CIVIL TRIAL PREPARATION

PRACTICAL SKILLS SERIES

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FOREWORD

by

the late **Honorable James M. Havey, P.J.A.D.**

"Civility" and "Courtesy" – I suspect that these words will not be found in the rules of civil procedure governing pretrial motions and discovery. But the concept of civility is no less important than the demanding time constraints imposed by the rules concerning production of answers to interrogatories and other written documents. Courtesy means as much to the motion judge and the legal process as the requisite form your motion takes to compel discovery from a tardy litigant. This notion of "civility" is the bedrock of professionalism. Professionalism is what distinguishes you as a practicing attorney from other disciplines and the public at large. Simply stated, it costs you nothing to act professionally; the rewards will be unbounded.

There is a fine line between aggressive, effective lawyering and the "mad dog" litigator. The former zealously protects the interests of the client. He or she may demand from the adversary overdue expert reports so that the litigator's own expert will not be prejudiced in the preparation of a competing opinion. The latter abuses the rules of pretrial practice. He or she makes incessant and unnecessary motions for more specific interrogatories when a courteous but forceful letter may suffice. The "mad dog's" purpose is to overload the system, enervate the adversary, or drain the opposition's financial resources. His or her purpose may, regrettably, even be to "chum" the process in order to increase fee charged to his or her own client.

The experienced litigator recognizes this fine distinction between effective lawyering and abuse of the process. Most attorneys will have a general practice in a limited venue - a single county or a defined region. Thus, what "goes around, comes around"; the bully in one case will need a favor in the next. Lawyers have long memories; they will not warm to the idea of extending a courtesy to the litigator who has previously abused them.

Equally important is the public's perception of our conduct as a profession. Lawyers are charged with the responsibility of elevating our worth and importance as a profession in the eyes of the general public, unsullied by media reports of unethical or discourteous conduct. Moreover, practicing attorneys must always be aware that a pattern of rudeness will not escape the public eye; inevitably, the litigator's reputation may become irretrievably damaged.

Finally, as the rules make clear, judges referee all disputes concerning pretrial procedures and discovery. We receive the blitz of pretrial correspondence engendered by the rambo litigator. We have a sense when there is a heavy-handedness or arbitrariness. We carry that sense into the courtroom on motion day and on the first day of trial.

Judges, of course, have the power to impose sanctions and even cite for contempt if a litigator's conduct is egregious. As important as these powers is the fact that judges are human. Inevitably, we may question whether, because of the litigator's prior conduct, his or her pretrial motion is being made in good faith, or whether it has legal worth. Inevitably, we ask: is it made for the purpose of delay or simply to frustrate the adversary? Judges act swiftly and firmly when we suspect an abuse of the process.

Conversely, civility is rewarded. The attorney who adheres to the letter and spirit of the rules, who has not impeded the system and has acted courteously gains respect in the eyes of the trial judge. The respectful litigator earns the judge's admiration. His or her actions bespeak credibility. In short, the benefits of civility, although not quantifiable, are, without question, perceptible in the real world of trial advocacy.

ABOUT THE AUTHORS

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Mr. Wolinetz dedicates his portion of this book to his wife, Lenora, and his children, Benjamin and Steven, for their love and support. Mr. Wolinetz also thanks his secretary, Carol Papi, for her invaluable assistance regarding this project.

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Mr. Greenberg wishes to thank his wife, Deborah, and his partners for their indulgence during the time that this book was being written.

INTRODUCTION

Approximately 97% of all civil cases settle before trial. The skills of the civil litigator, who engages in pretrial discovery, motion practice and other preparatory work, often determine whether a client can obtain a favorable settlement or must accept a less favorable one. Even in cases that are tried, preparation of the case in the litigation stage is critical to success. Litigation may lack glamour in comparison to trial work, but it is very important to the process.

It is important to understand what this book is. And what it is not. This book is intended to provide you, the newly admitted attorney, with a practical approach to litigation practice in New Jersey. We have tried to show how the Court Rules apply in the real world. We have attempted to offer approaches based on the notion that attorneys are professionals who should cooperate with each other whenever possible, not engage in "Rambo litigation." In that vein, we urge you to read and take to heart Judge Havey's Foreword to this book.

Much of the information in this book is based on our practical experience. We have included "form" letters, pleadings, discovery requests and motions that may help you get started. We have purposefully kept case citations to a minimum.

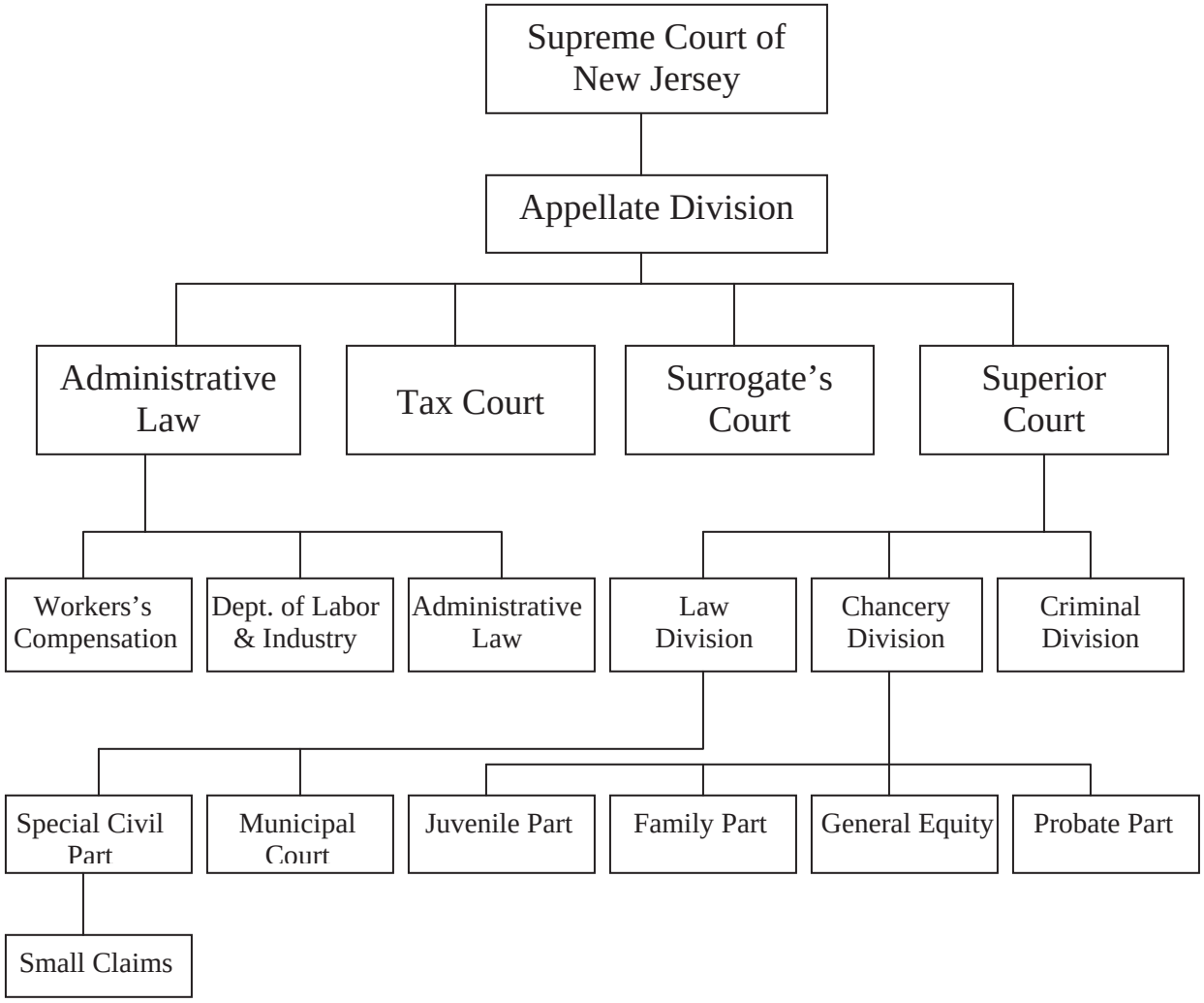
While we have included numerous forms, this book is not intended to be an "encyclopedia" of forms. It is our belief that blind allegiance to forms without considering the subtleties of a particular action is a recipe for disaster. That said, for a collection of forms not contained here you should consult the *New Jersey Practice* series published by West Group and *New Jersey Pleading and Practice Forms* published by Lawyer Cooperative Publishing.

This book is not intended and should never be used as a substitute for reading the New Jersey Court Rules and the applicable law, including statutes, cases, and other sources of law. For example, you should consider Judge Pressler and Justice Verniero's annual *Rules Governing The Courts of the State of New Jersey with Comments and Annotations* as "the Bible" for New Jersey litigation practice. It should be the first place you look with questions regarding the Court Rules. Our book should be used only as a supplement.

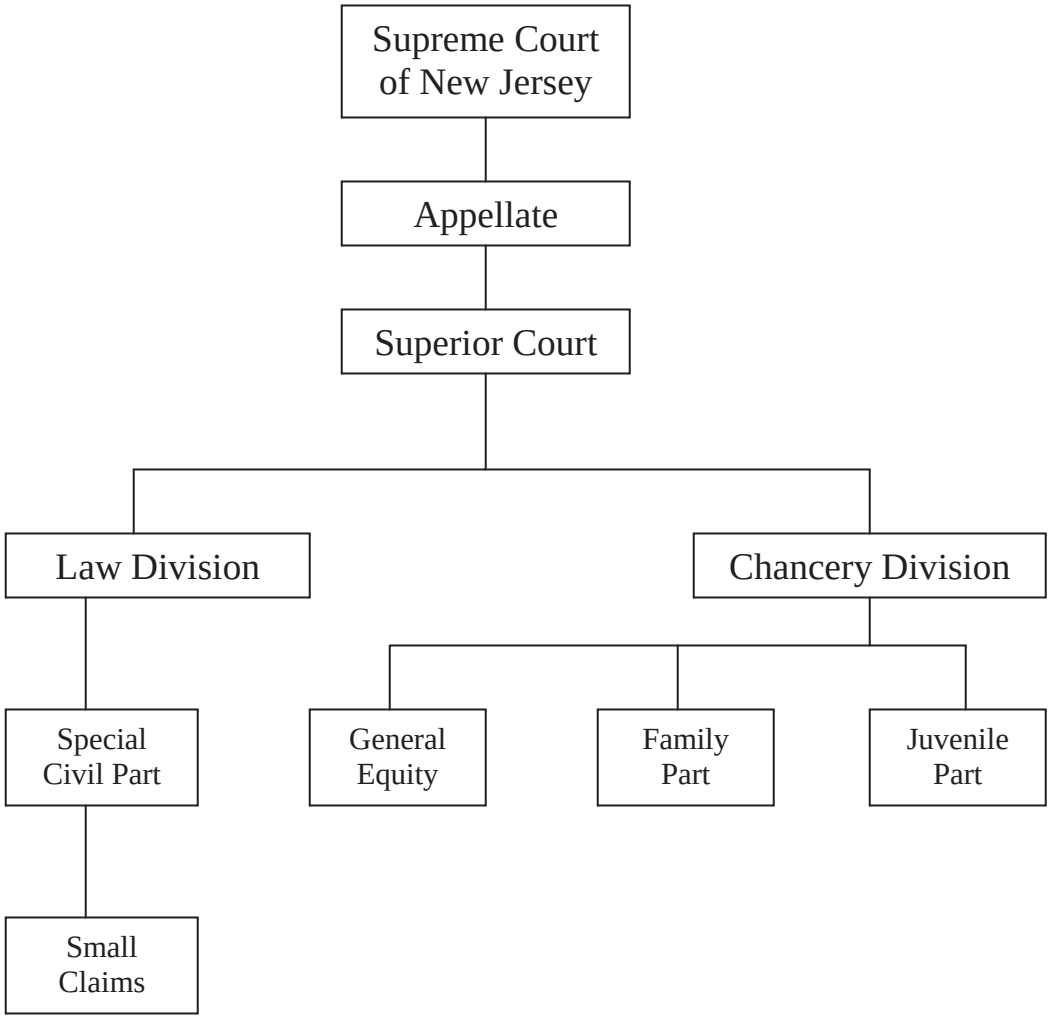
Finally, the format of this book was based on a text originally written by Barry A. Knopf, Esq. We thank him for his efforts.

I. THE STRUCTURE OF THE COURTS

A. AN OVERVIEW



This book deals with the part of the court system diagramed below.



B. SUPERIOR COURT

The Superior Court has "original general jurisdiction throughout the State in all causes." New Jersey Constitution, Article 6, §3, ¶2. The Superior Court is divided into an Appellate Division, a Law Division and a Chancery Division, each of which in tum has different Parts. New Jersey Constitution, Article 6, §3, ¶3. Subject to rules established by the Supreme Court, the Law Division and Chancery Division "each exercise the powers and functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined." New Jersey Constitution, Article 6, §3, ¶4.

All Law and Chancery Division judges are co-equals with all the others. While the decision of one such judge should be taken into consideration by others, such decisions are not binding on those other judges. *E.g., State v. Martes,* 266 N.J. Super. 117, 120 (Law Div. 1993); *Schamber v. Prudentiallns. Co.,* 214 N.J. Super. 309, 313 (Law Div. 1986).

1. Law Division

The Law Division deals with civil cases in which the primary relief sought is money and with criminal cases of all types.

The Special Civil Part within the Law Division has jurisdiction over "actions seeking legal relief when the amount in controversy does not exceed $15,000." R. 6:1-2(a)(l). The Small Claims Section of the Special Civil Part covers cases in which the amount in dispute does not exceed, exclusive of costs, the sum of $3,000. R. 6:1-2(a)(2). Attorneys' fees that are recoverable under statutory provisions such as those of the Consumer Fraud Act, N.J.S.A. 56:8-

19, are not counted toward the jurisdictional amount. *Lettenmaier v. Lube Connection, Inc.*, 162 N.J. 134 (1999).

For the most part, the Court Rules governing the Superior Court generally, that is, the Rules beginning with R. 4:1, govern in the Special Civil Part and Small Claims Section. R. 6:3-1. However, there are exceptions, and counsel who practice in these courts must be aware of those exceptions, many of which are stated in R. 6:3-1. The time for discovery is much shorter than in the Law Division and cases go to trial much more quickly as well.

Sometimes the Law Division actually functions as an appellate court. For example, an appeal from a municipal court decision goes to the Law Division. R. 3:23-2; R. 3:23-S(e). That appeal is heard *de novo* on the record below. R. 3:23-S(a).

A second type of case in which the Law Division acts as an appellate court is the action in lieu of prerogative writ. New Jersey Constitution, Article 6, §5, ¶ 4; R. 4:69-1. Actions in lieu of prerogative writ include such things as appeals from decisions of municipal planning boards or boards of adjustment, and other cases seeking to review or contest actions or decisions of local governmental bodies. For a non-exhaustive list of some types of prerogative writ cases, see R. 4:69-6 (discussing statutes of limitations).

2. Chancery Division

The General Equity Part of the Chancery Division handles cases that seek primarily equitable, that is, non-monetary, forms of relief. R. 4:3-1(a)(l). The Family Part, which is one of the components of the Chancery Division, handles cases "which the principal claim is unique to and arises out of a family or family-type relationship." R. 4:3-1(a)(3). The

jurisdiction of the Family Part includes, but is not limited to, cases seeking domestic violence restraining orders.

The Probate Part of the Chancery Division handles all actions brought pursuant to R. 4:83 *et seq.* R. 4:3-1(a)(2). These include actions for the probate of a will, for letters of administration, or guardianship of a minor or incompetent, and other matters set forth in those Court Rules.

3. Appellate Division

The Appellate Division of the Superior Court is the intermediate level court in New Jersey. The Appellate Division is currently divided into eight Parts. Each Part consists of four or five judges. Appeals are heard by two or three of the four judges on a particular Part, but never "'*en banc*" by all four judges as in the federal circuit courts of appeals. The different Parts of the Appellate Division are of equal stature, and (as stated above regarding Law and Chancery Division judges) a decision of one Part may be persuasive to, but does not necessarily bind, other Parts.

Final judgments of the Superior Court are appealable as of right to the Appellate Division. R. 2:2-3(a)(1). Final judgments are those that dispose of all claims as to all parties in a case. *Caggiano v. Fontura*, 354 N.J. Super. 111, 123 (App. Div. 2002).

Review of decisions that are not final, which are known as interlocutory decisions, may be obtained only by leave of the Appellate Division, which must be sought by motion. R. 2:2-4; R. 2:5-6(a). *See* Chapter IX. The Appellate Division also hears appeals from final decisions or actions of state administrative agencies. R. 2:2-3(a)(2).

C. SUPREME COURT

The Supreme Court is the final appellate court in the New Jersey state court system. New Jersey Constitution, Article 6, §2,¶2. The Supreme Court also has power to make rules governing the administration of all courts and, subject to law, the practice and procedure in all courts. New Jersey Constitution, Article 6, §2, ¶3. Moreover, the Supreme Court has jurisdiction over admission of persons to the practice of law and over the discipline of persons admitted to the bar. *Id.*

Most cases are not appealable as of right to the Supreme Court. The only types of cases that may be appealed to the Supreme Court as of right are final judgments of the Appellate Division "involving a substantial question arising under the Constitution of the United States or this State," final decisions of the Appellate Division in which there is a dissent (and the appeal as of right is limited to the issues of the dissent), death penalty cases (in which the appeal is directly from the trial court, bypassing the Law Division), and other cases as provided by law. R. 2:2-1(a). All other final judgments will be reviewed by the Supreme Court only if the requirements of R. 2:12-4 are satisfied and the Supreme Court grants certification of the matter. R. 2:2-1(b). "Certification will be granted only if [such a case] presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires." R. 2:12-4.

When certification is granted, the petitioner's entire case will be before the Supreme Court review unless the Supreme Court otherwise orders. R. 2:12-11. The respondent on a

petition for certification cannot obtain affirmative relief from the Supreme Court unless that respondent files a cross-petition for certification. R. 2:12-3(b). The Supreme Court will rule only on those matters that are the subject of a granted petition for certification or an appeal as of right.

D. OTHER FORUMS

1. Tax Court

The Tax Court has jurisdiction over all tax matters, including the promulgation of rules or regulations by a County Board of Taxation, the director of the Division of Taxation, or any other municipal, county or state agency or official. R. 8:2(a). The Tax Court also has initial jurisdiction to review local property tax assessments and "over any action cognizable in the Superior Court that raises any issue as to which expertise in taxation is desirable." *Id.* Such Superior Court cases must be transferred to the Tax Court pursuant to R. 4:3-4(a).

Like the Special Civil Part of the Superior Court, the Tax Court has a Small Claims Division. R. 8:11 assigns to the Small Claims Division cases in which the amount in controversy as alleged in the complaint does not exceed $5,000, exclusive of interest and penalties, and certain cases in which the prior year's taxes for the subject property were less than $25,000.

2. Surrogate's Court

Administrative probate matters are filed with the County Surrogate, who is an elected official. The surrogate serves as a clerk of the Probate Part of the Chancery Division. R. 1:34-2. If a matter is contested, however, it is then heard by a judge of the Probate Part. R. 4:80 *et seq.* deals with such matters.

3. Office of Administrative Law

The Office of Administrative Law ("OAL") is an independent agency that is housed in the executive branch of New Jersey government. The OAL conducts hearings in contested cases that arise in the state administrative agencies. The agency head, however, has final decision-making authority, and may, upon review of the OAL hearing record, adopt, reject or modify the recommended OAL report and decision. N.J.S.A. 52:14B-10(c); *see generally In re Kallen,* 92 N.J. 14 (1983); *In re Uniform Administrative Procedural Rules,* 90 N.J. 85 (1982).

II. FIRST STEPS

A. INITIAL CLIENT CONTACT

Your involvement with a civil case may begin in any number of ways. You may receive a telephone call from a college friend asking you to represent her in threatened litigation. You may receive a referral from a law school classmate. Or, more likely at this stage in your career, you will be handed a file from a partner, briefly told the facts, and directed to speak with the client.

