Jersey, Law Division, Essex County, at the Courthouse in Newark, New Jersey for an Order granting summary judgment on behalf of Defendant, PROGRESSIVE SOUTHEASTERN INS. CO. Attached hereto are a Certification and a Brief upon which reliance is made. Also attached is a proposed form of Order.

I hereby certify that the original of this motion was filed with the Essex County Clerk and a copy served, via E-courts upon all counsel as noted above.

Pursuant to R. 1:6-2(d), the undersigned waives oral argument and consents to disposition on the papers, unless opposition is received.

BRUNO, GERBINO, SORIANO & AITKEN, LLP

Dated: May 7, 2024

By: _____
DAVID KOWZUN, ESQ.
Attorneys for Defendant,
PROGRESSIVE
SOUTHEASTERN INS. CO.

Discovery End Date: 1/22/24

Arbitration Date: Not Assigned

Trial Date: Not Assigned

DROZ

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FILED
8:43 am, Jun 10, 2024

ANTONIO BELL, JR., Plaintiff, vs. GEORGIE M. HARDY, PROGRESSIVE CASUALTY INSURANCE COMPANY and/or PROGRESSIVE SOUTHEASTERN INS. CO., JOHN DOES 1-10 (fictitiously named) and XYZ COMPANIES 1-10 (fictitiously named), Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-6420-22 Civil Action **ORDER GRANTING SUMMARY JUDGMENT** **Granted.**

THIS MATTER being opened to the Court by Bruno, Gerbino, Soriano & Aitken, LLP, attorneys for Defendant, PROGRESSIVE SOUTHEASTERN INS. CO., upon notice to Plaintiffs' Counsel., upon application for an Order granting Summary Judgment on behalf of Defendant, PROGRESSIVE SOUTHEASTERN INS. CO., and the Court having reviewed the papers submitted and for good cause shown,

IT IS on this 7TH day of JUNE, 2024,

ORDERED that Summary Judgment be and is hereby granted on behalf of Defendant, PROGRESSIVE SOUTHEASTERN INS. CO., only, dismissing any and all claims against them and; it is further

DR03

ORDERED that a true copy of this Order be deemed served upon all counsel when it is uploaded to the E-courts website.

Honorable Jeffrey B. Beacham, J.S.C.

PLAINTIFF'S VEHICLES WERE GARAGED IN NEW JERSEY SO THERE IS NO COVERAGE UNDER THE NORTH CAROLINA POLICY

Opposed :_____

Unopposed: X

Bencosme v. Kannankara

Superior Court of New Jersey, Appellate Division

February 23, 2016, Argued; March 22, 2016, Decided

DOCKET NO. A-1672-14T3

Reporter
2016 N.J. Super. Unpub. LEXIS 614 *

FEDERICO BENCOSME, Plaintiff-Appellant, v. JOSEPH KANNANKARA, Defendant-Respondent.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: **[*1]** On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-2632-13.

Core Terms

uninsured, coverage, benefits, motorists, medical expenses, scienter requirement, plain language, statutory bar, exemption, automobile accident, summary judgment, noneconomic, broker

Counsel: Brandon J. Broderick argued the cause for appellant (Brandon J. Broderick, attorney; Simcha Davidman, on the brief).

Darren C. Kayal argued the cause for respondent (Rudolph & Kayal attorneys; Mr. Kayal, of counsel and on the brief).

Judges: Before Judges Yannotti and Vernoia.

Opinion

PER CURIAM

Plaintiff appeals an October 28, 2014 order granting summary judgment to defendant and dismissing plaintiff's complaint based on the court's finding that plaintiff was uninsured and therefore barred from bringing a claim for economic and non-economic losses under *N.J.S.A. 39:6A-4.5(a)*. We affirm.

I.

We discern the following undisputed facts from the record and view the facts and all reasonable inferences therefrom in the light most favorable to the party against whom summary judgment was entered. *Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540, 666 A.2d 146 (1995)*. On April 12, 2011, plaintiff and defendant were involved in an automobile accident during which plaintiff suffered injuries. At the time of the accident, plaintiff was uninsured for medical expense benefits coverage as required under *N.J.S.A. 39:6A-3.1*, *-3.3*, and *-4*.

For most of the seven-year period prior to the accident, plaintiff was insured under his mother's **[*2]** automobile insurance policy, and he contributed $75 per month toward the cost of that coverage. In March 2011, he was removed from his mother's policy and endeavored to obtain his own policy. Plaintiff performed an internet search, called a company that advertised itself as an insurance broker, and scheduled a meeting with a broker. Plaintiff met with the broker, paid $150 in cash for six months of liability coverage, and received an insurance identification card bearing the name Proformance Insurance Company covering a six-month period.