The first step in any new case is to confirm that there is no conflict in your representation of the prospective client. *See* Rule of Professional Conduct ("RPC") 1.7. An example of a clear conflict is that your prospective client wants to sue a company that your firm already represents. Other conflicts are more subtle. The conflict inquiry should take place before you have a substantive discussion about the facts of the case with the prospective client.

Many firms use a computer program to run conflict checks. Whatever method is used, it is your obligation to make sure that there is no conflict or, if one exists, that it is waived. RPC 1.7(b)(l) and (2). Under no circumstances should you lose sight of the conflict rules in your zeal to obtain a new client. Further, you should always be aware of potential conflicts as the case proceeds and new parties are added.

Assuming there is no conflict, the next step is to conduct an initial interview with the client. Unlike in law school, the facts are not given to you. Rarely will a client prepare a concise written narrative of the facts and bring all of the relevant documents to your office. Instead, it is your obligation to determine the relevant facts. Needless to say, what your client thinks is important may or may not be.

You should hope to achieve several goals in your initial client meeting. First, you must obtain a basic framework of the facts of the case. Second, you must ascertain whether your client is facing a litigation crisis, such as a demand for immediate injunctive relief or a statute of limitations problem. Third, you should be prepared to discuss how the legal process will function in his or her case. For example, you can expect a client to ask such questions as when the pleadings must be filed and when the case will come to trial. Finally, you must be prepared to discuss your fees and whether you will require the client to post a retainer. As you learn more about the case during this meeting, you should be particularly sensitive to the existence of potential conflicts.

You should also make the prospective client aware that, in addition to your legal fees, he will be required to pay certain costs. These costs can be substantial and may include filing fees, service of process fees, copying charges and court reporter fees. The latter may range from several hundred dollars for a very short deposition to tens of thousands of dollars or more in a larger case.

Additionally, in medical malpractice, automobile accidents, product liability and numerous other cases, expert testimony is required. This will require that the client retain an expert and pay for the preparation of an expert report. The expert must also be compensated if she is required to testify at a deposition or at trial. Again, these costs can be significant depending upon the nature of the case.

Conducting a good initial client meeting is a skill that takes years to develop. A few pointers are fundamental. <u>Listen to the client.</u> Your job is not to tell the client how much law you know. Instead, your responsibility is to learn the facts. Take notes. Clients are not pleased

when you ask them weeks later to repeat something they told you at your initial meeting. Ask questions. Do not be afraid of asking a "dumb" question. Clients often say "he said this" and "she said that." Make sure that you understand who and what the client is talking about. Obtain the documents, including any relevant e-mail. Many clients like to tell you what their contract says. Sometimes they are right, but sometimes they are wrong. You must obtain the documents and see for yourself.

Remember that even the most sophisticated client (and you probably will not be dealing with the CEOs of any major corporations at this stage) will tell you the facts with a "spin" favorable to his position. Thus, as you do not have all of the facts, do not make promises about the ultimate resolution of the case. You may do a wonderful job as a lawyer. However, you have no control over facts that other witnesses provide or the judge assigned to your case. Nor can you do anything if your client makes a terrible witness. Nevertheless, even if evidence emerges that your client was totally at fault, he may remember only your initial promise to him that you would win the case. Do not make that mistake.

1. Retainer Agreements

At some point, either at your initial meeting or thereafter, your prospective client may elect to retain you as her lawyer. You must then confirm the representation of your client with a retainer letter. Note that certain rules govern contingency fee arrangements (R. 1:21-7) and civil family actions (R. 5:3-5). In all civil family actions and tort actions involving a contingency fee arrangement the retainer letter must be in writing signed by both the attorney and client. *See* R. 1:21-7(g) and R. 5:3-5(a). *See* **Examples 1, 2 and 3.**

In a typical commercial case, a retainer letter should state that your firm will represent the client in pending or threatened litigation and outline your fees. The letter should also spell out what costs the client will be responsible to pay. *See* **Example 4.** The retainer letter should be signed by the client and, if you are representing a small corporation, should also be signed by the client personally, not merely in his position as an officer of the corporation. This helps ensure that if the corporation goes out of business or is merely a shell, you have someone else to look to for the payment you have earned. Make sure that you actually receive the signed retainer letter from your client before you commence work. If a client balks at paying your fees or signing a retainer agreement you should reconsider whether you want to handle the case. Clients who are unwilling to pay an attorney at the start of a matter, when their need is greatest, are unlikely to be more willing later.

The sad reality is that your client may decide not to pay your fees for reasons having nothing to do with your legal representation. Your retainer letter then becomes crucial in a fee dispute.

2. Arbitration and Mediation

There are several other points to discuss with your client at your initial meeting(s). You should discuss alternative dispute resolution ("ADR"). ADR encompasses various methods to resolve disputes either before or during litigation. The two most popular are arbitration and mediation. Arbitration is conducted in many respects like litigation. However, the parties do not have to wait years before their case comes to trial. Instead of being assigned a judge, the parties select one or more arbitrators to decide the merits of the claim. Alternatively, an arbitrator may be appointed by a commercial dispute resolution service such as the American

Arbitration Association. An arbitrator essentially functions as a judge. However, the process is usually conducted in a lawyer's office in an informal fashion. Generally, arbitration is far less expensive than litigation. Arbitration can either be binding or non-binding. Binding arbitration is, as its name implies, binding upon the parties. It is very difficult to successfully appeal a decision rendered in binding arbitration.

Non-binding arbitration provides the parties with an opportunity to present their case and essentially obtain an advisory opinion. Non-binding arbitration can be helpful because it provides a forum for the parties to "tell their story" to an unbiased decision maker, a psychological need that is significant for many parties. Thereafter, the decision of the arbitrator can be used as a basis for settlement discussions.

Mediation is a process in which the parties and their counsel meet with a mediator in either a lawyer's office or at court. Position papers are often exchanged and the mediator will meet with each party separately to have a candid discussion of the merits of their claims. The mediator's goal is to help the parties structure a settlement. While the mediator may give her opinion about the case, a mediator may not impose a settlement on the parties. Mediation only works if <u>both</u> parties want to resolve their disputes. Like arbitration, mediation gives clients a vehicle to "tell their story."

In some cases, as discussed in the next section, ADR is not merely an option, it is mandatory. For example, many contracts today require some form of ADR. Thus, before racing to the courthouse to file a complaint, make sure that you carefully review the relevant agreements between the parties to determine if there is an ADR clause. Many personal injury, automobile negligence and certain commercial cases are subject to mandatory arbitration after

they are filed. *See* R. 4:21A. In many counties, the same is true of some other types of cases, particularly relatively small ones. New Jersey courts also encourage the mediation of disputes through various Complementary Dispute Resolution programs. *See* R. 1:40-1 *et seq.*

B. MANDATORY ARBITRATION

If applicable, you should be aware that certain tort and commercial cases detailed in R. 4:21A-1 are subject to mandatory arbitration. Cases subject to mandatory arbitration under this Rule include automobile accidents and personal injury actions (except for professional malpractice) and all actions based on a book account, negotiable instrument, personal injury protection claims against a plaintiff's insurer and other contract and commercial actions that have been screened and identified as appropriate for arbitration. R. 4:21A-1(a)(l)-(3).

Prior to the scheduling of a case for arbitration, or within fifteen days thereafter, a party may seek to remove a case that is assigned for mandatory arbitration. To do so, a party must submit a certification to the arbitration administrator stating that the case involves novel legal or unusually complex issues or that the case is otherwise ineligible for arbitration under subsection (a). R. 4:21A-1(c)(1). A party that objects to removal from arbitration must notify the arbitration administrator within ten days of his receipt of the certification. *Id.* The arbitration administer shall, however, remove the case from arbitration if no objection is made and the reasons for removal certified to are sufficient. The matter will then be referred to a judge for determination. *Id.* After the arbitration is scheduled, the matter may be removed only upon motion made to the Assignment or Civil Presiding Judge. R. 4:21A-1(c)(3).

Parties may also elect to submit claims that are not subject to mandatory arbitration to voluntary arbitration on written stipulation of all parties filed with the civil division manager. R. 4:21A-1(b).

C. PRE-FILING CONSIDERATIONS

1. General Matters

After you have been formally retained, you must then tum your attention to the dispute at hand. As noted above, you must first ascertain if there are any statute of limitations issues or notice requirements such as filing a Notice of Claim under the New Jersey Tort Claims Act, N.J.S.A. 59:8-1, *et seq.* Further, you must consider if your client needs emergent relief that should proceed by way of an Order to Show Cause. *See* Chapter VII. Obviously, if your client was served with a complaint you must take the necessary steps to file an Answer or an appropriate motion. *See* Chapter III.

Often, factual research beyond simply listening to your client is required. It is essential that you do a thorough factual investigation before filing a complaint. Failure to do so can subject you or your client to sanctions. N.J.S.A. 2A:15-59.1; R. 1:4-8.

If you are considering filing a complaint, you must also, of course, research the law to determine the possible causes of actions and responsible parties. You should also try to determine if a potential defendant has any assets (or insurance coverage) before filing suit. After all, assuming your client is not interested in vindicating constitutional or abstract rights, a typical commercial lawsuit (or, to some extent, a personal injury case) should be viewed as an investment: Will the potential recovery exceed the legal fees, costs, aggravation and time commitment incurred in pursuing a legal claim? As a result, even though your client may have

suffered damages, it makes little sense to pursue a claim against a defendant that is "judgment proof." A party is judgment proof if it does not have sufficient assets to pay a judgment.

At least that is the theory. You will find, however, that parties, even in commercial disputes, file lawsuits based on "principle;" *i.e.*, they dislike the other party. Nevertheless, it is your obligation to advise your client of the likelihood of recovery in such cases.

At all times, and certainly at the preliminary stage, it is important to keep your client informed of the results of your research. If your research reveals that the case has little merit, your client may elect not to pursue it. It is often prudent to send the client a letter summarizing your research and any potential problems. If a fee dispute or malpractice claim arises because a weak or unmeritorious case was brought, such a letter can help protect you.

After you have a good handle on the facts and the law, you may elect to send the adverse party (after your client reviews it for accuracy) a "lawyer's letter" stating your client's position and, if necessary, requesting a meeting. *See* **Example 5.** You might be surprised how many cases can be resolved in this fashion. Importantly, if you know that the adverse party is represented by counsel you *must* communicate with the lawyer, not the adverse party. *See* RPC 4.2.

Several additional points to consider before filing a lawsuit. You should discuss how much information your client would like to receive about the litigation. By rule, you have a professional obligation to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." RPC 1.4. However, different clients have different needs. Some clients want to review every letter or email that you receive and be copied with (if not review beforehand) every letter or email that you generate. Other clients panic when they receive legal papers and do not want to see anything. The majority

of clients leave it up to your judgment to send them the important documents and correspondence. You must clarify the level of information your client desires. Normally, more communication with your client is better than less.

Finally, though it does not happen often, your client may instruct you to file a complaint that you know is frivolous. The client may even threaten to take his business elsewhere unless you accede to his wishes.

Hold the door open for him as he leaves. Filing a lawsuit that is frivolous can subject you to professional discipline and you and your firm to sanctions. N.J.S.A. 2A:15-59.1; R. 1:4-8; *Schettino v. Roizman Development, Inc.*, 158 N.J. 476 (1999). Under no circumstances should you be bullied into filing a lawsuit that is frivolous to appease a client or to bring money into your firm.

2. New Jersey Tort Claims Act

Claims brought against public entities and employees pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 *et seq.* (the "TCA"), are often a source of confusion because of the strict notice and timing requirements. While a full treatment of the TCA is beyond the scope of this book, it is important to understand the basics of the TCA when contemplating (or defending) litigation against a public entity or employee.

a. Background

As a matter of public policy, our Legislature has recognized that a public entity is immune from suit for negligence except as provided in the TCA. N.J.S.A. 59:1-2. In a nutshell, "[a] public entity is liable for injury proximately caused by an act or omission of a

public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances." N.J.S.A. 59:2-2(a). However, other sections of the TCA specifically provides that a public entity is not liable for various conduct detailed in N.J.S.A. 59:2-2(b) through 10. Alternatively, subject to various exceptions detailed in the TCA (N.J.S.A. 59:3-2 through 14) a public employee "is liable for injury caused by his act or omission to the same extent as a private person." N.J.S.A. 59:3-1.

In *Fluehr v. City of Cape May,* 159 N.J. 532, 539 (1999), the New Jersey Supreme Court explained the philosophy of the TCA.

> The TCA, N.J.S.A. 59:1-1 to 13-10, was enacted for the purpose of reestablishing the general rule immunizing public entities from liability for injuries to others. It was not enacted for the purpose of creating liability to others…*Generally, immunity for public entities is the rule and liability is the exception. In contrast, immunity of a public employee under the TCA is the exception.* "Except as otherwise provided by [the TCA], a public employee is liable for injuries caused by his act or omission to the same extent as a private person." N.J.S.A. 59:3-1a. Any immunity provided a public employee must be independent of a public entity's immunity under the TCA. The source of a public employee's immunity under the TCA can be the TCA itself, N.J.S.A. 59:3-1b, or any other statute or common law. [*Id.* at 539 (citations omitted) (emphasis added)].

b. Limitations of Recovery

There are certain types of actions and recoveries that are prohibited by the TCA. For example, claims for strict liability, implied warranty or products liability are barred. N.J.S.A. 59:9-2(b). A claimant may not recover punitive or exemplary damages against a public entity. N.J.S.A. 59:9-2(c). Absent a claim for permanent loss of a bodily function, permanent disfigurement or dismemberment where the medical treatment expenses exceed $1,000, a claimant may not obtain damages for pain and suffering. N.J.S.A. 59:9-2(d). Finally, N.J.S.A. 59:9-2(e) limits various insurance claims.

c. Notice of Claim

A party seeking to sue a public entity or employee must carefully consider the notice and timing requirements of the TCA.

i. Timing

To permit a public entity to commence a timely investigation, a claimant must file a Notice of Claim within ninety days after the accrual of the cause of action. N.J.S.A. 59:8-8; *O'Neill v. City of Newark*, 304 N.J. Super. 543, 549 (App. Div. 1997). Six months after the Notice of Claim is filed, the claimant may file a lawsuit. *Id.* If a party fails to file a Notice of Claim within ninety days, he is barred from recovery unless he is permitted to file a late claim pursuant to N.J.S.A. 59:8-9. N.J.S.A. 59:8-8(a). In no event, however, is a claimant permitted to file a Notice of Claim more than two years after the cause of action accrued. N.J.S.A. 59:8-8(b).

Thus a claimant that fails to file a Notice of Claim within ninety days must utilize N.J.S.A. 59:8-9. That statute provides that a claimant may file a motion for leave to file a late Notice of Claim *within one year* after the accrual of the claim. *Id.* The motion must be supported by an affidavit "based upon personal knowledge of the affiant showing sufficient reasons constituting extraordinary circumstances for his failure to file a notice of claim [within ninety days] or to file a motion seeking to file a late notice of claim within a reasonable time thereafter." *Id.* In deciding the motion, the court will focus on whether the public entity or employee has been substantially prejudiced. *Id.*

ii. Contents of the Notice of Claim

The Notice of Claim must include the following information contained in N.J.S.A. 59:8-4: (a) the name of the claimant; (b) the address of the claimant; (c) the date, place and circumstances of the transaction giving rise to the claim; (d) a general description of the injuries, damage and description of the claim; (e) the name of the public entity or employee(s) involved; and (f) the amount of the prospective claim. Note that a public entity may adopt a particular claim form which should be utilized and may require a claimant to submit to a physical or mental examination and provide records relating to the claim. N.J.S.A. 59:8-6.

iii. Where to file the Notice of Claim

The Notice of Claim should be filed with the Attorney General or the public agency involved in the incident. N.J.S.A. 59:8-7. The Notice of Claim should be hand-delivered or mailed by certified mail, return receipt requested, to the applicable entity. N.J.S.A. 59:8-10. Note that delivery of the Notice of Claim upon the Attorney General is not considered adequate notice to a municipality. *Epstein v. State*, 311 N.J. Super. 350, 356 (App. Div.), certif. denied, 155 N.J. 589 (1998). Service of the Notice of Claim upon a public entity is considered constructive notice upon any employee of that entity. N.J.S.A. 59:8-9.

Example 1:

Agreement to Provide Legal Services for a Contingent Fee

THIS AGREEMENT, dated
is made **BETWEEN** the Client(s) (indicate Minor or Incompetent's Name separately and identify if such)

whose address and telephone number is

referred to as "You,"
AND

whose address is

referred to as the "Law Firm."

1. **Your Injury or Damages.** You have been injured or suffered damages as a result of

which took place on or about and your problems are:

You agree that the Law Firm will make a claim on your behalf against others who are responsible for your injuries or damages. Names and addresses of those You feel are responsible for the injury(ies):

Name	Street & Apartment #	City	State	Zip Code

2. **Legal Services.** The Law Firm will protect your legal rights and do all necessary legal work to properly represent You in this matter. The Law Firm expects You to cooperate and follow its instructions.

3. **Costs and Expenses.** In addition to legal fees, You may be required to pay for expenses in connection with the institution and prosecution of your claim. Such expenses may include, among other things, experts' fees and expenses for other testimony or evidence, court costs, accountants' fees, appraisers' fees, service fees, investigators' fees, deposition costs, cost of briefs, transcripts on appeal and extraordinary photocopying, messenger service, overnight delivery, faxing, long distance telephone and express mail expenses. You will not be required to pay for usual and customary law office overhead expenses, such as local telephone charges, routine photocopying and postage costs and expenses associated with legal research.

The Law Firm may pay the above expenses for the Client or require that the expenses be paid in advance. The Client must pay the Law Firm for these costs and expenses even if there is no recovery of money.

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4. Legal Fees. You will pay the Law Firm a legal fee if money recovered for You is greater than your costs and expenses (see paragraph 3). The fee will be based on a percentage of the net recovery. Net recovery is the total recovered on your behalf, minus your costs and expenses (including costs and expenses paid for You by the Law Firm, as described in paragraph 3 above), and minus any interest included in a judgment pursuant to R. 4:42-11(B). The fee will be as follows:

33-1/3% on the first $500,000 recovered;
30% on the next $500,000 net recovered;
25% on the next $500,000 net recovered; and
20% on the next $500,000 recovered.

Fees on net recoveries exceeding $2,000,000.00 will be determined by the court by application for reasonable fee pursuant to R. 1:21-7(f).

5. Reduced Fees for Minors or Incompetents. (Check one)

☐ This Agreement is not signed on behalf of a minor or an incompetent.

☐ This Agreement is signed on behalf of a minor or an incompetent. The legal fees will be reduced to 25% of the net recovery if this matter is settled without trial pursuant to R. 1:21-7(c)(6).

6. Alternative Fee Plan. The Law Firm has offered to represent You and charge You legal fees and expenses which You will be required to pay even if money is not recovered. You have rejected this and have instead agreed to pay the contingent fees as set forth in the Agreement.

7. Increased Legal Fees. As indicated under R. 1:21-7(f), the Law Firm may ask that the Court require You to pay a greater legal fee if the Law Firm has not been adequately compensated for time and effort. A copy of any request to the Court will be forwarded to You. The Court will then decide whether or not to increase the legal fees.

Signatures. You have read this Agreement. The Law Firm has answered all of your questions and fully explained this Agreement to your complete satisfaction. You have been given a signed copy of the Agreement.

Law Firm: Agreed and Accepted

By _____ _____
Attorney *Client*

_____
Client

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Example 2:

Agreement To Provide Legal Services in Family Actions

THIS AGREEMENT, dated

is made **BETWEEN** the Client(s)

whose address is

referred to as "You," **AND**

whose address is

referred to as the "Law Firm."

1. Legal Services To Be Provided. You agree that the Law Firm will represent your interests in the matrimonial dispute between You and your spouse. This dispute may involve some or all of the following issues: grounds for divorce, custody of children, rights to visit children, payments for alimony or child support, the division of property between You and your spouse and the payment of counsel fees and costs. The legal work includes all necessary court appearances, research, investigation, correspondence, preparation and drafting of pleadings and other legal documents, trial preparation, conferences in person and by telephone with You and with others, and related work to properly represent You in this matter. will have primary responsibility for representing You in this matter.

2. Legal Services Not Provided. You and the Law Firm may make additional agreements to provide for legal services not covered by this Agreement. Without such agreements, the Law Firm will not provide any of the following:

a. provide any legal services after the judgment of the trial court;
b. appeal any decisions of the trial court;
c. enforce any judgment or order of the trial court;
d. represent You on the purchase or sale of your home or other real estate transactions;
e. represent You in any other court including municipal court;
f. represent you in domestic violence proceedings;
g. prepare your Will; or
h. Tort claims

3. Legal Fees. The Law Firm cannot predict or guarantee what your final bill will be. This will depend on the amount of time spent on your case and the amount of other expenses. For example, a case which is initially believed to be uncontested can become contested and require much more time and expense than originally anticipated.

a. Initial Payment. The Law Firm will begin work on your case upon receipt of an initial retainer of $. This sum will be used to pay your fees and expenses according to this Agreement. Should the matter be resolved before absorption of the above retainer, any and all remaining moneys will be refunded. The Law Firm may require You to replenish and/or increase the retainer from time to time. If so, the Law Firm will give You notice (by mail or telephone) of the amount You are to pay and when that amount is due.

b. Hourly Rate. You agree to pay the Law Firm for legal services at the following rates:

Title	Name	Hourly Rate
Primary Attorney		

c. All Services Will Be Billed. You will be billed at the hourly rates set forth in paragraph 3b for all services rendered (minimum charge of 6 minutes). This includes telephone calls, dictating and reviewing letters, travel time to and from meetings and the Court, legal research, negotiations and any other service relating to this matter.

d. Court Awards of Legal Fees. It is possible that your spouse will either agree to pay or be required to pay for some or all of your legal expenses and costs. Any money that is actually paid by your spouse will be applied to reduce the amount You may owe. You will be liable until the payment is actually made by your spouse. The Law Firm is not required to sue your spouse to collect any moneys due. Under Rule 5:3-5(c), the Court may award counsel fees after application for same.

e. Increased Legal Fees. The Rules of Court allow attorneys to charge additional fees in certain cases. You may be charged an additional amount above the hourly rates set forth in this Agreement where the urgency of the case, the amount involved or the results obtained reasonably justify such an additional fee. If such an additional fee is charged, all reasons for such charges will be explained in detail.

4. Costs and Expenses. In addition to legal fees, You may be required to pay for expenses in connection with the institution and prosecution of your complaint. Such expenses may include, among other things, expert's fees and expenses for other testimony or evidence, court costs, accountant's fees, appraiser's fees, service fees, investigator's fees, deposition costs, transcripts and extraordinary photocopying, messenger service, overnight delivery, faxing, long distance telephone charges and express mail expenses. You will not be required to pay for usual and customary law office overhead expenses, such as local telephone charges, routine photocopying and postage costs and expenses associated with legal research.

The Law Firm may pay the above expenses for the client on your behalf or require that the expenses be paid in advance. The Law Firm may require that expert(s) be retained directly by You and You would therefore be solely responsible to pay them. A statement of the expenses and disbursements for which you are responsible will be provided to You with the monthly bill.

5. Bills. The Law Firm will send You monthly itemized invoices and these bills are to be paid upon receipt. The Law Firm may require that costs and expenses (see paragraph 4) be paid in advance. All other bills for costs and legal expenses are due upon receipt. You will be charged interest at a yearly rate of % on any remaining balance not paid within days (not less than 30 days) from the date the bill is rendered.

6. Your Responsibilities. You must fully cooperate with the Law Firm and comply with the other requirements in paragraph 10. If You do not comply with these requirements, the Law Firm may ask the Court for permission to withdraw from representing You. The Law Firm will also withdraw at your request.

7. No Guarantee. The Law Firm agrees to provide conscientious, competent and diligent services and at all times will seek to achieve solutions which are just and reasonable for You. However, because of the uncertainty of legal proceedings, the interpretation and changes in the law and many unknown factors, attorneys cannot and do not warrant, predict or guarantee results or the final outcome of any case.

8. Withdrawal from Representation. An attorney may withdraw from the representation prior to the fixing of the trial date or the Matrimonial Early Settlement Panel hearing, whichever is earlier, upon the client's consent and in accordance with R. 1:11-2(a)(1). If the client does not consent, the attorney may withdraw only on leave of court as provided in R. 5:3-5(d)(2).

STATEMENT OF CLIENT RIGHTS AND RESPONSIBILITIES IN CIVIL FAMILY ACTIONS

9. Client Rights

- **a.** Clients have the right to have their attorneys diligently advocate their interests within the bounds of the law and legal ethics.
- **b.** Clients have the right to have the fee arrangement fully and completely explained prior to entering into any agreement for services.
- **c.** Clients have the right to have a written retainer agreement describing the financial terms of the relationship between the client and the attorney.
- **d.** Clients have the right to refuse to enter into any unacceptable fee arrangement or modification of a fee arrangement.
- **e.** Clients have the right to be provided information as to the attorney(s) who will be primarily responsible for their matter and all other legal staff who will be working on the matter as well as information as to the costs for those individuals.
- **f.** Clients have the right to be provided bills on a regular basis itemized as to the charges and time spent on each activity.
- **g.** Clients have the right to be informed of and be present at any court proceeding involving their case unless otherwise directed by the court.
- **h.** Clients have the right to be provided copies of all documents presented to the court by any party in their matter unless otherwise ordered by the court.
- **i.** Clients have the right to be afforded reasonable access to their attorneys.
- **j.** Clients have the right to make the final decision as to whether, when, and how to settle their cases and as to economic and other positions to be taken with respect to issues in the case.

10. Client Responsibilities

- **a.** Clients shall provide full and accurate information to their attorneys regarding their matter.
- **b.** Clients shall be available to participate in a timely fashion regarding their matter and to respond reasonably to requests from their counsel.
- **c.** Clients shall advise their attorneys promptly of any change in their lives that might reasonably be expected to affect the handling of their matter.
- **d.** Clients shall pay for the legal services rendered on their behalf within the time period set forth in the retainer agreement.
- **e.** Clients shall be required to review diligently all bills submitted by their attorneys and within a reasonable time to raise any objections regarding billing.
- **f.** Clients shall not take any position in their matter for any improper purpose, such as to delay the proceeding or intentionally to increase the cost to other litigants.
- **g.** Clients shall not seek to use their attorneys for any improper means.
- **h.** Clients must recognize and be responsible for the costs associated with any action initiated or requested by the client.
- **i.** Clients shall provide sufficient time for their attorneys to explain to them the financial costs and other ramifications of a potential action in their matter and reasonably to consider the advice of their attorneys.

Signatures. You and the Law Firm have read and agree to this Agreement. The Law Firm has answered all of your questions and fully explained this Agreement to your complete satisfaction. You have been given a copy of this Agreement.

Law Firm:

By _____
Attorney

Agreed and Accepted:

_____
Client

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Example 3: Agreement to Provide Legal Services in Matrimonial Litigation

Woodbridge

December 30, 1999

Personal & Confidential

[insert name and address]

RE: [insert name of case]

Dear :

I do not recall if you ever formally retained us many years ago, but Court Rules have required us to change our retainer agreements and, therefore, I am sending this letter to confirm your retention of us to represent you in the matrimonial litigation that is about to ensue between you and your wife. This letter will set forth the terms of your retention of this firm, and I would ask you to review it carefully and call me with any questions if you have any, or otherwise sign the copy of the letter provided herewith and return it to me in the enclosed envelope with your retainer check.

We will represent you in the within matter and we will bill on a time basis, charging the hourly rates then applicable for the work performed by the various attorneys and staff. My current hourly rate is **[insert]** and the current hourly rates of the attorneys in our office who may work on your case range from **[insert]** per hour up to **[insert]** per hour. Additionally, you will be billed for disbursements incurred on your behalf for such as court filing fees, photocopies, travel expenses, deposition costs, computerized legal research, messenger service, fax and long distance telephone charges.

Our time charges and disbursements incurred in your matter will be sent to you periodically, but no less frequently than every ninety (90) days. The time charges will first be billed against your retainer of **$[insert]** Dollars, which you should forward to me along with your signed retainer letter. Once the retainer falls to **$[insert]**, you will be responsible for the prompt payment of our periodic bills. If bills are not paid, this firm has the right to charge interest on all unpaid bills at a rate of 1% per month; however, no interest will be charged sooner than thirty

Example 3 - Continued

December 30, 1999
Page 2

(30) days after the presentation of the billing statement to you. If there is any money left in your retainer account at the conclusion of our representation, you will receive the balance of that retainer.

Lastly, you are hereby advised that our firm may, consistent with the procedures set forth in the Rules of Court, withdraw as your counsel if you do not comply with the terms of this agreement and your signature on this agreement is your acceptance and approval of our firm's withdrawal as your counsel in the above-captioned matter should you fail to comply with the terms of this retainer agreement.

A "Statement of Client Rights and Responsibilities in Civil Family Actions" is attached hereto. The same is incorporated within the terms of this retainer agreement and should be carefully reviewed before you sign this retainer.

If the foregoing meets with your approval, kindly sign a copy of this letter, below, and return it to me.

We look forward to working with you.

Very truly yours,

Lawrence Lawyer

LL/cap

I have read this retainer agreement carefully and understand and agree to its terms.

By: _____ ***Dated:***
[insert]

Example 3 - Continued

STATEMENT OF CLIENT RIGHTS AND RESPONSIBILITIES IN CIVIL FAMILY ACTIONS

A. Client Rights

1. Clients have the right to have their attorneys diligently advocate their interests within the bounds of the law and legal ethics.

2. Clients have the right to have the fee arrangement fully and completely explained prior to entering into any agreement for services.

3. Clients have the right to have a written retainer agreement describing the financial terms of the relationship between the client and the attorney.

4. Clients have the right to refuse to enter into any unacceptable fee arrangement or modification of a fee arrangement.

5. Clients have the right to be provided information as to the attorney(s) who will be primarily responsible for their matter and all other legal staff who will be working on the matter as well as information as to the costs for those individuals.

6. Clients have the right to be provided bills on a regular basis, itemized as to the charges and time spent on each activity.

7. Clients have the right to be informed of and be present at any court proceeding involving their case unless otherwise directed by the court.

8. Clients have the right to be provided copies of all documents presented to the court by any party in their matter unless otherwise ordered by the court.

9. Clients have the right to be afforded reasonable access to their attorneys.

10. Clients have the right to make the final decision as to whether, when, and how to settle their cases and as to economic and other positions to be taken with respect to issues in the case.

B. Client Responsibilities

1. Clients shall provide full and accurate information to their attorneys regarding their matter.

Example 3 - Continued

2. Clients shall be available to participate in a timely fashion regarding their matter and to respond reasonably to requests from their counsel.

3. Clients shall advise their attorneys promptly of any change in their lives that might reasonably be expected to affect the handling of their matter.

4. Clients shall pay for the legal services rendered on their behalf within the time period set forth in the retainer agreement.

5. Clients shall be required to review diligently all bills submitted by their attorneys and within a reasonable time to raise any objections regarding billing.

6. Clients shall not take any position in their matter for any improper purpose, such as to delay the proceeding or intentionally to increase the cost to other litigants.

7. Clients shall not seek to use their attorneys for any improper means.

8. Clients must recognize and be responsible for the costs associated with any action initiated or requested by the client.

9. Clients shall provide sufficient time for their attorneys to explain to them the financial costs and other ramifications of a potential action in their matter and reasonably to consider the advice of their attorneys.

Example 4: Retainer Agreement

LETTERHEAD

[insert date]

[insert]

Re: Legal Representation

Dear [insert]

This letter shall serve as our retainer agreement. Our firm will represent you and your company **[insert]** in connection with **[insert nature of litigation]**.

Our original retainer will be $**[insert]**.

You will be billed monthly on an hourly basis against your retainer and we will advise you on a monthly basis of the status of your retainer. The hourly rates of the individuals presently working on your case are as follows:

[insert]

Certain other attorneys and/or paralegals with different rates may also be utilized as needed. Please note that all rates are subject to change and are adjusted periodically.

You will also be billed separately on a monthly basis for all out-of-pocket expenses such as shorthand reporters, transcript fees, long distance telephone toll charges, computerized research, travel, photocopying and similar expenses.

In the event that the balance of your retainer falls below the sum of $**[insert]**, you will provide additional funds to bring the retainer balance up to that amount. It is understood that unless you meet your positive retainer requirement of $**[insert]**, this firm may take the appropriate action to cease providing legal services for you.

As you know, we have not examined any of the underlying documents. Thus, we cannot at this time analyze whether we have a good faith basis to file papers in court. After we complete our review, you will be advised whether we, in our sole discretion, can in good faith file the necessary court papers. If we do not file court papers all monies, minus legal fees and disbursements, will be returned to you. However, you expressly understand and agree that we will be paid for all of our time and expenses in reviewing this matter even if we advise you that we do not believe there is a good faith basis to proceed and, on that basis, do not proceed.

Example 4 - Continued

It is understood that we make no promises to you as to the resolution of your matter except that we promise to provide you with our best professional skills.

If you are in agreement with the terms of this letter, kindly sign at the bottom and return the original to me along with your check for the retainer.

Very truly yours,

LAWRENCE LAWYER

Enclosures

Accepted and agreed to:
[insert corporation]

I agree to be personally responsible for all legal fees and expenses incurred

_____ By:_____
[insert individual]

Dated:

Example 5: Demand Letter

Letterhead

December 28, 1999

VIA FAX & REG. MAIL

Benjamin Daniel, Esq.
1 Apple Lane
Westview, NJ 02331

Dear Mr. Daniel:

As you know, we represent ABC Corp. ("ABC"), the tenant at the premises owned by your client, Acme Inc. ("ACME"), located at 1 Brick Lane, Eastmont, New Jersey (the "Premises"). Despite repeated written and verbal requests by ABC, Acme has refused to repair the loading dock at the Premises. Acme's failure to properly maintain the Premises and make the necessary repairs to the loading dock violates paragraph 37 of the Lease between the parties.

Please be advised that we will file a lawsuit against Acme in New Jersey Superior Court if it fails to repair the loading dock within the next ten days. We will also seek attorneys' fees against ABC based on paragraph 52 of the Lease. Feel free to contact me if you would like to discuss a resolution of this dispute short of litigation.

Thank you for your attention to this matter.

Very truly yours,

Lawrence Lawyer

LL/cap

Example 6: Notice of Tort Claim

Forward to: Tort & Contract Unit, Claims Service Section, Division of Law, 25 Scotch Road, Trenton, New Jersey 08625

(THIS CLAIM FORM MUST BE FILED WITHIN 90 DAYS OF THE ACCIDENT OR OCCURRENCE OR YOU MAY FORFEIT YOUR RIGHTS)

1. _____
Name of Claimant Street Address

_____
Date of Birth City State Zip

_____
Home Telephone Number Social Security Number

Telephone number at which you can be reached during the hours of 9 a.m. to 5 p.m.:
_____

2. If it is requested that notices be sent to a person other than claimant, state:

_____
Name of Person Mailing Address

_____
Telephone Number City State Zip

Relationship to claimant: _____

3. The accident or occurrence:

_____
Date Time Location

_____
City or Town State

Describe the accident or occurrence:

_____
_____
_____
_____
_____

Example 6 - Continued

State the name and address of all witnesses:

_____
_____
_____

4. a) State the name and address of each State agency and each State employee whom you claim caused your damages or injuries:

_____
_____
_____
_____

b) State the name and address of all other persons, companies, or governmental agencies whom you claim are responsible for your injuries or damages:

_____
_____
_____

5. Briefly describe the injury, damages and losses incurred by you.

_____
_____
_____
_____

6. State the amount claimed by you _____

State the basis of the calculation of this loss _____
_____
_____
_____

I hereby certify that the foregoing statements made by me are true. I am aware that if any statement made herein is willfully false or fraudulent, that I am subject to punishment provided by law.

Dated:

_____
Claimant or person filing claim on behalf of claimant

Example 6 - Continued

NOTICE OF CLAIM UNDER TORT CLAIMS ACT
TO PUBLIC ENTITY OTHER THAN THE STATE

To: City Clerk
City of Newark
920 Broad Street
Newark, New Jersey 07102

TAKE NOTICE that the following claim is hereby presented under the New Jersey Tort Claims Act:

a. The claimants are John Doe and Jane Doe, residing at 89 Third Street, East Orange, New Jersey.

b. Notice in regard to the claim should be directed to Jones and Jones, attorneys for the claimants, 123 Main Street, Newark, New Jersey 07102.

c. The claim arises out of a collision between automobiles operated by the claimant John Doe and by Richard Roe on July 1, 1996, at the intersection of Broad and Market Streets, Newark, New Jersey.

d. Damages claimed are (1) personal injuries to John Doe presently to include a cerebral concussion, fracture of the right arm, and multiple contusions and abrasions; (2) *per quod* damages to Jane Doe as wife of John doe, and (3) property damage to the automobile of John Doe.

e. The damages were caused by Richard Roe, Assistant Building Inspector, operating an automobile owned by the City of Newark during the course of his employment.

f. Claimant John Doe is still under treatment, and detailed amounts of damages claimed are not known at this time.

_____
George Jones, for Jones and Jones
Attorneys for Plaintiffs

III. PLEADINGS

"A civil action is commenced by filing a complaint with the court." R. 4:2-2. Before a complaint is filed, however, the plaintiffs counsel must determine which court has jurisdiction, and what venue is the proper one.

A. JURISDICTION

Without jurisdiction over both the subject matter of the case and the defendant(s), a court may not proceed. The New Jersey Constitution gives the Superior Court subject matter jurisdiction over virtually all types of cases. N.J. Const., Art. VI, §3, ¶ 2; *see* Chapter I. In general, the Law Division of Superior Court has subject matter jurisdiction over cases that involve primarily a claim for monetary damages, while the Chancery Division has jurisdiction over cases that entail primarily claims for non-monetary relief such as specific performance, an injunction, or other equitable relief. *See* R. 4:3-l(a). The Special Civil Part has jurisdiction over cases in which damages do not exceed $15,000. R. 6:l-2(a)(l).

In cases involving claims under a federal statute or the United States Constitution, the United States District Court for the District of New Jersey has subject matter jurisdiction. 28 U.S.C. §1331. Additionally, the District Court has jurisdiction where the plaintiff(s) are all from a different state than all defendant(s) *and* the amount in controversy exceeds $75,000. 28 U.S.C. §1332. Sometimes either the federal court or the state courts may have subject matter jurisdiction. Though federal litigation is beyond the scope of this book, you need to consider carefully whether to choose federal rather than state court as the place to file the case. Two indispensable resources for federal litigation practice are Gann Law Books' annotated *New Jersey*

Federal Practice Rules, written by Allyn Z. Lite, and New Jersey Law Journal Books' *New Jersey Federal Civil Procedure,* edited by Robert E. Bartkus and Elizabeth J. Sher.

Jurisdiction over the defendant(s) must also be evaluated before a complaint is filed. The New Jersey Court Rules afford personal jurisdiction to the outer limits of what the due process clause of the Constitution permits. R. 4:4-4; *Avdel Corporation v. Mecure,* 58 N.J. 264, 266 (1971). In general, the question is whether it is reasonable for a defendant to expect to be subject to suit in New Jersey. The basic assessment on this issue addresses whether the defendant's contacts with New Jersey are sufficient so that requiring the defendant to defend a case in this state does not offend traditional notions of fairness and substantial justice. There are numerous cases on the subject of personal jurisdiction, many of which depend on the particular facts and nuances of those cases. For counsel who are about to embark on the prosecution or defense of a case where personal jurisdiction may be an issue, there is no substitute for familiarity with this body of case law.

As is true of every facet of a complaint or other pleading, you should carefully investigate the facts that affect personal jurisdiction before filing a complaint. Not only does R. 1:4-8 subject counsel to sanctions for frivolous filings, but failing to investigate jurisdiction adequately may permit defendants to delay consideration of the merits by seeking to dismiss the complaint based on lack of jurisdiction.