Plaintiff believed he purchased six months of liability insurance. He was told by the broker that if an accident was his fault "it would have to come out of [his] pocket and basically, fix the other car." He also understood that "if [he] were to get into a collision it wouldn't cover, . . . payments of any injury [he] sustained or anything like that. It would just be to protect [him] from the - from any type of fraud or anything like that so [he] wouldn't get into any issues with the law."

After plaintiff's April 12, 2011 accident with defendant, it was discovered he had been the victim of a scam. The broker was a fraud, and plaintiff did not have any **[*3]** automobile insurance at the time the accident occurred.[1]

Plaintiff filed suit against defendant, claiming he suffered economic and non-economic losses as a result of the accident. Defendant moved for summary judgment, claiming that plaintiff was barred from bringing suit under *N.J.S.A. 39:6A-4.5(a)*. The court heard argument and granted defendant's motion. Plaintiff appealed.

II.

We conduct a de novo review of the trial court's decision on defendant's motion and apply the same standard as the trial court for granting a motion for summary judgment. *Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405, 98 A.3d 1173 (2014)*. We view the evidence in the light most favorable to the non-moving party, determine if there are any genuine issues of material fact in dispute, and decide whether the motion judge correctly found that the moving party was entitled to judgment as a matter of law. *Brill, supra, 142 N.J. at 540*. Issues of law are subject to the de novo standard of review, *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378, 658 A.2d 1230 (1995)*, and we "do not defer to the trial court's . . . interpretation of 'the meaning of a statute.'" *Davis, supra, 219 N.J. at 405* (quoting *Nicholas v. Mynster, 213 N.J. 463, 478, 64 A.3d 536 (2013)*).

When interpreting a statute, we are required to determine the "intent of the Legislature," **[*4]** *Hardy v. Abdul-Matin, 198 N.J. 95, 101, 965 A.2d 1165 (2009)*, and must first consider the plain language of the statute because that is the best indicator of legislative intent. *DiProspero v. Penn, 183 N.J. 477, 492, 874 A.2d 1039 (2005)*. We are to

> "ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole." . . . Courts are cautioned against "rewrit[ing] a plainly-written enactment of the Legislature or presum[ing] that the Legislature intended something other than that expressed by way of the plain language." If the language is "clear on its face," courts should "enforce [the statute] according to its terms."
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> However, "where a literal interpretation would create a manifestly absurd result, contrary to public policy, the spirit of the law should control." . . . Accordingly, "when a 'literal interpretation of individual

[1] Plaintiff was working for his employer at the time of the accident. His medical bills were paid under his employer's worker's compensation insurance policy.

> statutory terms or provisions' would lead to results 'inconsistent with the overall purpose of the statute,' that interpretation should be rejected."
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> [*Perrelli v. Pastorelle, 206 N.J. 193, 200-01, 20 A.3d 354 (2006)* (second, third, and fourth alterations in original) (citations omitted) (first quoting *Hardy, supra, 198 N.J. at 101*; then quoting *Hubbard v. Reed, 168 N.J. 387, 392-93, 774 A.2d 495 (2001)*).]

Plaintiff does not contend there were any genuine issues of material fact in dispute that precluded the proper granting of defendant's motion for **[*5]** summary judgment. He asserts only that the court erred in its legal conclusion that plaintiff's claims against defendant are barred under *N.J.S.A. 39:6A-4.5(a)* because of plaintiff's admitted failure to maintain medical benefits expense coverage. We therefore turn our attention to the court's application of the statute to the undisputed facts here.

N.J.S.A. 39:6A-4.5(a) provides:

> Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by section 4 of P.L. 1972, c. 70 (C. 39:6A-4), section 4 of P.L. 1998, c. 21 (C. 39:6A-3.1) or section 45 of P.L. 2003, c. 89 (C. 39:6A-3.3) shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.

Plaintiff concedes that on April 12, 2011, he "fail[ed] to maintain" the mandated medical expense benefits coverage required under *N.J.S.A. 39:6A-4.5(a)*. He argues, however, that he should be exempted from the statutory bar to suit because he made a good faith effort to purchase the requisite insurance. We disagree.

We are satisfied that the plain language of *N.J.S.A. 39:6A-4.5(a)* bars plaintiff's claims against defendant. The statute expressly provides that a person, such **[*6]** as plaintiff, who fails to maintain "medical expense benefits coverage . . . shall have no cause of action for recovery of economic or noneconomic loss." *N.J.S.A. 39:6A-4.5(a)*. Plaintiff does not argue the language is ambiguous and acknowledges that "[o]n its face, the statute deprives an uninsured motorist of the right to sue for any loss caused by another." *Aronberg v. Tolbert, 207 N.J. 587, 598, 25 A.3d 1121 (2011)*.