B. VENUE

The New Jersey Court Rules address venue very specifically. R. 4:3-2 discusses which county is the proper place to file a case. R. 4:3-1 contains directions as to whether the Law Division or the Chancery Division is appropriate. In general, venue is proper in the county in

which the cause of action arose, or in which any party to the action resides at the time the action is instituted or, in case of a nonresident defendant, the county in which the summons was served. Exceptions include actions affecting title to or other interests in real property, where the only proper venue is the county in which the property is located, actions against public agencies or officials, which must be brought where the cause of action arose, and receivership, attachment, family, probate, and Special Civil Part cases, all of which have their own venue rules. *See* R. 4:53-2 (receivership); R. 4:60-2 (attachment); R. 5:2-1 (family); R. 4:83-4 (probate); R. 6:1-3 (Special Civil Part). Furthermore, for venue purposes, R. 4:3-2(b), deems a corporation to reside in the county in which its registered office is located or in any county in which it is actually doing business.

When more than one venue is appropriate for a particular case, you must consider the nature of the case, whether a jury trial will be sought, how quickly case calendars are moving, and other factors that may lead to a choice of one county over another. If the case is to be filed in the Chancery Division, where one judge normally handles the matter for its entire duration, you may wish to consider the identities of the particular judges involved in making decisions about where to file. Forum-shopping and judge-shopping, though condemned by many in the abstract, are venerable tactics that every good lawyer should use *reasonably* to aid his client.

C. THE COMPLAINT

1. Factual Allegations

Every claim for relief "shall contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief, and a demand for judgment for the relief to which the pleader claims entitlement." R. 4:5-2. The Rules require that "[e]ach allegation of a

pleading shall be simple, concise and direct," and "no technical forms of pleading are required." R. 4:5-7. Thus, such things as malice, intent, knowledge, other states of mind, and performance or occurrence of conditions precedent may be alleged generally. R. 4:5-S(a), (b). However, allegations of "misrepresentation, fraud, mistake, breach of trust, willful default or undue influence" must be pleaded with special particularity. R. 4:5-S(a). The gist of each cause of action must be alleged in a complaint, and the defendant must be apprised of the nature of the claim. *Grobart v. Society for Useful Mfrs.,* 2 N.J. 136 (1949).

Factual allegations should be set forth in numbered paragraphs. Ideally, each such paragraph should be limited to a single set of circumstances. That makes the pleading more easily understandable. This also forces a defendant to admit or deny each allegation specifically, rather than permitting a more vague response to combined allegations. A clear narrative style, usually recounting the events in chronological order, will help convey effectively the facts and the basis for a claim for relief. Legalese, while perhaps impressive to some less sophisticated clients, does not enhance and may even detract from your pleadings. Keep them clear and simple.

If there are multiple Counts in the complaint, there is no need to restate the same facts repeatedly. R. 1:4-3 permits allegations made in one part of a pleading to be adopted by reference in another portion of the document.

Each separate legal theory should be set forth in its own Count. It is often helpful to describe the legal theory of each Count in parentheses after the number of the Count.

Different Counts of a complaint may form a basis for different types of relief. If so, after each Count, the complaint should include an *"ad damnum"* clause (commonly called a

"WHEREFORE" clause) that specifies the relief demanded in that Count. If all Counts seek the same relief, the *ad damnum* may be stated once at the conclusion of the pleading.

Specific amounts of damages may be demanded in a complaint only when those amounts are liquidated (that is, there is a firm basis for asserting that a specific amount is due, such as in the case of a book account). If unliquidated damages are sought, as in personal injury cases, the Court Rules require (except in the Special Civil Part) that "the pleading shall demand damages generally without specifying the amount." R. 4:5-2; *Botta v. Brunner,* 26 N.J. 82 (1958). In an automobile negligence case, however, the plaintiff's medical expenses may have to be pleaded in order to invoke jurisdiction in accordance with the no-fault statute.

2. Special Provisions

The Court Rules contain special provisions for particular matters such as representing an infant or incompetent person, R. 4:26-2(b), representing a future interest, R. 4:26-3, or asserting a *per quod* claim, such as for loss of consortium, R. 4:28-3(b). Additionally, particular Court Rules govern certain specialized types of cases such as actions in lieu of prerogative writ and class actions. For example, R. 4:69 not only addresses prerogative writ principles such as stays and exhaustion of administrative remedies, but that Court Rule, not a statute, contains the statute of limitations applicable to prerogative writ cases. R. 4:69-6. Similarly, R. 4:32, which governs class actions, contains not only procedural but substantive requirements for such cases. Finally, certain causes of action that originate in the common law are governed by special Court Rules as well. *E.g.,* R. 4:61 (replevin); R. 4:62 (action to quiet title); R. 4:63 (waste, partition, dower and curtesy); R. 4:63A (lis pendens). Counsel involved in these or other specialized

types of claims must consult the applicable Rules and ensure that their pleadings comply with those provisions.

a. Representing an Infant

If a plaintiff is an infant or an incompetent person, a guardian must represent him. R. 4:26-2(a). The guardian may be appointed by the state or by the court on petition, its own motion or a party's motion. R. 4:26-2(b).

In negligence cases, unless the court otherwise directs, a parent of an infant or incompetent person is deemed to have been appointed guardian *ad litem* without court order upon the filing of an attorney's certificate stating the parental relationship, the child or incompetent person's status and his or her age, the parent's consent to act as guardian *ad litem* at the same time as the complaint and setting it forth below the attorney's signature. If the complaint has already been filed without the attorney's certificate and an Answer has been served, a copy of the attorney's certificate must be served upon the adversary and filed in duplicate with the Clerk of the Superior Court, together with an acknowledgment of service by the adversary or an affidavit of service. Therefore, the better practice is to include the certification in the complaint.

The guardian of an infant or incompetent person may not, even in the exercise of good faith and reasonable discretion, compromise a case without judicial approval. *See* R. 4:44-3. This hearing, often known as a "friendly proceeding," is heard by the court without a jury. *Id*. The court is to examine the merits of the infant or incompetent person's claim, to consider the evidence submitted in support of the settlement, and to determine "whether the settlement is fair and reasonable as to its amount and terms." *Id.*

If an action is not actually pending when a settlement is reached, a complaint should be filed setting forth the infant or incompetent person's claim and the settlement terms, together with any defendant's answer deemed appropriate. Process is not required because the filing of an answer and a formal appearance by defendant is sufficient to give the court jurisdiction. Venue is laid in accordance with R. 4:3-2. *See* R. 4:44-1.

The attorney should have the guardian and infant present for the friendly proceeding. Children from the age of five or so may be called by the judge to testify. The plaintiff's attorney should have available recent doctors' reports to present for the court's approval. The plaintiff's attorney should also have an Order of Judgment prepared. This Order of Judgment must contain the amount of the award, attorney's fees, expenses and the net award going to the infant or incompetent person. R. 4:44-3. R. 4:48A deals with the aftermath of a judgment for infants and incompetents, whether by settlement or trial, including bonding and other requirements.

Once a money judgment is obtained, the prevailing party, usually the plaintiff, must send the judgment to Trenton, along with the filing fee, in order for the judgment to be recorded as a statewide lien in the Civil Judgment and Order Docket. Following satisfaction of the judgment, the defendant should send the Warrant for Satisfaction of Judgment and Order Docket. In the event the plaintiff did not file the Judgment in Trenton, the Warrant for Satisfaction of Judgment should be sent to the Deputy Clerk of the Superior Court in the county of venue, along with the filing fee. R. 4:48 discusses Warrants for Satisfaction of Judgment generally.

b. Representing a Future Interest

R. 4:26-3 describes the procedure in circumstances affecting property and the interests of persons unknown, not in being and with future interests. This Rule provides for representation by one person who has the same interest unless a conflict of interest exists, and thereby eliminates the expenses of a specially appointed guardian. If a conflict exists between a person holding the same interest and the other beneficiaries, or a person with the same interest is unknown or difficult to ascertain, the court may appoint a guardian *ad litem.* R. 4:26-3(c).

c. Per Quod Claims

R. 4:28-3(b) requires that a spouse's suit for loss of consortium in a personal injury negligence action by the other spouse (the *per quod* action) must be joined with the claim for personal injury or it shall be deemed to be waived absent a court order for good cause. That Rule embodies the decision in *Ekalo v. Construction Serv. Corp. of America*, 46 N.J. 82 (1965).

d. Unknown Parties

Sometimes a plaintiff will not know the identity of a person or entity who is alleged to have done the wrong to the plaintiff. In that event, you should plead such defendant(s) as "John Doe(s)." If there is more than one such defendant, they are usually given numbers (that is, "John Doe #1, John Doe #2," etc.) or different names (such as "Richard Roe"). *See* **Example 7.** R. 4:26-4 and 4:26-5 deal with such fictitious name practice. You should, however, attempt to ascertain promptly the true identity of any John Does and amend the pleadings accordingly. R. 4:26-4 forbids the entry of a final judgment against a party designated by a fictitious name. Moreover, plaintiffs who wait too long to amend John Doe allegations may be precluded from doing so at all.

3. Formatting Required

Regardless of the type of complaint, the layout and format of the allegations are largely the same. *See* **Examples 8, 9, and 10.** Other forms of complaints may be found in sources such as *New Jersey Practice* and the New Jersey Judiciary's website, www.njcourtsonline.com. The actual formatting requirements for a complaint, such as the size of the paper, the need for the name, address, and the telephone number of the attorney filing the pleading, and the requirement that a party's address be stated, are contained in R. 1:4-1. (Beginning November 1, 2013, the Supreme Court will also require the attorney identification number of the attorney filing the pleading to be included.) With the advent of computer systems, you can easily ensure that each pleading complies with the format rules.

R. 1:4-9 specifies that all pleadings and other papers filed in any court shall be prepared on letter size paper (8 1/2 x 11 inches) of a standard weight (that is, for example, no "onion skin" paper). The number of copies may vary from county to county so it is best to call the clerk's office if uncertain of the number required.

R. 1:4-1(b) requires that the first page of each paper filed contain a blank space of approximately three inches reserved for notations by the Clerk. Moreover, at the top left of the first sheet of every paper to be filed, the name of the attorney filing the paper and his or her office address and telephone number must be typed, along with their attorney identification number (beginning November 1, 2013). No backer or cover sheet should be attached.

R. 1:4-1(a) deals with the caption of the pleading and the names of the parties. Every paper to be filed should contain a caption setting forth at the right-hand margin the names and division of the court in which the action is instituted, the county of venue and a space where the docket number may be added for further service and pleadings. Slightly below should appear the nature of the action (Civil, Criminal, Family, or Probate) and a designation such as

"Complaint." The complaint must include the names of all the parties, but in later pleadings it is enough to state the name of the first party on each side with an indication that there are other parties, such as John Smith, *et al.* The first pleading of any party must also state his or her place of residence, or if the party is not a natural person, its principal business address. R. 1:4-l(a). Failure to comply with this requirement, however, may be corrected in an amended complaint. *Carolina Cas. Ins. Co. v. Belford Trucking Co.,* 116 N.J. Super. 39 (Ch. Div. 1971). *aff'd,* 121 N.J. Super. 583 (App. Div. 1972).

4. Requesting a Jury Trial

Several miscellaneous matters must or should be addressed in an initial complaint. First, you must decide whether to request a jury trial. Most cases in the Law Division carry a right to a jury, while Chancery Division cases usually do not. *See generally* Greenberg & Wolinetz, *The Right to a Civil Jury Trial in New Jersey,* 47 Rutgers L. Rev. 1461 (1995). Although R. 4:35-1(a) permits a party to demand a jury by serving a demand within ten days after the last pleading, it is prudent to make the demand in the initial pleading. A jury demand normally may not be made in an amended or supplemental pleading. *Associated Metals Corp. v. Dixon,* 82 N.J. Super. 281 (App. Div.), *certif. denied,* 42 N.J. 501 (1964). Failure to demand a jury in timely fashion waives any right to a jury trial. R. 4:35-1(c). The standard jury demand seeks a jury "as to all issues so triable." *See* **Example 11.**

5. Designation of Trial Counsel

Second, if it is intended that a particular attorney try the case, the initial pleading should include a designation of trial counsel. R. 4:5-1(c). *See* **Example 12.** Absent such a designation (which may also be made later in the case in a writing filed no later than 10 days after the

expiration of the discovery period, *see* R. 4:25-4), in certain cases, the court may insist that any partner or associate proceed with trial when the case is reached on the calendar. R. 4:25-4.

6. R. 4:5-1; Certification, Joinder of Claims and Parties, and the Entire Controversy Doctrine

Finally, each complaint must contain a certification regarding "whether the matter in controversy is the subject of any other action pending in any court or of a pending arbitration proceeding, or whether any other action or arbitration proceeding is contemplated." R. 4:5-1(b)(2). *See* **Example 13.** This furthers the policy of the entire controversy doctrine, R. 4:30A, which requires that all claims that can be brought against a particular party must be brought in a single action, absent judicial permission not to do so. This is true even though R. 4:27-1, regarding joinder of claims, appears to be merely permissive, not mandatory. Though the entire controversy doctrine no longer requires mandatory joinder of all parties as well as all claims, R. 4:28-1(a) mandates that any person who is subject to process must be joined as a party if complete relief cannot be accorded among those already parties in his or her absence, or if he or she claims an interest in the subject matter of the action that would, as a practical matter be impaired, or where those already parties would face a substantial risk of double liability or inconsistent obligations absent joinder. Thus, it is always important to consider what parties must be joined and to include them all in the complaint.

The entire controversy doctrine is an extremely intricate area of law, and one that appears to be unique to New Jersey. Since 1989, when the Supreme Court decided one of the leading entire controversy doctrine cases, *Cogdell v. Hospital Center at Orange*, 116 N.J. 7 (1989), the Court has issued numerous entire controversy doctrine decisions and has changed some of the

rules governing the doctrine more than once. *See, e.g., Oliver v. Ambrose,* 152 N.J. 383 (1998); *Joel v. Marrocco,* 147 N.J. 546 (1997); *Olds v. Donnelly,* 150 N.J. 424 (1997); *Circle Chevrolet v. Giordano, Halleran & Ciesla,* 142 N.J. 280 (1995) (later overruled by *Olds); Mortgagelinq Corp. v. Commonwealth Land Title,* 142 N.J. 336 (1995); *DiTrolio v. Antiles,* 142 N.J. 253 (1995). The annotation to R. 4:30A in *New Jersey Court Rules* is a comprehensive compilation of entire controversy doctrine cases at all levels.

It is essential that an attorney who is about to file a complaint that does or should involve multiple parties or claims review carefully the applicability of the entire controversy doctrine. The consequences, to both attorney and client, of failing to do so are significant. If you are in doubt about whether to include a party or claim, it is often wise to err on the side of doing so. You can always later ask a judge to sever part of the case, but if you do not include it in the complaint in the first place it may be precluded if you try to bring it thereafter.

7. Signature

A complaint must be signed by the attorney of record. R. 1:4-5. The attorney's signature constitutes a certification that he or she has read the pleading, that to the best of his or her knowledge there is good ground to support it, and that it is not interposed for delay. R. 1:4-8. A verification of the pleading by the client is also required in cases where a statute so requires or *ex parte* relief is sought. R. 1:4-7. Complaints in the Chancery Division, General Equity, or in the Law Division, Special Civil Part, must certify that confidential personal identifiers have been and will be redacted from all filed papers. R. 4:5-1(c).

8. Case Information Statement

Finally, a Case Information Statement must accompany the complaint. R. 4:5-1(b)(1). The annotated New Jersey Court Rules and the Judiciary's website, www.njcourtsonline.com, contain a form of CIS. *See* **Example 14.** The CIS is designed to aid the court in case

management but may not be used as evidence and has no substantive effect on the case. *See* **Example 15.** If the Case Information Statement is incomplete or omitted, the complaint will be returned to you. R. 1:5-6(c).

The CIS is one of the means by which the "Best Practices" regime that was adopted effective September 5, 2000 are being implemented. "Best Practices" is designed to improve the speed and efficiency of the trial courts and to ensure state-wide uniformity in procedures, including such discretionary matters as the resolution of discovery disputes and the fixing and adjournment of trial dates. The "Best Practices" provisions impose deadlines and obligations on attorneys that must be calendared and observed carefully in order to avoid prejudice to clients.

The CIS requires the plaintiff's attorney to designate the case category into which the Complaint falls. There are four different "tracks" that encompass the various case categories, and each case must be assigned to one of those tracks. R. 4:5A-l. One of the most significant differences in the tracks is the length of the discovery period. Track I cases, including tenancy, book account, PIP coverage, UM or UIM claims, and other relatively more simple matters, have a 150-day discovery period. Track II, which includes construction claims, most personal injury cases, and employment lawsuits other than under the Law Against Discrimination or the Conscientious Employees Protection Act, provides 300 days for discovery. Track III affords 450 days for discovery, and covers medical and other professional malpractice, civil rights, LAD, CEPA, product liability and toxic tort cases. Track IV is for the most complex cases, such as environmental coverage cases, complex commercial matters, *Mount Laurel* and

prerogative writ litigation, and certain other types of lawsuits. Those cases not only have a 450-day discovery period, but are to be actively case-managed by an individual judge.

The CIS affords the plaintiff's attorney the opportunity to state reasons why the case should be assigned to a track other than the one designed for that type of claim. The court assigns a track and must notify the plaintiff's attorney of the track assignment within ten days after the filing of the Complaint. R. 4:5A-2(a). The plaintiff must attach a copy of the track assignment to the summons or other process served on each defendant. *Id.*

If the plaintiff wishes a track reassignment, an application may be made to the court for a change of track by filing a certification of good cause. *Id.* Other parties, if they have been served, may object by a responding certification filed within ten days. *Id.* Any party aggrieved by a decision on such an application may seek relief by motion within 15 days after that decision. *Id.* Thereafter, a track change may be made only upon a showing of "exceptional circumstances," or by the court on its own motion, on notice to the parties. R. 4:5A-2(b).

It is thus important that you pay attention to the track assignment that your case receives, and determine promptly whether it needs to be changed. If you wait too long to seek a change, it may be too late to get such relief, particularly because "exceptional circumstances" is likely to be construed in a very limited way.

D. SUMMONS

Every complaint that is to be served must be accompanied by a summons. The summons must be issued within fifteen days of the filing of the complaint. R. 4:4-1. Failure to issue the summons timely may result in the dismissal of the case without prejudice, though dismissal is

quite rare unless the defendant is prejudiced by the delay. *Id.; see, e.g., Vines v. Orange Memorial Hospital,* 192 N.J. Super. 496 (App. Div. 1984).

The form of the summons is described in R. 4:4-2. Once again, the annotated *New Jersey Court Rules*, and the Judiciary website, www.njcourtsonline.com, contain an actual form of summons that may be used. Forms may also be purchased from commercial firms as well. The docket number of the case, once received, must be placed on the summons, and counsel should sign the name of the Clerk of the Superior Court (you can find the Clerk's name on the Judiciary website or in the *New Jersey Lawyer's Diary*). As noted above, a copy of the track assignment must be attached to the summons. R. 4:5A-2(a). Once the summons is ready, counsel must then arrange for service of the summons and complaint upon each defendant. *See* **Example 16.**

E. SERVICE OF SUMMONS

R. 4:4-3 contains the basic rules regarding who must serve a summons and complaint. The Sheriff or a commercial process server may make service. R. 4:4-3(a). The *New Jersey Lawyer's Diary* contains information about Sheriffs fees for service. It is often prudent, however, to telephone the Sheriff's office for the particular county in which service is to be made to confirm the fees and the number of copies of the summons and complaint that is required. The summons and complaint should then be sent for service promptly. *See* **Example 17.**

The Sheriff is to provide plaintiff's counsel with proof of service, and to file such process with the court as well. R. 4:4-7 contains the requirements for the proof of service. Those requirements are applicable to persons other than the Sheriff who serve process as well.

Another alternative means of service is to arrange with the defendant or her attorney, if known, to accept service voluntarily. R. 4:4-6.

While R. 4:4-3 describes the "who" of service, R. 4:4-4 and 4:4-5 discuss the "how." The requirements for proper service on a natural person differ from those applicable to corporate, partnership, governmental or other entity defendants, and there are special rules applicable to defendants not located in New Jersey. *See* R. 4:4-4. Similarly, there are different procedures for serving out of state defendants in actions *in rem* or in matrimonial cases. R. 4:4-5. In general, the Court Rules are concerned with providing notice by methods that are adequate to put defendants on notice that they have been sued. You should familiarize yourself with the rules applicable to the different types of defendants. Many out of state corporations have registered agents for service of process in New Jersey. You can find out the identity of such an agent by contacting the office of the Secretary of State. There is a fee for that service.

Two aspects of service merit specific mention. First, R. 4:4-4(c) provides that any defendant upon whom the Rules require personal service may be served by mail, provided, however, that such service is effective only if the defendant answers the complaint or otherwise appears in response to it. Some defendants will respond to a complaint no matter how it is served. Thus, this Rule provides an easy and inexpensive way to serve process. However, a plaintiff who serves process using this Rule may not obtain a default judgment if the defendant does not respond.

Second, if the plaintiff's attorney submits an affidavit stating that "despite diligent effort and inquiry" personal service cannot be made on an out of state defendant in the manner required by R. 4:4-4(a), other means may be used to accomplish service. R. 4:4-4(b). You

must take care to document the efforts that have been made to serve process in accordance with R. 4:4-4(a) before resorting to the affidavit of diligent inquiry as an alternative. *See* **Example 18.** There is no fixed standard for what constitutes due diligence in a particular case. For a recent discussion of that issue, see *Madan v. Madan,* 327 N.J. Super. 44 (App. Div. 1999).

F. RESPONSES TO COMPLAINTS

1. Initial Considerations

When a defendant consults you about a complaint that has been received, you must first find out how and when the complaint was received. If service was proper, the time to answer or otherwise respond to the complaint begins to run from the date of service. R. 4:6-1. Normally, that time period is 35 days. *Id.*

If service was not properly made, you may wish to acknowledge service anyway, as provided by R. 4:4-6, unless there is prejudice to the client. *See* **Example 19.** The plaintiff is likely to make proper service eventually if the defendant is subject to jurisdiction in New Jersey, and accepting service extends a professional courtesy that defense counsel may wish to have reciprocated if the defendant needs an extension of time to answer or otherwise respond to the complaint. Additionally, your client may wish to join battle at once, to display his readiness to the plaintiff. If the defendant wishes to contest the sufficiency of the service of process, R. 4:6-2(d) addresses that.

Defense counsel also needs to make other threshold decisions. First, you must decide whether to answer the complaint or to move against it. If the complaint is so vague or

ambiguous that the defendant cannot reasonably be required to frame a response to it, a motion for more definite statement of the claims may be made. R. 4:6-4. *See* **Example 20.** Both the grant and the denial of such a motion alter the time for the defendant to file a responsive pleading. R. 4:6-l(b)(l), (2). However, a motion for more definite statement should not be used as a tactic to get more time to answer or otherwise move. If more time is needed, you should simply request it of your adversary rather than resulting to an unnecessary motion that may provoke an unwelcome reaction from the judge who must consider it.

Like the plaintiff, a defendant may apply to change the track assignment given to the case. Such an application is to be made with the "first pleading." R. 4:5A-2(a). Though a motion is often not considered to be a "pleading," it may be prudent for a defendant that wishes to seek a track change to include a track reassignment application with the first motion that the defendant files. If the defendant files an Answer rather than a motion, any track change application should be made then. The remaining procedures of R. 4:5A-2(a) and (b) that were discussed above in regard to plaintiffs apply to defendants as well.

2. Motion to Dismiss

A motion to dismiss the complaint may be made on a number of grounds. R. 4:6-2. *See* **Example 21.** The most significant of those is failure to state a claim upon which relief may be granted. R. 4:6-2(e). Such a motion asserts, in effect, that accepting the allegations of the complaint, read most favorably to the plaintiff, as true, the law affords no basis for relief. *See Printing Mart v. Sharp Electronics,* 116 N.J. 739 (1989). This motion also alters the time for the defendant to file a responsive pleading. R. 4:6-l(b)(l). A motion under R. 4:6-2(e) may be made based only on the face of the complaint and a small universe of other sources, such as

documents referred to in the complaint or matters that may be judicially noticed. If a motion to dismiss relies on "matters outside the pleading," the court must either exclude from its consideration the material outside the pleading or convert the motion to one for summary judgment under R. 4:46. R. 4:6-2. In the latter event, all parties must be given the opportunity to present all material pertinent to the motion. In other words, the court must allow discovery before deciding the motion. *Id.*

A defendant may also move to dismiss a complaint for failure to plead with particularity any of those elements mentioned in R. 4:5-8(a). Most often, that occurs in fraud cases. However, the purpose of the particularity requirement "is to require the pleader to state the facts which are relied on as constituting the wrong with enough particularity to enable the person charged to deny or disprove or explain these facts. It was not intended to encourage motions to strike pleadings or motions for judgment on the pleadings." *Evangelista v. Public Service Coord. Trans.,* 7 N.J. Super. 164, 168-69 (App. Div. 1950). Thus, a motion to dismiss on this basis is not appropriate where the complaint performs its notice functions. R. 4:6-3 addresses the time within which motions to dismiss must be made. Defenses of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process, all of which are covered by R. 4:6-2, must be presented in a motion to dismiss within 90 days after service of an answer asserting such defenses, or they are waived. R. 4:6-3.

3. Answer

a. General Considerations

Under R. 4:6-2, every defense, legal or equitable, in law or fact, to an affirmative claim must be asserted in the answer. Certain defenses, however, may at the option of the pleader be

asserted by motion, with briefs. These defenses are (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim, discussed above, and (f) failure to join a party without whom the action cannot proceed, as required by R. 4:28. Defenses (b), (c) and (d) are waived if they are not asserted in the answer and raised by motion within 90 days after service of the Answer. R. 4:6-3; R. 4:6-7. This is designed to prevent a party from keeping such largely technical defenses in its "hip pocket" for presentation at a strategic point later in the case when the parties and the court have already invested substantial time, energy and resources in the case. If you believe that such defenses are available, they should be presented immediately.

The defenses of lack of subject matter jurisdiction, failure to state a claim, and failure to join a party required by R. 4:28 may be raised at any time before trial. These defenses go to the power of the court to hear the case or to the fundamental merits of the claims asserted. For that reason, these defenses are not waived if not immediately presented. Normally, however, there is no reason to withhold them once counsel learns of their possible existence. Neither clients, who may have paid substantial sums to litigate the case, nor the court, which will have invested its time in the matter, will be happy to see a motion to dismiss the case that could have been brought months or even years earlier. You are well-advised to evaluate the availability of dispositive defenses such as these at the outset of the case, and to re-evaluate these issues periodically prior to trial in order to avoid overlooking this resource.

Other threshold motions that must be evaluated are motions to change venue or to transfer the case to another court. ***See* Example 22.** If a change of venue within the Superior Court is to be sought, that must be done within ten days after the last permissible responsive pleading or

objections to venue are waived. R. 4:3-3(b). The ten day time period may be enlarged in the rare case where there is "substantial doubt that a fair and impartial trial can be had in the county where venue is laid." *Id.* Transfers other than between the Law and Chancery Division are covered by R. 4:3-4. Unlike R. 4:6-2 motions or a motion for a more definite statement, venue or transfer motions do not alter the time by which a responsive pleading is due.

b. Extending the Time to Answer or Move

Second, you must decide if more time is needed to prepare the answer or motion. If so, the best way is to obtain the consent of the plaintiff's counsel. As is true in so many other contexts, unless agreeing to an extension would prejudice the rights of the plaintiff, the plaintiff's counsel should agree to a reasonable extension of time to answer or otherwise move as a professional courtesy. If plaintiff's counsel does not consent, the defendant may apply to the court for an order extending time. Absent prejudice to the plaintiff, forcing a defendant to apply to the court in this manner will only make the court predisposed against the plaintiff.

Counsel for the parties may by agreement extend the time to answer or otherwise move for up to 60 days by entering into a stipulation extending time, which must be filed when the answer or motion is filed with the court. R. 4:6-l(c). *See* **Example 23.** Any request for an extension beyond that requires a court order. *Id.* However, parties may execute a consent order and submit that to the court for signature and entry. Such consent orders are almost invariably granted.

c. Formatting the Answer

The caption of an answer should look largely the same as that on a complaint. An obvious difference is the title of the pleading, which should include all the components of the

document. For example, the title could say "Answer and Separate Defenses," "Answer, Separate Defenses and Counterclaim," "Answer, Separate Defenses and Jury Demand," "Answer, Separate Defenses, Demand for Statement of Damages, Demand for Documents Referred to in the Pleading" (those demands will be discussed below) or the like. The purpose of the title is to give the reader notice of the different features contained in the document.

If an answer is to be filed, you must determine how to respond to the allegations of the complaint. Each paragraph of the complaint should be answered in a matching numbered paragraph. As to each paragraph, the answer must admit, deny, or claim insufficient knowledge or information to form a belief as to the truth of the allegations. R. 4:5-3. A blanket denial of the allegations in a complaint is improper. *Id.*

d. Responding to Each Allegation

Denials of allegations must fairly meet the substance of those allegations. *Id.* Therefore, if a portion of the allegations of a particular paragraph is true, counsel should admit what is true and deny the remainder of the allegations of that paragraph. *Id.* Counsel should be careful to admit what is true, but no more. Allegations that are not denied may be deemed admitted. R. 4:5-5. In addition to answering the allegations of the complaint, you should consider what affirmative defenses may be applicable. R. 4:5-4 contains a lengthy, but non-exhaustive, list of possible affirmative defenses. Other affirmative defenses may be available in a particular case. You should take care to plead any affirmative defense for which there is good ground. Failure to plead an affirmative defense may result in a waiver. *E.g., Fees v. Trow,* 105 N.J. 330 (1987); *see also* R. 4:6-7. *See* **Example 24.** But do not simply toss in every defense listed

in the Rule. It may be bad faith, and an astute adversary will serve interrogatories that will force you to explain the basis for each defense that you assert.

4. Counterclaims, Cross-Claims and Third-Party Complaints

Additionally, you must consider whether a counterclaim, crossclaim or third-party complaint should be filed. *See* **Example 25.** Some counterclaims are made mandatory by R. 4:7-1 and the entire controversy doctrine, R. 4:30A. Counterclaims that are permissive rather than mandatory may not have to be brought in the same case. Counsel must make tactical decisions based on the way that the claims contained in the complaint and those of a possible counterclaim would be tried in order to determine whether to bring a particular non-mandatory counterclaim. Moreover, you must consider possible collateral estoppel effects of this decision. A counterclaim "may claim relief exceeding in amount or different in kind from or not germane to that sought in the pleading of the opposing party." R. 4:7-2.

Crossclaims, which are claims asserted between co-parties such as co-defendants, are governed by R. 4:7-5. Claims for indemnification or contribution from co-defendants are to be raised in the answer. R. 4:7-5(b) contains special rules applicable to such crossclaims. Among other things, a defendant on an indemnification or contribution crossclaim need not file an answer to such claims. R. 4:7-5(b) automatically deems those crossclaims to be denied.

Third-party complaints are covered by R. 4:8-1. Once a third-party complaint is brought, the third-party defendant must react as though he were an original defendant. The third-party defendant must file an answer to the third-party complaint and assert any affirmative defenses that are available, and may (or must, in the case of mandatory counterclaims) assert counterclaims against the third-party plaintiff. The third-party defendant and the original

plaintiff may assert direct claims against each other as well. R. 4:8-l(b). Additionally, if the third-party defendant has claims against still another person who is not already a party to the case, the third-party defendant may file a fourth-party complaint. Such a pleading is considered a species of third-party complaint and is governed by the same rules. For an example of a complex case in which a fourth-party complaint was filed, see *Wm. Blanchard Co. v. Beach Concrete Co., Inc.,* 150 N.J. Super. 277 (App. Div.), *certif. denied,* 75 N.J. 528 (1977).

All pleadings are permitted to contain inconsistent and hypothetical allegations. R. 4:5-6. Thus, in an action for damage that the defendant allegedly did to the plaintiff's lawnmower when the defendant borrowed it, the defendant may simultaneously assert that (a) he never borrowed the lawnmower, (b) if he did borrow the lawnmower, he did not damage it, (c) the lawnmower was already damaged when he borrowed it, and (d) (by means of a third-party complaint) if the lawnmower was broken, a third-party defendant did that. As the facts develop during the course of the case, however, parties may be bound to one version of the facts.

5. Other Features of an Answer

As was true of the complaint, the answer is an opportunity for a party to designate a particular attorney to try the case. *See* R. 4:25-4. Again, if such a designation is not made in accordance with that Rule, and if no pretrial conference occurs (at which a designation may then be made), a party may be required to try the case even if its preferred counsel is not available on the trial date. It is prudent practice, therefore, to designate trial counsel at the outset if at all feasible.

Finally, you must decide whether to demand a jury. Some of the considerations are similar to those that the plaintiff's counsel must weigh before deciding whether to demand a

jury. In many counties with crowded dockets, cases take longer to reach trial if a jury is demanded. However, with an increasing trend toward case management, that is less so than before. You should not reflexively demand a jury in hopes of indefinite calendar delays.

Moreover, a defendant who requests a jury in the hope of delaying trial may regret that decision when the case comes to trial and the defendant's fate is placed in the hands of a jury of ordinary persons with ordinary reactions to the defendant's conduct. Though parties who have requested a jury trial may later waive it by consent, neither side should count on an agreement to waive a jury once one side has requested it.

Defense counsel must sign the answer and certify that it was filed and served within the time period provided by the Court Rules (or any applicable extension of time). R. 4:6-1. The original and a copy of the answer are to be filed with the court, along with the required fee, and a copy must be served on the plaintiff and any other parties.

6. Obtaining Initial Discovery As Part of the Answer

Two mechanisms for obtaining initial discovery are often employed by a defendant as part of an answer. R. 4:18-2 permits a demand for copies of all documents referred to in a pleading but not attached to the pleading. Such documents must be provided within five days of the request. *Id. See* **Example 26**. R. 4:5-2 permits a demand for a statement of damages. *See* **Example 27.** That too must be provided within five days of a request for it. *Id.* Though the statement of damages is not binding, and does not limit the damages that may be recovered, *Lang v. Baker,* 101 N.J. 147 (1985), it may help you get an idea of the magnitude of damages that the plaintiff seeks. Either or both of these demands may be appended to an answer, after

the responses to the allegations of the complaint, any affirmative defenses, counterclaim, crossclaim, third-party complaint, or jury demand.

G. REPLY

R. 4:5-1 permits the filing of a reply to a defensive pleading for purposes of avoiding (but not denying) an affirmative defense. As a practical matter, replies are rarely used. Absent the filing of a reply, there is no need to deny the validity of an affirmative defense. R. 4:5-5 deems as denied facts that support an affirmative defense, unless a reply is filed. No pleadings other than a complaint, answer, counterclaim, answer to counterclaim, crossclaim, answer to crossclaim, third-party complaint, answer to third-party complaint, and reply are permitted. R. 4:5-l(a).

H. AMENDED AND SUPPLEMENTAL PLEADINGS

Pleadings may need to be amended to account for the development of new facts in discovery, to cure omissions, or because counsel has developed a new legal theory. In contrast to an amended pleading, a supplemental pleading addresses transactions or occurrences that happen after the filing of the original pleading. These matters are addressed in R. 4:9.

In the case of a pleading to which a responsive pleading is to be served, a party may amend that pleading at any time before service of the responsive pleading. R. 4:9-1. Amendments after the responsive pleading has been served may occur "only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice." *Id.* If the pleading is one to which no responsive pleading is to be served, a party may amend it as a matter of right at any time within 90 days after it is served, provided that the case has

not been placed on the trial calendar. *Id.* Otherwise, written consent of the adverse party or leave of court is again required. *Id.*

A motion for leave to amend must include a copy of the proposed amended pleading. *Id. See* **Example 28.** On a motion for leave to amend, the court is not to consider the ultimate merits of the amendment. *E.g., Tomaszewski v. McKeon Ford, Inc.,* 240 N.J. Super. 404, 411 (App. Div. 1990). Thus, a party who seeks to oppose leave to amend may not defeat the motion by contending that the party seeking leave will not prevail on the amended claim at trial. A motion for leave to amend may, however, be opposed on the ground that the proposed amendment is futile. *E.g., Notte v. Merchants Mut. Ins. Co.,* 185 N.J. 490, 500-01 (2006).

Though motions to amend are to be granted freely, a court will deny leave if there is prejudice to the opposing party. The most common situation involving prejudice is where the moving party has waited until the time of trial or shortly before to seek leave to amend. *E.g., Globe Motor Car Co. v. First Fid.,* 291 N.J. Super. 428 (App. Div.), *certif. denied,* 147 N.J. 263 (1996); *Fox v. Mercedes-Benz Credit Corp.,* 281 N.J. Super. 476 (App. Div. 1995). Accordingly, prudent counsel review their cases periodically as they proceed, in order to determine as soon as possible whether amendments are required. Once you decide that a pleading should be amended, the necessary consent should be obtained, or the required motion filed, promptly.

On the other hand, an amendment has been permitted even on remand after an appeal. *Coastal Group v. Dryvit Systems,* 274 N.J. Super. 171, 180 (App. Div.1994); *but see Mercedes-Benz Credit Corp. v. Lotito,* 328 N.J. Super. 491 (App. Div. 2000) (limiting *Coastal Group).* Moreover, R. 4:9-2 permits a party to amend pleadings to conform to the evidence presented

at trial when issues not raised in the pleadings or the pretrial order have been tried by consent of the parties or without objection. In order to avoid being placed in this position as a defendant, you should vigilantly object at trial to any matters not contained in pleadings or the pretrial order, though any such objection may not succeed absent prejudice to the objecting party from the new matter. R. 4:9-2 authorizes the court to allow amendment of the pleadings and pretrial order "when the presentation of the merits of the actions will be thereby subserved and the objecting party fails to satisfy the court that the admission of such evidence would be prejudicial in maintaining the action or defense upon the merits." The court also has discretion to grant a continuance to allow the objecting party to meet the new evidence. *Id.*

R. 4:9-2 is thus a powerful means to offer new legal theories at the time of trial. Counsel should not, however, assume that the court will permit them to compensate for earlier failures to amend by relying on that Court Rule.

When the applicable statute of limitations may have run by the time of the amendment, the party seeking leave to amend will seek to have that amendment "relate back" to the date that the original pleading was filed. R. 4:9-3 deals with when such amendments "relate back." In general, if the claim or defense asserted in the amended pleading arose out of the same conduct, transaction or proceeding alleged in the original pleading, the amendment will "relate back," though the court has discretion to permit other claims to relate back as well. The requirements are more stringent if the amendment seeks to change the party against whom a claim is asserted. R. 4:9-3. Cases discussing some of the issues in this area are *Notte v. Merchants Mut. Ins. Co.*, 185 N.J. 490 (2006), *Kernan v. One Washington Park*, 154 N.J. 437 (1998), and *Otchy v. Elizabeth Bd. of Educ.*, 325 N.J. Super. 98 (App. Div. 1999).

Supplemental pleadings are covered by R. 4:9-4. In general, the standards governing supplemental pleadings are similar to those applicable to amended pleadings.

Example 7: Complaint with John Doe in Caption

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ROBERT JARNDYCE Plaintiff -vs- ALICE JARNDYCE and JOHN DOES 1-50, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO. Civil Action **COMPLAINT**

Example 8: Complaint - Law Division

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiffs

PETER RABBIT and HOME AND AWAY, INC.,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION BERGEN COUNTY
Plaintiffs,	Docket No. **[court will fill this in upon filing]**
vs.	Civil Action
MARIA MCGREGOR,	**COMPLAINT**
Defendant.	