If the words of a statute are clear, a court should not infer a meaning other than what is plainly written in the statute. *Hardy, supra, 198 N.J. at 101*. "Only 'if there is ambiguity in the statutory language that leads to more than one plausible interpretation' do we turn to extrinsic evidence, such as 'legislative history, committee reports, and contemporaneous construction.'" *Aronberg, supra, 207 N.J. at 598* (quoting *DiProspero, supra, 183 N.J. at 492-93*). We are convinced that because it was undisputed that plaintiff was uninsured at the time of the accident, the court correctly concluded that the plain language of *N.J.S.A. 39:6A-4.5(a)* required the dismissal of plaintiff's claims.

We are not persuaded by plaintiff's argument that we should ignore the unambiguous language of *N.J.S.A. 39:6A-4.5(a)* in favor of an interpretation that provides an exemption for individuals who acted in good faith to obtain insurance but failed to do so. Although we may consider extrinsic evidence if a strict **[*7]** application of the statute "leads to an absurd result or if the overall statutory scheme is at odds with the plain language," *Hardy, supra, 198 N.J. at 101* (quoting *DiProspero, supra, 183 N.J. at 493*), application of the statutory bar under the circumstances presented here is consistent with the statute's purpose.

New Jersey's No Fault Act (the Act), *N.J.S.A. 39:6A1 to 35* , was "intended to serve as the exclusive remedy for payment of out-of-pocket medical expenses arising from an automobile accident." *Caviglia v.*

Royal Tours of Am., 178 N.J. 460, 466, 842 A.2d 125 (2004) (citing *Roig v. Kelsey, 135 N.J. 500, 503, 512, 641 A.2d 248 (1994)*). The protections provided by the Act were meant to completely replace the courtroom oriented fault system that was perceived to be too inefficient. *Id. at 467*.

> The Legislature had four objectives in reforming the automobile accident tort system: (1) providing benefits promptly and efficiently to all accident injury victims (the reparation objective); (2) reducing or stabilizing the cost of automobile insurance (the cost objective); (3) making insurance coverage readily available for automobile owners (the availability objective); and (4) streamlining judicial procedures involved in third-party claims (the judicial objective).
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> [*Ibid.* (citing *Gambino v. Royal Globe Ins. Cos., 86 N.J. 100, 105-06, 429 A.2d 1039 (1981)*).]

The original legislation, which did not include *N.J.S.A. 39:6A-4.5*, was not successful in slowing the rise of insurance costs or lessening the **[*8]** burden on the court system. *Id. at 467-68*. To address the issue of rising costs, the Legislature created the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act (Cost Containment Act), which "gave motorists the option of reducing insurance premiums by increasing deductibles and reducing benefits" and excluded some categories of motorists from claiming personal injury protection (PIP) benefits. *Id. at 469*.

The Cost Containment Act did not sufficiently reduce insurance costs. As a result, the Legislature enacted *N.J.S.A. 39:6A-4.5*. *Ibid.* The original version of the statute required motorists to meet a $1500 medical-expense threshold in order to sue for noneconomic damages, and a 1988 amendment to the statute changed the requirement to a verbal threshold. *Id. at 469-70*. In 1997, the Legislature amended the statute to its current form, creating a complete bar to recovery for certain motorists, including those who operate an automobile without having medical expense benefits coverage. *Id. at 470*.

N.J.S.A. 39:6A-4.5(a) "advances a policy of cost containment by ensuring that an injured, uninsured driver does not draw on the pool of accident-victim insurance funds to which he did not contribute." *Id. at 471*. In finding the statute was constitutional, the Court in **[*9]** *Caviglia* declined "to second-guess the Legislature's common-sense reasoning that *section 4.5(a)* has the potential to produce greater compliance with compulsory insurance laws and, in turn, reduce litigation, and result in savings to insurance carriers and ultimately the consuming public." *Id. at 477*.

N.J.S.A. 39:6A-4.5(a) does not include a requirement that an uninsured motorist have a culpable state of mind and does not exempt motorists who have a good faith belief that they have medical expense benefits coverage. In *Hardy, supra, 198 N.J. 95*, the Court interpreted another part of the Act, *N.J.S.A. 39:6A-7(b)(2)*, which bars individuals from recovering PIP benefits if they were "occupying or operating an automobile without the permission of the owner or other named insured." The plaintiff in *Hardy* suffered injuries in an automobile accident and argued that *N.J.S.A. 39:6A-7(b)(2)* should not bar his claims because he was unaware the car he occupied was stolen. *Hardy, supra, 198 N.J. at 97*.