Plaintiffs Peter Rabbit and Home and Away, Inc., by way of Complaint against defendant Maria McGregor, say:

BACKGROUND

1. Plaintiff Peter Rabbit is a resident of Bergen County. His address is 123 Warren Street, Far Side, New Jersey.

2. Plaintiff Home and Away, Inc. ("Home and Away") has an office at Suite 123, 456 Main Street, Nowheresville, Bergen County, New Jersey.

3. Defendant Maria McGregor resides at 789 Hill Street, Nowheresville, New Jersey.

Example 8 - Continued

4. Home and Away operates an adult medical day care center located at 456 Main Street, Nowheresville, New Jersey. Home and Away's clientele consists almost entirely of indigent, Asian-American persons from Bergen County. Most of Home and Away's clients are elderly, and many of them are sick, disabled or physically handicapped. Many do not speak English.

5. Home and Away occupies space on the first floor of the Nowheresville premises pursuant to a written Lease dated June 15, 1999. Defendant McGregor is and at all relevant times has been the Executive Director of the owner of the premises, the Asian Center ("Center"). Center has its offices on the second floor of that same building.

6. Home and Away has been operating its adult medical day care center since late 1995. Home and Away is subject to strict regulation by various government agencies, including but not limited to the New Jersey Department of Health. Those agencies frequently conduct inspections of Home and Away's premises and operations, often without advance notice. Since commencing its operations, Home and Away has consistently received high ratings from all such government agencies. Moreover, Home and Away has received citations for its good work from Governor Christine Todd Whitman, the Bergen County Board of Freeholders, and the Nowheresville City Council.

7. Home and Away's clients also think quite highly of Home and Away, its services, and its personnel. Home and Away has many clients who use its services day in and day out. There are at least three other adult medical day care facilities in Nowheresville, and another five adult medical day care facilities located within approximately three miles of Home and Away's facility. Clients could go to one of these other adult medical day care providers if Home and Away did not deliver topnotch services. Only a handful of Home and Away's clients have ever

Example 8 - Continued

left Home and Away for another adult medical day care center, and most of those have returned to Home and Away thereafter.

8. Home and Away has also established itself as a good citizen of Nowheresville and, in particular, of the minority community there. For example, Home and Away has provided six scholarships per year to needy Asian students at Bergen County Community College. Home and Away has also contributed to numerous charitable causes within Nowheresville, elsewhere in the United States, and in Asian countries. These include, among others, the Nowheresville Fourth Ward Alliance, the PBA, and many other charitable causes.

9. Home and Away has busses and vans that pick up clients at their homes, transport them to Home and Away's facility, and return clients to their homes at the end of the adult medical day care session. Home and Away also uses those vehicles to transport clients to doctor's offices, hospitals, social security offices, and other medical or governmental facilities where they need to go, as well as on field trips organized by Home and Away for its clients as part of Home and Away's overall services.

10. As a result of the foregoing, and the high quality of Home and Away's adult medical day care and related services, Home and Away has earned a superb reputation in the community and among medical professionals. Defendant McGregor is aware that Home and Away has had an excellent reputation in the community.

11. At least since 1996, defendant McGregor and her Center have repeatedly provoked disputes with Home and Away, and have conducted themselves maliciously toward both Home and Away and Mr. Rabbit. Among other things, defendant McGregor resents the great success and fine reputation that Home and Away has achieved, in just a short time. Moreover, when

Example 8 - Continued

defendant McGregor demanded that Home and Away pay double or triple the agreed upon rent, and tried to force Home and Away to make additional payments to Center or defendant McGregor personally, Home and Away successfully refused to be forced into doing so. Accordingly, defendant McGregor bears substantial malice and ill will toward plaintiffs.

12. Home and Away has been required to go to court to defeat various provocations by defendant McGregor and her Center. Home and Away's success in litigation against defendant McGregor and her Center have contributed to the malice and ill will toward Home and Away and its President, Mr. Rabbit, that defendant McGregor harbors. For example:

(a) In 1999, defendant McGregor sought to take over Home and Away's business and exploit the facilities and goodwill that Home and Away had developed at great expense or, alternatively, to use the threat of eviction to force renegotiation of the Lease and require Home and Away to pay double or even triple the agreed upon rent for its space. Among other things, Center advised Home and Away that its Lease was invalid. Home and Away learned of the intentions of defendant McGregor and her Center. When Home and Away's efforts to dissuade defendant McGregor and her Center from such conduct did not succeed, Home and Away was required to institute suit for a declaratory judgment that the Lease was valid. After denying repeated motions by Center to dismiss that complaint, Hon. Jennifer Jurist, P.J. Ch., awarded Home and Away summary judgment declaring its Lease valid. Judge Jurist also granted Home and Away's motion for summary judgment dismissing virtually all of Center's counterclaims in that case. The few remaining claims raised by all parties to that case were then settled. Home and Away thus defeated defendant McGregor and her Center in that case.

Example 8 - Continued

(b) In the course of that litigation, Home and Away obtained an order from Judge Jurist compelling Center to give Home and Away a key to the basement of the premises, where Home and Away had certain systems equipment and other infrastructure for its business. When Center refused to comply with that order, Home and Away was required to seek relief in aid of litigant's rights. Judge Jurist not only granted that relief, but required defendant McGregor's Center to pay Home and Away's attorneys' fees in the amount of $2,000.00. That sum was paid. Once again, Home and Away had defeated defendant McGregor's efforts to harm Home and Away, and the episode ended, undoubtedly to the strong chagrin of defendant McGregor, with her Center paying for the entire exercise.

(c) Under Center's Lease with Home and Away, Center was required to clear snow and ice at the premises. In the winter of 1999-2000, Center repeatedly failed to clear snow and ice from the parking lot and other parts of the premises. Home and Away's elderly clients, many of whom walk unsteadily due to their physical conditions even in dry weather, were at serious risk of injury from Center's dereliction of duty. When Center would not respond to Home and Away's requests that Center carry out its responsibility, Home and Away was forced to file another complaint and to seek an Order to Show Cause with Temporary Restraints to require Center to clear the snow and ice. Once again, Judge Jurist granted complete relief to Home and Away. Not only did she grant a temporary restraint, but Judge Jurist summarily entered final judgment for permanent injunctive relief on the date that counsel for Home and Away and defendant McGregor's Center appeared to argue the application for temporary restraints. Once again, Home and Away had prevailed over defendant McGregor's Center, both completely and speedily.

Example 8 - Continued

(d) Later in 2000, Home and Away sought Center's permission to install security cameras, as well as a small, non-permanent antenna on the roof of the premises to enable Home and Away to communicate with its vehicles that transport its clients from their homes to Home and Away's facility, back to their homes, and to other locations as described above. Home and Away requested such permission even though, under the Lease, no such permission of Center was required. Without the antenna, Home and Away would have been unable to maintain necessary conduct with its vehicles and to reach every client at all times if necessary. Defendant McGregor's Center would not consent to Home and Away's requests. Instead, Center protracted discussions on those subjects for months. As to the security cameras, Center raised purported concerns for the confidentiality of the identities of persons entering the premises, even though Center itself had a security camera that showed the identities of those persons, and Home and Away's proposed cameras would show the identities only of persons coming to Home and Away's own doors. Center then filed a complaint for an Order to Show Cause With Temporary Restraints to block Home and Away from installing the antenna. Only after Judge Jurist heard argument and indicated that Home and Away was entitled to install the antenna did Center agree to allow installation of the antenna. Thereafter, Center finally agreed to allow the security cameras to be installed.

12. There have been numerous other incidents. In short, however, defendant McGregor has had a lengthy history of hostility and malicious actions toward plaintiffs.

FIRST COUNT (Slander)

1. Plaintiffs repeat the allegations stated above as if set forth at length herein.

Example 8 - Continued

2. In February 2000, at a meeting in Nowheresville, defendant McGregor defamed plaintiffs and each of them by making the following statements:

> Our tenant, Home and Away, steals from the poor, and Peter Rabbit abuses poor people who go to them.

3. Defendant McGregor made those statements intentionally. As she spoke, she referred to notes or other papers, and she spoke in a calm, measured and deliberate tone. All of this indicates that defendant McGregor planned to say exactly what she said.

4. Reasonable persons of ordinary intelligence who heard defendant's statements would understand, and did understand, that plaintiffs and each of them steal from the poor, and that they abuse, physically or otherwise, poor people who seek their services. These charges are false and defamatory.

5. Defendant's false and defamatory statements were heard by numerous other persons who were present at the meeting when those statements were made. Moreover, because the meeting was broadcast on television, which broadcast was repeated more than one time, hundreds or even thousands of persons heard and saw the false and defamatory statements.

6. Defendant McGregor made the foregoing false and defamatory statements for the purpose of injuring plaintiffs and each of them in their reputations, profession and business. Defendant knew that her statements were false or, alternatively, acted with reckless disregard of whether her statements were true or false.

7. As a direct and proximate result of defendant McGregor's false and defamatory statements, plaintiffs have suffered damages. Defendant's statements constitute slander per se in that they affect plaintiffs in their respective business and profession, and the charge that plaintiffs

Example 8 - Continued

or either of them abuse poor people imputes criminal conduct to plaintiff. Moreover, Home and Away has suffered harm to its reputation in the community, particularly in the poor community and the Asian community in Nowhereseville from which most of its clients come. Home and Away has lost clients since defendant made her false and defamatory remarks. Similarly, Mr. Rabbit has suffered harm to his reputation in the community, including in the health care community of which he is a member.

WHEREFORE, plaintiffs demand judgment against defendant for compensatory damages, punitive damages, prejudgment and postjudgment interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT (Libel)

1. Plaintiffs repeat the allegations of the First Count as if set forth at length herein.

2. Defendant's aforesaid false and defamatory statements were broadcast on television.

3. As such, defendant's aforesaid false and defamatory statements constitute libel.

WHEREFORE, plaintiffs demand judgment against defendant for compensatory damages, punitive damages, prejudgment and postjudgment interest, costs of suit, and such other relief as the Court deems equitable and just.

THIRD COUNT (Product Disparagement)

1. Plaintiffs repeat the allegations of the First and Second Counts as if set forth at length herein.

2. Defendant's aforesaid statements falsely disparaged the business and services of Home and Away. In particular, reasonable persons of ordinary intelligence hearing or seeing the statements of defendant would understand, and did understand, that Home and Away's services

Example 8 - Continued

not only are not useful or beneficial to its clients from the poor community, but that, on the contrary, Home and Away and Mr. Rabbit steal from those very clients and are abusive, even physically abusive, to clients.

3. Defendant McGregor intended her statements to result in monetary harm to Home and Away by inducing Home and Away's clients to believe that Home and Away's services were not beneficial, or were in fact harmful, and therefore that clients would cease to use Home and Away's services. Alternatively, defendant recognized or should have recognized that her statements were likely to bring about such financial harm to Home and Away. Defendant has great influence with the Asian community in Nowheresville through, among other things, her activities at Center, and has the capacity to influence the very clients upon whom Home and Away depends. Defendant hoped to use that influence to disparage Home and Away's services and cause Home and Away monetary losses as aforesaid.

4. As a direct and proximate result of defendant's disparaging statements about Home and Away's services, Home and Away has suffered damage.

Example 8 - Continued

WHEREFORE, plaintiff Home and Away, Inc. demands judgment against defendant for compensatory damages, punitive damages, prejudgment and postjudgment interest, costs of suit, and such other relief as the Court deems equitable and just.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiffs

_____
BRUCE D. GREENBERG

Dated: March ____, 2000

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiffs, by their attorneys, hereby certify that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceeding. Plaintiffs are not currently aware of any other parties that should be joined in this action.

_____
BRUCE D. GREENBERG

Dated: March ___, 2000

Example 9: Breach of Contract Complaint and Jury Demand

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ROBERT ABEL	:	SUPERIOR COURT OF NEW JERSEY
	:	MIDDLESEX COUNTY: LAW DIVISION
Plaintiff,	:	DOCKET NO.: **[clerk will insert]**
v.	:	
	:	Civil Action
CAIN CORPORATION	:	
	:	
Defendant.	:	**COMPLAINT AND JURY DEMAND**
	:	

Plaintiff Robert Abel, by way of Complaint against defendant Cain Corporation, says:

FIRST COUNT

1. Plaintiff is a citizen of the State of New Jersey with an address of 123 Happy Hill Road, Any Town, New Jersey.

2. Defendant is and at all relevant times was a corporation having its principal place of business at 5432 Trouble Road, Someplace, Middlesex County, New Jersey.

3. On or about **[date]**, defendant entered into a written Business Broker Agreement (the "Agreement") with plaintiff whereby defendant engaged and authorized plaintiff to act as a broker for the sale of a portion of defendant's business holdings known as National Works ("National"). A true copy of the Agreement is annexed hereto as Exhibit A. The Agreement provides that it is governed by New Jersey law and that any actions arising under the Agreement shall be brought in the courts of New Jersey.

Example 9 - Continued

4. Pursuant to the Agreement, defendant agreed to pay plaintiff a commission of five percent of the total purchase price in the event that a qualified buyer of National, identified to defendant by plaintiff, executed an agreement to purchase National from defendant.

5. Pursuant to the Agreement, plaintiff identified Huge Computer ("Huge") as a purchaser of National.

6 On January 3, 2000, Huge purchased National from defendant for **$500,000.00.**

7 Pursuant to the Agreement, defendant was to pay to plaintiff a commission of $25,000.00, representing five percent of the purchase price. Defendant has failed and refused to pay plaintiff's commission or any part thereof, despite repeated demands by plaintiff.

WHEREFORE, plaintiff demands judgment against the defendant in the amount of $25,000.00, together with interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT

1. Plaintiff repeats the allegations of the First Count of the Complaint as if set forth at length herein.

2. Defendant promised and agreed to pay plaintiff the reasonable value of the brokerage services rendered by plaintiff.

3. Plaintiff has duly performed all of the services required by defendant under the Agreement and is entitled to be paid for the services rendered on behalf of defendant.

4. The reasonable value of the services performed by plaintiff for defendant is $25,000.00.

Example 9 - Continued

5. Despite plaintiff's demands for payment of the $25,000.00, defendant has failed to pay any part of said sum, leaving a balance of $25,000.00.

WHEREFORE, plaintiff demands judgment against defendant for $25,000.00, together with interest, costs of suit, and such other relief as the Court deems equitable and just.

THIRD COUNT

1. Plaintiff repeats the allegations of the First and Second Counts of the Complaint as if set forth at length herein.

2. Despite plaintiff's demands therefor, there remains due and owing by defendant the sum of $25,000.00 for plaintiff's services in accordance with an account stated.

WHEREFORE, plaintiff demands judgment against defendant for the sum of $25,000.00, together with interest, costs of suit, and such other relief as the Court deems equitable and just.

FOURTH COUNT

1. Plaintiff repeats the allegations of the First, Second and Third Counts of the Complaint as if set forth at length herein.

2. As a result of services provided by plaintiff and the failure of defendant to pay plaintiff therefor, defendant has been unjustly enriched in the amount of $25,000.00

WHEREFORE, plaintiff demands judgment against defendant for the sum of $25,000.00, together with interest, costs of suit, and such other relief as the Court deems equitable and just.

Example 9 - Continued

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

_____
BRUCE D. GREENBERG

Dated: January ____, 2000

JURY DEMAND

Plaintiff hereby demands trial by jury of all issues in this action.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

_____
BRUCE D. GREENBERG

Dated: January ___, 2000

RULE 4:5-1 CERTIFICATION

Plaintiff, by his attorneys, hereby certifies that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceeding. Plaintiff is not currently aware of any other party who should be joined in this action.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

_____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 10: Complaint - Chancery Division

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

	: SUPERIOR COURT OF NEW JERSEY
BERNARD BUYER,	: CHANCERY DIVISION
	: PASSAIC COUNTY
Plaintiff,	: DOCKET NO. **[clerk will insert]**
	:
-vs-	:
	: Civil Action
STEVEN SELLER,	:
	:
	: **COMPLAINT**
	:
	:
Defendant.	:
	:

Plaintiff Bernard Buyer, by way of Complaint against defendant, says:

1. Plaintiff resides at 123 Any Street, Anytown, Passaic County, New Jersey.

2. Defendant Steven Seller resides at 456 Nowhere Street, Nowheresville, New Jersey.

Example 10 - Continued

3. On June 30, 1999, plaintiff and defendant entered into a written contract ("the Contract") under which plaintiff would purchase land known as 999 Any Street, Anytown, New Jersey, and identified on the Tax Map of the Township of Anytown as Lot 1, Block 1. The purchase price was $10,000.

4. Closing under the Contract was to have occurred on January 3, 2000 at the office of John Doe Real Estate, Anytown, New Jersey.

5. Plaintiff appeared at the closing ready, willing and able to pay the full purchase price and close on the purchase of the property in accordance with the terms of the Contract.

6. Defendant failed to appear at the closing. Since that date, despite demand, defendant has failed and refused to convey the property to plaintiff as agreed in the Contract.

7. Among other things, paragraph 11 of the Contract provides that if one party incurs attorneys' fees to compel performance of the Contract by the other, the party seeking relief may obtain reasonable attorneys' fees from the defaulting party.

8. Plaintiff has no adequate remedy at law. Specific performance would be fair and equitable and would not be harsh to defendant.

WHEREFORE, plaintiff demands judgment against defendant for an Order compelling defendant to specifically perform his obligations under the Contract and to convey the property that is the subject of the Contract to plaintiff in accordance with the terms of the Contract, together with attorneys' fees, costs of suit, and such other relief as the Court deems equitable and just.

Example 10 - Continued

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, by his attorneys, hereby certifies that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceeding. Plaintiff is not currently aware of any other party that should be joined in this action.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 11: Jury Demand

[To be Appended at End of Complaint, Answer or Other Permitted Pleading]

JURY DEMAND

Plaintiff [or other party] hereby demands trial by jury of all issues so triable.

HUNGADUNGA, HUNGADUNGA & MCCORMICK
Attorneys for Plaintiff [or other party]

By: _____
ARLENE ATTORNEY

Dated: January ____, 20____

Example 12: Designation of Trial Counsel

[To be Appended to First Pleading or for Use as Separately Captioned Writing Submitted to Assignment Judge Prior to Weekly Call]

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, plaintiff [or other party] designates John Jones, Esq., as trial counsel in this matter.

_____
JOHN JONES
Attorney for Plaintiff [or other party]

Dated: January ____, 2000

Example 13: Certification Pursuant to R. 4:5-1

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff [or other party], by his [her/its] attorneys, hereby certifies that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceeding. Plaintiff [or other party] is not currently aware of any other party that should be joined in this action.

_____
ALEXIS ADVOCATE
Attorney for Plaintiff [or other party]

Dated: January ____, 20____

Example 14: Civil Case Information Statement

CIVIL CASE INFORMATION STATEMENT

(CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under Rule 4:5-1
Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: CK CG CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

ATTORNEY/PRO SE NAME	TELEPHONE NUMBER	COUNTY OF VENUE
	( )	
FIRM NAME (If applicable)		DOCKET NUMBER (When available)
OFFICE ADDRESS		DOCUMENT TYPE
		JURY DEMAND ☐ YES ☐ NO

NAME OF PARTY (e.g., John Doe, Plaintiff)	CAPTION

CASE TYPE NUMBER (See reverse side for listing)	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☐ NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.
RELATED CASES PENDING? ☐ YES ☐ NO	IF YES, LIST DOCKET NUMBERS
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☐ NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN ☐ NONE ☐ UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? ☐ YES ☐ NO	IF YES, IS THAT RELATIONSHIP ☐ EMPLOYER-EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☐ BUSINESS
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☐ YES ☐ NO	

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? ☐ YES ☐ NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:
WILL AN INTERPRETER BE NEEDED? ☐ YES ☐ NO	IF YES, FOR WHAT LANGUAGE:

ATTORNEY SIGNATURE

Example 14 - Continued

SIDE 2

CIVIL CASE INFORMATION STATEMENT
(CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

151 NAME CHANGE
175 FORFEITURE
302 TENANCY
399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
502 BOOK ACCOUNT (debt collection matters only)
505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
506 PIP COVERAGE
510 UM or UIM CLAIM
511 ACTION ON NEGOTIABLE INSTRUMENT
512 LEMON LAW
801 SUMMARY ACTION
802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
999 OTHER (Briefly describe nature of action)

Track II — 300 days' discovery

305 CONSTRUCTION
509 EMPLOYMENT (other than CEPA or LAD)
599 CONTRACT/COMMERCIAL TRANSACTION
603 AUTO NEGLIGENCE – PERSONAL INJURY
605 PERSONAL INJURY
610 AUTO NEGLIGENCE – PROPERTY DAMAGE
699 TORT – OTHER

Track III — 450 days' discovery

005 CIVIL RIGHTS
301 CONDEMNATION
602 ASSAULT AND BATTERY
604 MEDICAL MALPRACTICE
606 PRODUCT LIABILITY
607 PROFESSIONAL MALPRACTICE
608 TOXIC TORT
609 DEFAMATION
616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
617 INVERSE CONDEMNATION
618 LAW AGAINST DISCRIMINATION (LAD) CASES
620 FALSE CLAIMS ACT

Track IV — Active Case Management by Individual Judge / 450 days' discovery

156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
280 ZELNORM
303 MT. LAUREL
508 COMPLEX COMMERCIAL
513 COMPLEX CONSTRUCTION
514 INSURANCE FRAUD
701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Mass Tort (Track IV)

248 CIBA GEIGY
266 HORMONE REPLACEMENT THERAPY (HRT)
271 ACCUTANE
272 BEXTRA/CELEBREX
274 RISPERDAL/SEROQUEL/ZYPREXA
275 ORTHO EVRA
276 DEPO-PROVERA
277 MAHWAH TOXIC DUMP SITE
278 ZOMETA/AREDIA
279 GADOLINIUM
281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL
282 FOSAMAX
283 DIGITEK
284 NUVARING
601 ASBESTOS
619 VIOXX

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐ Verbal Threshold ☐ Putative Class Action ☐ Title 59

Example 15: Letter to Clerk filing Complaint and Case Information Statement

Clerk, Passaic County
[address]

RE: Jarndyce v. Jarndyce

Dear Sir or Madam:

I am enclosing an original and two copies of a Complaint and Case Information Statement for filing in this matter. Please stamp a copy "filed" and return it to me in the enclosed self-addressed stamped envelope. Please charge our Superior Court account no. XXXX for the filing fee **[Alternative** - Our firm's check for the filing fee of $_____ is enclosed.**]**

Thank you very much.

Very truly yours,

LAWRENCE LAWYER

LL:abm
Enclosures
cc: **[your client]** (w/enc.)

Example 16: Summons

Attorney(s)_____
Office Address_____
_____
Town, State, Zip Code_____
Telephone Number_____
Attorney(s) for Plaintiff_____

_____
_____
Plaintiff(s)

Vs.

_____
_____
Defendant(s)

Superior Court of New Jersey

_____COUNTY
_____DIVISION

Docket No:_____

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $135 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated:_____

_____
Jennifer M. Perez,
Acting Clerk of the Superior Court

Name of Defendant to Be Served:_____
Address of Defendant to Be Served_____

NOTE: The Case Information Statement Is available at www.njcourtsonline.com
Revised 7/1/2008, CN 10792

Example 16 - Continued

DIRECTORY OF SUPERIOR COURT DEPUTY CLERK'S OFFICES
COUNTY LAWYER REFERRAL AND LEGAL SERVICES OFFICES

ATLANTIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:
Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:
Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(800) 496-4570

CAMDEN COUNTY:
Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice
1st Fl., Suite 150
101 South 5th Street
Camden, NJ 08103
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:
Deputy Clerk of the Superior Court
9 N. Main Street
Cape May Court House, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Sts.
P.O. Box 10
Bridgeton, NJ 08302
LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:
Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd
Newark, NJ 07102
LAWYER REFERRAL
(973) 622-6204
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street, P.O. Box 750
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:
Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House--1st Floor
583 Newark Ave.
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:
Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822
LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:
Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:
Deputy Clerk of the Superior Court,
Middlesex Vicinage
2nd Floor - Tower
56 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:
Deputy Clerk of the Superior Court
Court House
71 Monument Park
P.O. Box 1269
Freehold, NJ 07728-1269
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:
Morris County Courthouse
Civil Division
Washington and Court Streets
P. O. Box 910
Morristown, NJ 07963-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:
Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08754
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY:
Deputy Clerk of the Superior Court
92 Market Street
P.O. Box 29
Salem, NJ 08079
LAWYER REFERRAL
(856) 678-8363
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:
Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge Street
Somerville, N.J. 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:
Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:
Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(908) 475-2010

Example 17: Letter to Sheriff for Service of Summons and Complaint on Defendant

Name and Address of Sheriff

RE: Jarndyce v. Jarndyce
Docket No. PAS-L-0000-00

Dear Sheriff _____:

I am enclosing an original and three copies of a Summons and Complaint for service upon:

Alice Jarndyce
123 Any Street
City, NJ 08888

Our check in the sum of $[appropriate fee] is enclosed to cover your fees. Please effect service and once service has been effected, kindly return your proof of service to this office in the enclosed self-addressed stamped envelope.

Thank you for your prompt attention to this matter.

Very truly yours,

LAWRENCE LAWYER

LL:nrw
Enclosures

Example 18: Affidavit of Diligent Inquiry

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

	: SUPERIOR COURT OF NEW JERSEY
ROBERT JARNDYCE	: LAW DIVISION
Plaintiff,	: PASSAIC COUNTY
-vs-	: DOCKET NO. [insert]
	: Civil Action
ALICE JARNDYCE and	: **CERTIFICATION OF DILIGENT**
CHARLES DICKENS,	: **INQUIRY AS TO DEFENDANT**
Defendants.	: **CHARLES DICKENS**
	:

BRUCE D. GREENBERG, of full age, upon his Certification, says:

1. I am an attorney at law of the State of New Jersey, and a member of the law firm of Lite DePalma Greenberg & Rivas, LLC, attorneys for plaintiff in this matter. I have personal knowledge of the facts contained on this Certification.

2. I make this Certification pursuant to R. 4:4-4(b)(1), in order to be able to serve defendant Charles Dickens with the Complaint in this case by mail at his New York address, which is 400 West 116th Street, New York, New York 10027.

3. Despite diligent inquiry, plaintiff has been unable to locate any address in New Jersey at which defendant Charles Dickens can be served. **[List efforts that constitute the diligent inquiry made.]** We had a last known address for him of 222 Baker Street, Anytown New Jersey . I attempted to update that address through the Anytown post office, but Mr. Clifford Klavan of the post office advised me that there was no forwarding information on file. Additionally, I reviewed telephone directories for this and the surrounding counties, and did not find any listing for Charles Dickens.

4. Accordingly, plaintiff seeks to serve the Complaint on defendant Charles Dickens by mail to his New York address.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated:

_____
BRUCE D. GREENBERG

Example 19: Acknowledgment of Service

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ROBERT JARNDYCE Plaintiff -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO. Civil Action **ACKNOWLEDGEMENT OF SERVICE**

Service of the summons on defendant Charles Dickens and the Complaint in this matter is hereby acknowledged on this _____ day of _____, 20____.

HUNGADINGA, HUNGADINGA & MCCORMICK
Attorneys for Defendant Charles Dickens

By: _____
LAWRENCE LAWYER

Example 20: Defendant's Notice of Motion for More Definite Statement

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Charles Dickens

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION PASSAIC COUNTY DOCKET NO. **[insert]** Civil Action **DEFENDANT CHARLES DICKENS'S NOTICE OF MOTION FOR MORE DEFINITE STATEMENT**

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Plaintiff

Arlene Attorney, Esq.
Dewey, Cheatham & Howe
456 Broad Street
Nowheresville, NJ 99999
Attorneys for Defendant Alice Jarndyce

SIR AND MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for defendant Charles Dickens, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert**

Example 20 - Continued

motion return date] at 9 A.M. or as soon thereafter as the matter can be heard, for an Order directing plaintiff to furnish a more definite statement of his claims, pursuant to R. 4:6-4.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, defendant will rely upon the accompanying brief. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that defendant requests oral argument.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant Charles Dickens

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 21: Defendant's Notice of Motion to Dismiss the Complaint Pursuant to R. 4:6-2(e)

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Alice Jarndyce

	: SUPERIOR COURT OF NEW JERSEY
ROBERT JARNDYCE	: CHANCERY DIVISION
	: PASSAIC COUNTY
Plaintiff,	: DOCKET NO. **[insert]**
	:
-vs-	: Civil Action
	:
	: **DEFENDANT'S NOTICE OF MOTION**
	: **TO DISMISS THE COMPLAINT,**
	: **PURSUANT TO R. 4:6-2(e)**
	:
ALICE JARNDYCE,	:
	:
	:
Defendant.	:
	:

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Plaintiff

SIR:

PLEASE TAKE NOTICE that the undersigned, attorneys for defendant, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert motion return date]** at 9 A.M. or as soon thereafter as the matter can be heard, for an Order dismissing the

Example 21 - Continued

Complaint for failure to state a claim upon which relief may be granted, pursuant to R. 4:6-2(e).

PLEASE TAKE FURTHER NOTICE that, in support of this motion, defendant will rely upon the accompanying brief. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that defendant requests oral argument.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 22: Defendant's Notice of Motion to Transfer Venue

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Alice Jarndyce

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE, Defendant.	: SUPERIOR COURT OF NEW JERSEY : CHANCERY DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : : Civil Action : : **DEFENDANT'S NOTICE OF MOTION** : **TO TRANSFER VENUE** : : : : :

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Plaintiff

SIR:

PLEASE TAKE NOTICE that the undersigned, attorneys for defendant, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert motion return date]** at 9 A.M. or as soon thereafter as the matter can be heard, for an Order transferring the

Example 22 - Continued

venue of this case to the Superior Court of New Jersey, Passaic County, Chancery Division **[or to the Law Division of a different county]**.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, defendant will rely upon the accompanying brief and Certification of Alice Jarndyce. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that defendant requests oral argument.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 23: Stipulation Extending Time to Answer or Otherwise Move as to Complaint

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : CHANCERY DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : : Civil Action : : **STIPULATION EXTENDING TIME** : **TO ANSWER OR OTHERWISE** : **MOVE AS TO COMPLAINT** : :

It is hereby stipulated and agreed among Lite DePalma Greenberg, LLC, attorneys for plaintiff, Hungadunga, Hungadunga & McCormick, attorneys for defendant Alice Jarndyce, and Dewey, Cheatham & Howe, attorneys for defendant Charles Dickens, that the time for defendants to answer or otherwise move as to the Complaint is extended until **[date]**, 2000.

Example 23 - Continued

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By:_____
BRUCE D. GREENBERG

HUNGADUNGA, HUNGADUNGA & MCCORMICK
Attorneys for Defendant Alice Jarndyce

By:_____
LAWRENCE LAWYER

DEWEY, CHEATHAM & HOWE
Attorneys for Defendant Charles Dickens

By:_____
ARLENE ATTORNEY

Dated: January ____, 2000

Example 24: Affirmative Defenses

[Affirmative defenses are inserted after the answers to the allegations of the Complaint]

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSES

The Complaint is barred by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by plaintiff's failure to mitigate his claimed damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claimed damages on his claim for negligence must be reduced or precluded by the doctrine of comparative negligence.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused by persons over whom this defendant had no control.

EIGHTH AFFIRMATIVE DEFENSE

The Complaint is barred by the terms of the contract between the parties.

Example 24 - Continued

NINTH AFFIRMATIVE DEFENSE

The Complaint is barred by the terms of a release dated January 00, 2000.

TENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrines of frustration of purpose and failure of consideration.

ELEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the applicable statute of limitations.

TWELFTH SEPARATE DEFENSE

The Second Count of the Complaint is barred by the Statute of Frauds.

THIRTEENTH SEPARATE DEFENSE

The Complaint should be dismissed because the agreement between the parties contains a provision that makes arbitration the sole remedy for any breaches of that agreement.

FOURTEENTH SEPARATE DEFENSE

Plaintiff's contract claims are barred because the agreement sued upon was the product of duress.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's contract claims are barred because the agreement between the parties was illegal and therefore unenforceable.

Example 25: Answer with Counterclaim, Crossclaim, Third-Party Complaint

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Charles Dickens

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants. and CHARLES DICKENS, Defendant-Third-Party Plaintiff, -vs- ROBERT CRATCHIT, Third-Party Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION PASSAIC COUNTY DOCKET NO. **[insert]** Civil Action **DEFENDANT CHARLES DICKENS'S ANSWER, AFFIRMATIVE DEFENSES COUNTERCLAIM, CROSS-CLAIM, AND THIRD-PARTY COMPLAINT**

Defendant Charles Dickens, by way of Answer to plaintiff's Complaint, says:

Example 25 - Continued

AS TO FIRST COUNT

1. This defendant admits the allegations of paragraph 1.

2. This defendant denies the allegations of paragraph 2.

3. This defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and leaves plaintiff to his proofs of those allegations.

4. This defendant denies the allegations of paragraph 4, but admits that the property is located at 123 Main Street, Anytown, New Jersey.

[Continue as to each paragraph of each Count]

AFFIRMATIVE DEFENSES

[Insert all appropriate defenses- see Example 24]

WHEREFORE, defendant Charles Dickens demands judgment against plaintiff dismissing the Complaint with prejudice, together with costs of suit and such other relief as the Court deems equitable and just.

COUNTERCLAIM

Defendant Charles Dickens, by way of Counterclaim against plaintiff, says:

[Insert factual allegations in separately numbered paragraphs and, if necessary, multiple Counts, as in a Complaint, followed by a "WHEREFORE" clause demanding the relief sought on the Counterclaim]

CROSS-CLAIM

Defendant Charles Dickens, by way of Cross-Claim against defendant Alice Jarndyce, says:

Example 25 - Continued

[Insert factual allegations in separately numbered paragraphs and, if necessary, multiple Counts, as in a Complaint, followed by a "WHEREFORE" clause demanding the relief sought on the Cross-Claim].

THIRD-PARTY COMPLAINT

Defendant Charles Dickens, by way of Third-Party Complaint against Third-Party Defendant Robert Cratchit, says:

[Insert factual allegations in separately numbered paragraphs and, if necessary, in multiple Counts, as in a Complaint, followed by a "WHEREFORE" clause demanding the relief sought on the Third-Party Complaint]

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant Charles Dickens

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

[INSERT CERTIFICATION PURSUANT TO R. 4:5-1]

Example 26: Demand for Documents Referred to in Pleading

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant

OLIVER HOLMES,	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: OCEAN COUNTY : DOCKET NO. OCN-L-0000-99
Plaintiff,	: Civil Action
vs.	: **DEMAND FOR DOCUMENTS** : **REFERRED TO IN PLEADING**
BRANDEIS INTERNATIONAL, INC.	:
Defendant.	:

TO: Lawrence Lawyer, Esq.
123 Main Street
Far Side, New Jersey 00000
Attorneys for Plaintiff

SIR:

Example 26 - Continued

PLEASE TAKE NOTICE that, pursuant to R. 4:18-2, defendant hereby demands that plaintiff produce, within five days after service of this Demand, all documents referred to in plaintiff's Complaint in this matter, including but not limited to all documents to which plaintiff has referred in paragraphs 2 and 3 of the Complaint under the heading "Nature of the Action," and paragraphs 15, 16, 18, 19, 23, 24 and 25 of the Complaint under the heading "Factual Allegations."

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 27: Demand for Statement of Damages

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant

OLIVER HOLMES,	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: OCEAN COUNTY : DOCKET NO. OCN-L-0000-99
Plaintiff,	: Civil Action
vs.	: **DEMAND FOR STATEMENT OF DAMAGES**
BRANDEIS INTERNATIONAL, INC.	:
Defendant.	:

TO: Lawrence Lawyer, Esq.
123 Main Street
Far Side, New Jersey 00000
Attorneys for Plaintiff

Example 27 - Continued

SIR:

PLEASE TAKE NOTICE that, pursuant to R. 4:5-2, defendant hereby demands that plaintiff furnish, within five days after service of this Demand, a written statement of the amount of damages claimed.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 28: Notice of Motion for Leave to Amend Complaint

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : Civil Action : **PLAINTIFF'S NOTICE OF MOTION** : **FOR LEAVE TO AMEND** : **COMPLAINT**

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Defendant Alice Jarndyce

Arlene Attorney, Esq.
Dewey, Cheatham & Howe
456 Broad Street
Nowheresville, NJ 99999
Attorneys for Defendant Charles Dickens

Example 28 - Continued

SIR AND MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for plaintiff, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert motion return date]** at 9 A.M. or as soon thereafter as the matter can be heard, for an Order granting plaintiff leave to file an Amended Complaint, pursuant to R. 4:9-1.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, plaintiff will rely upon the accompanying brief and supporting Certifications of Bruce D. Greenberg and Robert Jarndyce. A copy of the proposed Amended Complaint is attached to the Greenberg Certification as Exhibit A. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that plaintiff waives oral argument and consents to disposition on the papers.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 29: Complaint on Book Account

Attorney(s):
Address:

Telephone No.:
Fax No.:
Attorney(s) for Plaintiff(s):

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SPECIAL CIVIL PART COUNTY DOCKET NO. CIVIL ACTION **Complaint** (on Contract)

Plaintiff(s)

residing at say(s)

FIRST COUNT: There is due from the defendant(s) the sum of $, on a certain book account, a true copy of which is annexed hereto. Payment has been demanded and has not been made.

SECOND COUNT: The Plaintiff(s) sue(s) the defendant(s) for goods sold and delivered and/or services rendered by the plaintiff(s) to the defendant(s), upon the promise by the defendant(s) to pay the agreed amount as set forth in Schedule annexed hereto. Payment has been demanded and has not been made.

THIRD COUNT: The Plaintiff(s) sue(s) the defendant(s) for the reasonable value of goods sold and delivered, and/or services rendered by the plaintiff(s) to the defendant(s) upon the promise of the defendant(s) to pay a reasonable price for the same, as set forth in Schedule annexed hereto. Payment has been demanded and has not been made.

FOURTH COUNT: The defendant(s), being indebted to the plaintiff(s) in the sum of $
upon an account stated between them, did promise to pay to the plaintiff(s) said sum upon demand. Payment has been demanded and has not been made.

Judgment is demanded for $ together with lawful interest and costs of suit.

I certify that the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in this action. R.4:5-1.

Dated:

Attorney(s) for Plaintiff(s)

450S -(Special) - Complaint - (4 Counts) –
Special Civil Part
Rev 8/97

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(908) 272-0800

Example 30: Complaint in Lieu of Prerogative Writ

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiffs

BELIEVERS IN WATER, INC., THURSTON HOWELL III, and GINGER GRANT,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SUSSEX COUNTY
Plaintiffs,	:	DOCKET NO:
vs.	:	Civil Action
CITY OF NOWHERE PLANNING BOARD and ANGER DEVELOPMENT CORP.	:	**COMPLAINT IN LIEU OF PREROGATIVE WRITS**
Defendants.	:	

Plaintiffs Believers in Water, Inc., Thurston Howell, III, and Ginger Grant, by way of Complaint against defendants, say:

PARTIES

1. Plaintiff Belivers in Water, Inc. ("BW") is a non-profit corporation of the State of New Jersey, whose address is 1 Main Street, Nowhere, New Jersey. BW is dedicated to the use and development of the area at, around and in sight of the Great Unsalted Lake in a fashion that promotes cultural and economic growth through proper planning and advances the public interests in, among other things, historic preservation, environmental protection and education. BW has members who live within 200 feet of the subject property of this Complaint.

2. Plaintiff Thurston Howell, III resides at 15 Main Street, Nowhere, New Jersey. Mr. Howell resides within 200 feet of the property that is the subject of this Complaint. Plaintiff

Example 30 - Continued

Ginger Grant resides at 276 First Street, Somewhere, New Jersey. Ms. Grant owns property within 200 feet of the property that is the subject of this Complaint.