The Court rejected plaintiff's contention, finding that because the Legislature included a scienter requirement in *N.J.S.A. 39:6A-7(a)* but omitted it from *N.J.S.A. 39:6A-7(b)*, *N.J.S.A. 39:6A-7(b)* could not be properly interpreted to include a scienter requirement. *Hardy, supra, 198 N.J. at 104*. The Court rejected the inclusion of an exemption to the statutory bar based on an individual's reasonable belief or knowledge because **[*10]** the plain language of the statute did not provide for one. *Id. at 104-05*.

The Court's reasoning in *Hardy* applies here. The statutory bar to suit contained in *N.J.S.A. 39:6A-4.5(c)* requires a finding that a plaintiff acted "with specific intent." The Legislature did not include a similar scienter requirement in *N.J.S.A. 39:6A-4.5(a)*. The inclusion of a scienter requirement in *subsection (c)*, and absence of the requirement in *subsection (a)*, manifests a legislative intention to bar the claims of

uninsured motorists without regard to a motorist's good faith belief regarding the status of his or her coverage. N.J.S.A. 39:6A-4.5. We cannot impose a scienter requirement where the Legislature has chosen not to do so. Hardy, supra, 198 N.J. at 104-05.

For the same reason, we reject plaintiff's contention that N.J.S.A. 39:6A-4.5(a) bars the claims of only the "culpably uninsured." Although the term has been employed in cases applying N.J.S.A. 39:6A-4.5(a), it has not been used to suggest the statute includes a scienter requirement. Instead, it has been used to identify individuals who, under varying circumstances, were deemed to be uninsured within the meaning of the statute. *See, e.g.*, Perrelli, supra, 206 N.J. at 208 (finding N.J.S.A. 39:6A-4.5(a) barred the claims of an uninsured passenger because to hold otherwise "would allow the culpably uninsured person to violate the law and not suffer its consequences"); Dziuba v. Fletcher, 382 N.J. Super. 73, 81-82, 887 A.2d 732 (App. Div. 2005) (finding **[*11]** plaintiff's beneficial ownership of an uninsured automobile rendered him "culpably uninsured" under N.J.S.A. 39:6A-7(b), but also finding that plaintiff's claims were not barred under N.J.S.A. 39:6A-4.5(a) because the statute only applies when "the uninsured vehicle [is] the vehicle involved in the accident"), *aff'd*, 188 N.J. 339, 907 A.2d 427 (2006).

N.J.S.A. 39:6A-4.5(a) has been described as a "blunt tool" that may result in harsh outcomes, but that is because "[t]he statute's self-evident purpose" is "to give the maximum incentive to all motorists to comply with this State's compulsory no-fault insurance laws." Aronberg, supra, 207 N.J. at 599, 601. Harsh consequences, however, do not permit a departure from the express language in the statute because "[i]t is not within [the Court's] province to second guess the policymaking decisions of the Legislature when no constitutional principle is at issue." Id. at 602.

Contrary to plaintiff's assertion, our decision in Jendrzejewski v. Allstate Insurance Co., 341 N.J. Super. 460, 775 A.2d 583 (App. Div. 2001), did not recognize a good faith exception to the statutory bar in N.J.S.A. 39:6A-4.5(a). Unlike plaintiff here, the plaintiff in *Jendrzejewski* purchased auto insurance but the insurance company was subsequently declared insolvent. Id. at 464-65. The plaintiff was injured in an accident, and we found he was not barred from bringing suit because "[h]e complied with the requirements set by N.J.S.A. 39:6A-4.5(a) . . . by obtaining **[*12]** a policy of insurance from an insurer which was then in good standing." Id. at 465. Moreover, the plaintiff actually had insurance coverage through the New Jersey Property Liability Insurance Guaranty Association, as a result of his insurance carrier's insolvency. Id. at 461-62. None of the circumstances upon which we permitted the plaintiff to proceed in Jendrzejewski are present here.

As noted, the express language of N.J.S.A. 39:6A-4.5 does not support plaintiff's request for an exemption from the statutory bar for those that claim to be victims of insurance fraud. Recognizing such an exemption would be inconsistent with the Act's purpose of reducing auto insurance costs and would undermine one of the original goals of the statute, the streamlining of the judicial process, Caviglia, supra, 178 N.J. at 467 (citing Gambino, supra, 86 N.J. at 105-06), because it would result in litigation over whether a plaintiff was knowingly uninsured.

We also reject plaintiff's contention that the court erred by failing to view the facts in the light most favorable to him as the non-moving party. Brill, supra, 142 N.J. at 540. Our review of the record confirms that the court did not rely upon or resolve any genuine issue of material fact in its grant of defendant's summary judgment motion. The court accepted the undisputed fact that **[*13]** plaintiff was not insured at the time of the accident and, based upon that fact alone, correctly concluded that defendant was entitled to judgment as a matter of law and dismissed the complaint under N.J.S.A. 39:6A-4.5(a).

Affirmed.

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