3. Defendant City of Nowhere Planning Board ("the Board") is a Planning Board duly constituted pursuant to statute, and possessing the powers granted to it by statute.

4. Defendant Anger Development Corp. ("Anger") is, on information and belief, a New York corporation. Anger has offices at 1000 South Street, Tweentown, New Jersey.

BACKGROUND

5. Within the City of Nowhere is located the Great Unsalted Lake National Historic Landmark District ("Historic District"). The Historic District has been listed since 1968 as a Priority One threatened National Historic Landmark in the Department of the Interior's annual report to Congress.

6. On or about December 12, 1978, the Nowhere City Council adopted an ordinance establishing the existence of a blighted area and approving a Redevelopment Plan ("the Redevelopment Plan") for the Historic District.

7. The Nowhere City Council thereafter amended the Redevelopment Plan on or about December 27, 1992.

8. The City of Nowhere owns certain property within the Historic District, which property is designated as Lot 1, Block 1 ("the Subject Property"). The Subject Property is commonly known as 2 Main Street, Nowhere, New Jersey.

9. The Subject Property consists of approximately seven acres located in the Historic District directly adjacent to the Great Unsalted Lake.

Example 30 - Continued

10. On or about June 13, 1995, the Nowhere City Council adopted a resolution that designated Anger as the developer of the Subject Property.

11. The City of Nowhere entered into an agreement with Anger for the sale of land including the Subject Property dated June 12, 1998.

12. Anger filed an application with the Board seeking land use relief to construct townhomes, roadways, walkways and a café.

13. Following public hearings, the Board voted 5-3 on July 21, 1999 to approve Anger's application.

14. The Board adopted a memorializing resolution dated February 16, 2000. The memorializing resolution was published in the Nowhere News on February 19, 2000.

FIRST COUNT

15. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

16. As an essential part of the preliminary and final site plan and subdivision approvals sought by Anger and granted by the Board, the Board purported to grant "special exceptions" from the requirements of the Redevelopment Plan as to density, building height, and floor-area ratio ("FAR").

17. The Board determined that the maximum number of units permitted under the Redevelopment Plan was 108. The Board approved Anger's application for 114 units.

Example 30 - Continued

18. The Board determined that the maximum FAR permitted under the Redevelopment Plan was .8. Of the 57 lots for which Anger sought approval, 47 lots, or more than 80% of the lots, had an FAR in the range of 1.7, more than twice the allowable FAR. The Board approved that excessive FAR.

19. The Board determined that the maximum height of buildings permitted under the Redevelopment Plan was 35 feet. The Board approved building heights of 38-40 feet. The buildings that were over 38.5 feet high thus exceeded permitted height by more than 10%.

20. Building heights that exceed by more than 10% of the maximum permitted height, density and FAR (collectively "the d variances") fall within the sole jurisdiction of the Board of Adjustment under the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-70(d).

21. N.J.S.A. 40A:12A-13 commits an application under the Redevelopment Plan to the Board "for its review and approval in accordance with the requirements for the review and approval of subdivisions and site plans as set forth by ordinance adopted pursuant to [the MLUL]."

22. The Redevelopment Plan did not expressly give the Board jurisdiction over the "d variances." Nor could the Redevelopment Plan lawfully have done so, since an ordinance purporting to do so could not have been "adopted pursuant to [the MLUL]."

23. The Board's purported grant of "special exceptions" for the "d variances" exceeded its jurisdiction, and was therefore ultra vires and void ab initio.

24. Accordingly, the Board's purported grant of preliminary and final site plan approval and preliminary subdivision approval was arbitrary, capricious and unreasonable.

Example 30 - Continued

WHEREFORE, plaintiffs demand judgment on their Complaint reversing the decision of defendant City of Nowhere Planning Board to grant approvals to defendant Anger Development Corp., and invalidating those approvals, together with costs of suit and such other relief as the Court deems equitable and just.

SECOND COUNT

25. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

26. The City of Nowhere embodies its standards for density, FAR and building height in its zoning ordinance. Under N.J.S.A. 40A:12A-7c, the standards for density, FAR and building height contained in the Redevelopment Plan superseded the standards on those subjects that are contained in the zoning ordinance. The density, FAR and building height standards contained in the Redevelopment Plan were to be treated as the legal equivalent of the zoning ordinance standards that they superseded.

27. Deviations from standards contained in a zoning ordinance rather than a subdivision ordinance may be approved only under the legal standards applicable to variances, not as mere "special exceptions." The Board acted arbitrarily, capriciously and unreasonably in approving the "variances" as "special exceptions" rather than applying the criteria for variances contained in N.J.S.A. 40:55D-70(d).

28. Accordingly, the Board's purported grant of preliminary and final site plan approval and preliminary subdivision approval was arbitrary, capricious and unreasonable.

Example 30 - Continued

WHEREFORE, plaintiffs demand judgment on their Complaint reversing the decision of defendant City of Nowhere Planning Board to grant approvals to defendant Anger Development Corp., and invalidating those approvals, together with costs of suit and such other relief as the Court deems equitable and just.

THIRD COUNT

29. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

30. The Legislature has consistently treated use variances and the "d variances" as among a disfavored class of deviations from municipal standards. Among other things, N.J.S.A. 40:55D-70(d) requires a super-majority for approval of a "d variance."

31. The Board has nine members. In order to have obtained approval of the "d variances,"Anger was required to have obtained a super-majority of at least six votes in favor.

32. The Board's purported grant of the "d variances" was void ab initio for failure to garner the support of the required super-majority.

33. Accordingly, the Board's purported grant of preliminary and final site plan approval and preliminary subdivision approval was arbitrary, capricious and unreasonable.

WHEREFORE, plaintiffs demand judgment on their Complaint reversing the decision of defendant City of Nowhere Planning Board to grant approvals to defendant Anger Development Corp., and invalidating those approvals, together with costs of suit and such other relief as the Court deems equitable and just.

Example 30 - Continued

FOURTH COUNT

34. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

35. Mary Ann Gilligan, the Mayor's designee, is a Class I member of the Board. Ms. Gilligan is a Deputy Mayor of the City of Nowhere.

36. Ms. Gilligan made the motion to approve Anger's application, and she was one of the Commissioners of the Board who voted to approve that application.

37. The Mayor has publicly expressed the view that Anger's proposed project is desirable and should go forward. The Mayor has directly and actively assisted Anger in obtaining governmental approvals for Anger's proposed project. The Mayor has vigorously advocated in favor of Anger's proposed project, among other things, in communications with other governmental entities such as the New Jersey State Historic Preservation Office of the New Jersey Department of Environmental Protection, the New Jersey Department of Community Affairs, and the National Park Service. As such, the Mayor has pre-judged Anger's application.

38. The City of Nowhere, which the Mayor heads, has endorsed Anger's application, and has a particular interest in seeing the proposed project receive approval from the Board. Among other things, the City itself is actually the owner of the Subject Property.

39. By virtue of her status as the Mayor's designee on the Board, and given the pre-judgment of the Mayor and the particularized interest of the City in seeing the application approved by the Board, Ms. Gilligan could not consider the matter objectively and had a disqualifying conflict of interest.

Example 30 - Continued

40. Ms. Gilligan's improper participation in deliberating and voting on Anger's application irreversibly poisoned the proceedings and rendered the Board's approvals void ab initio.

41. Accordingly, the Board's purported grant of preliminary and final site plan approval and preliminary subdivision approval was arbitrary, capricious and unreasonable.

WHEREFORE, plaintiffs demand judgment on their Complaint reversing the decision of defendant City of Nowhere Planning Board to grant approvals to defendant Anger Development Corp., and invalidating those approvals, together with costs of suit and such other relief as the Court deems equitable and just.

FIFTH COUNT

42. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

43. The Board's approvals, which were attended by the purported grant not only of the several "d variances" but also numerous other "special exceptions" that approved deviations from municipal development standards, was arbitrary, capricious, unreasonable and not supported by the record before the Board.

WHEREFORE, plaintiffs demand judgment on their Complaint reversing the decision of defendant City of Nowhere Planning Board to grant approvals to defendant Anger Development Corp., and invalidating those approvals, together with costs of suit and such other relief as the Court deems equitable and just.

Example 30 - Continued

SIXTH COUNT

44. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

45. The Board's findings and conclusions and purported support of the grant of Anger's application merely parroted the standards set forth in the Redevelopment Plan.

46. As such, the Board's findings were purely conclusory and legally insufficient to support the grant of Anger's approvals.

WHEREFORE, plaintiffs demand judgment on their Complaint reversing the decision of defendant City of Nowhere Planning Board to grant approval to defendant Anger Development Corp., and invalidating those approvals, together with costs of suit and such other relief as the Court deems equitable and just.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiffs

By:_____
BRUCE D. GREENBERG

Dated: April 11, 2000

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiffs, by their attorneys, hereby certify that the matter in controversy is not the subject of any other pending or contemplated judicial arbitration proceeding. Plaintiffs are not currently aware of any other parties that should be joined in this action.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiffs

By:_____
BRUCE D. GREENBERG

Dated: April 11, 2000

Example 31: Complaint for Negligence

Jones and Jones
123 Main Street
Newark, New Jersey 07102
(201) 642-1234
Attorneys for Plaintiff

JOHN DOE and JANE DOE,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION -- ESSEX COUNTY
Plaintiffs,	DOCKET NO. L-
v.	Civil Action
RICHARD ROE,	COMPLAINT and JURY DEMAND
Defendant.	

Plaintiffs, John Doe and Jane Doe, residing at 89 Third Street in the City of East Orange, County of Essex, State of New Jersey, say:

FIRST COUNT

1. On or about July 1, 1996, Plaintiff John Doe was operating an automobile owned by him in a northerly direction on Broad Street at or near its intersection with Market Street in the City of Newark, County of Essex, State of New Jersey.

2. At the same time, Defendant Richard Roe was operating another automobile in a westerly direction on said Market Street at or near its intersection with the said Broad Street.

3. Defendant Richard Roe was negligent in the operation of his said automobile in that he entered the intersection despite a red traffic signal controlling his direction of travel and was otherwise inattentive and careless, which negligence caused a collision between his automobile and the automobile of Plaintiff John Doe.

(If there is only a soft tissue injury, medical expenses in excess of $200 would have to be specifically pleaded to show exception to the No-Fault Law, N.J.S.A. 39:6A-1 et seq.)

Example 31 — Continued

4. As a result of such collision, Plaintiff John Doe was thrown about violently inside his automobile and suffered severe painful bodily injuries including a cerebral concussion, fracture of his right arm, and multiple contusions and abrasions about his body, which injuries necessitated his obtaining medical treatment, caused him great pain and suffering, incapacitated him from pursuing his usual employment and other activities, and have left him with permanent disabilities that will in the future similarly incapacitate him, cause him pain and suffering, and require medical treatment.

WHEREFORE, Plaintiff John Doe demands judgment against the Defendant for damages, interest and costs of suit.

SECOND COUNT

1. Plaintiff Jane Doe repeats the allegations of the First Count herein in their entirety.

2. Plaintiff Jane Doe is the wife of Plaintiff John Doe.

3. As a result of the injuries suffered by her husband as aforesaid, Plaintiff Jane Doe has and will in the future suffer the loss of usual services and consortium of her husband and has been required to provide special services and care to him.

WHEREFORE, Plaintiff Jane Doe demands judgment against the Defendant for damages, interest and costs of suit.

THIRD COUNT

1. Plaintiff John Doe repeats the allegations of Paragraphs 1, 2, and 3 of the First Count herein.

2. As a result of such collision, the automobile of Plaintiff John Doe was severely damaged and rendered inutile, requiring him to incur expenses for its repair, towing, and alternate means of transportation while awaiting the completion of repairs.

WHEREFORE, Plaintiff John Doe demands judgment against the Defendant for damages, interest and costs of suit.

JURY DEMAND

(If the defendant wishes to try the triable issues to a jury and a jury demand is not included in the Complaint, a written demand for jury trial must be made no later than 10 days after the last pleading addressing the issue is served, R. 4:35-1(a), otherwise a jury trial is waived, R. 4:35-1(c). Such a jury demand may be included in the Answer. Unless the Court orders that the jury is to consist of 12 persons, juries in civil actions will consist of 6 persons. R. 1:8-2(b)).

Plaintiffs demand trial by jury.

Example 31 - Continued

TRIAL ATTORNEY DESIGNATION

(Pursuant to R. 4:5-1, a law firm may designate the attorney who is to try the case and such designation will prevent the Court from requiring any other attorney in the firm to try the matter, unless the case is three years or older. In the absence of such a designation or if the case is three years or older, the Court may expect and require any attorney associated with the firm to try the case when reached on the calendar.)

George Jones is hereby designated as trial attorney.

Dated:

Jones and Jones
Attorney for Plaintiff

_____
George Jones

CERTIFICATION PURSUANT TO R. 4:5-1

(Pursuant to R. 4:5-1(b)(2), the first pleading of each party must contain a certification regarding whether the matter is the subject of any pending or anticipated case or arbitration proceeding, and whether any other parties should be joined in the matter. If the matter is the subject of another pending or anticipated proceeding, the certification must contain information, including the parties, regarding that proceeding. If other parties should be joined in the current proceeding, the certification must identify those parties.)

Pursuant to Rule 4:5-1, the undersigned certifies that to the best of his knowledge, the within matters in controversy are not the subject of any other action pending in any other Court or of a pending arbitration proceeding nor is any action or arbitration proceeding contemplated nor are other parties required to be joined in this action.

Dated:

_____
George Jones

IV. DISCOVERY

A. SCOPE OF DISCOVERY

Whether you work for a large firm handling complex commercial litigation or a small firm (or your own firm) trying personal injury cases, you will spend the vast majority of your time involved in discovery. As its name implies, discovery constitutes the process where a party "discovers" the facts underlying the litigation.

Unless you are conducting a major deposition in a high profile case, discovery is not glamorous. Hollywood will not soon produce a legal thriller about drafting interrogatories or attending a document production.

However, as the overwhelming number of civil cases are resolved prior to trial, either by motion or settlement, the ability to conduct effective discovery is crucial. After all, most litigation does not rise or fall on some novel legal theory of constitutional law. Instead, the vast majority of cases are won and lost (and settled) based on the facts learned through the discovery process.

There are essentially six methods of discovery permissible under R. 4:10-1: (1) interrogatories, (2) document requests, (3) inspection of property and other things, (4) physical and mental examinations, (5) requests for admissions and (6) depositions. Each will be considered in tum.

However, before considering particular discovery devices, it is essential to understand the *scope* of discovery. Our discovery rules are intended to " eliminate, as far as possible, concealment and surprise in the trial of lawsuits to the end that judgments rest upon real merits of the causes and not upon the skill and maneuvering of counsel." *Abtrax Pharmaceuticals, Inc. v. Elkins-Sinn, Inc.,* 139 N.J. 499, 512 (1995), quoting *Olivero v. Porter Hayden Co.,* 241 N.J.

Super. 381, 387 (App. Div. 1990). Consistent with that view, R. 4:10-2 (a) permits discovery of all matters, not privileged, that are relevant "to the subject matter involved in the pending action."

The question of "relevance" is itself construed broadly to prevent a party from utilizing an unduly restrictive definition of the term. Thus, R. 4:10-2 (a) provides that a party (or her lawyer) may not withhold discovery because she believes it is not relevant or even will be inadmissible at trial. Instead, the test is whether "the information sought appears reasonably calculated to lead to the discovery of admissible evidence." *Id.*

The Court Rules do not mandate the sequence of discovery. R. 4:10-4. As a practical matter, however, you should obtain as much discovery as possible prior to taking depositions unless the size of the case makes it uneconomical to do so. That way you can question the deponent (the person being deposed) about his answers to interrogatories and the documents he produced.

B. TIMING OF DISCOVERY

Under R. 4:24-1, each case is placed in a separate Track depending upon the complexity of the case. The Track determination is made based on information provided in the Civil Case Information Statement you file with the first pleading. R. 4:24-1(a). **Example 14.** As noted in Section III, the parties will receive a notice of track assignment from the court (for a plaintiff) or from the plaintiff (for a defendant). R. 4:5A-2.

The timing of discovery is (with certain limited exceptions) dependant upon whether your case is designated in Track I, Track II, Track III or Track IV. R. 4:24-1(a). Discovery in Track I cases must be completed within 150 days. *Id.* Discovery in Track II cases must be completed within 300 days. *Id.* Discovery in Track III and IV cases must be completed within

450 days (except as may be otherwise provided in R. 4:69-4 governing actions in lieu of prerogative writs). *Id.* The discovery period in each Track begins to run from the date the first defendant files her Answer or ninety days after the first defendant is served, whichever happens first. *Id.*

If a party files a pleading that adds a new party (such as a third party complaint), the discovery period is extended for an additional sixty days. R. 4:24-1(b). Further, a party that joins a new party to the action shall serve a new copy of all discovery materials or make them available to the new party within 20 days of the new party's initial pleading. That period may be reduced or enlarged by the Court for good cause. *Id.*

Prior to the expiration of the discovery period, parties (with the consent of all counsel and *pro se* parties) may extend the time to complete discovery for up to 60 days by submitting a stipulation filed with the court or a writing signed by one party and copied to all parties representing that all parties have consented to the extension. R. 4:24-1(c). A consensual extension of discovery must be sought prior to the expiration of the discovery period. *Id.* If consent cannot be secured or a longer extension is sought, a party may file a motion to the Civil Presiding Judge in Track I, II and III cases and to the managing judge in Track IV cases. *Id.* That motion must be filed, however, *before* the end of the applicable discovery period and must describe the discovery sought and must include copies of all previous orders granting or denying an extension of discovery or a certification stating there are none. *Id.* The Court is permitted to extend the discovery period for good cause for a stated period. *Id.* Absent exceptional circumstances, the discovery period may not be extended after an arbitration or trial date is fixed. *Id.*

Cases filed **before** September 5, 2000 must complete discovery within 150 days of the

service of the Complaint upon each defendant or as otherwise provided by court order. R. 4:24-1(d). In any pending action, however, the parties may agree or the court may direct that further discovery may be limited or extended granted consistent with the revised R. 4:24-1. *Id.*.

Consistent with the deadlines listed above, you should serve discovery requests as early as possible in the case. Thus, when representing a defendant you should serve discovery requests with the Answer. When representing a plaintiff, you may wish to propound some discovery with your Complaint, though often you will want to see the Answer first so that you can seek discovery of defenses or counterclaims asserted there.

Your goal is to put your adversary on the defensive immediately by compelling her client to respond to your discovery requests. By immediately propounding discovery upon your adversary you will create the impression that your client is committed to devote the necessary resources to defend or prosecute the case. You might be surprised to learn how many cases settle when a party is confronted with the task of responding to a comprehensive document request and appearing for a deposition. For some parties, the prospect of appearing for a deposition is far worse than the actual deposition experience. Further, a party who is dilatory in complying with your discovery requests will not be in a position to complain if your client is unable to comply with his discovery obligations in a timely fashion.

A final general thought on the discovery process before discussing the particular methods of discovery. Engaging in discovery can be both expensive and time consuming. Accordingly, prior to engaging in discovery, you should discuss the discovery process with your client and consider what you hope to achieve in discovery. Do not engage in discovery without a clear purpose. To avoid later problems, (even though it will be detailed in your retainer letter), you must explain that the client will be responsible for certain potentially significant costs, such as the fees for a court reporter at a deposition.

Most clients will tell you to keep the costs down, but will leave the discovery strategy up to you. Some clients, particularly insurance carriers and large companies, will insist on a discovery budget. Occasionally, however, you may represent a client who, in an effort to save costs, will instruct you not to engage in *any* discovery. The client may tell you that the case will soon settle and he does not want to waste any money propounding discovery or taking depositions.

Obviously, this is a very dangerous "strategy" because the case may not settle and you will be left out on a limb without any discovery. Further, it will not protect your client from responding to your *adversary's* discovery requests. In such cases, you must do your best to convince your client to, at a minimum, permit you to serve a simple set of interrogatories and a document request. If your client refuses to permit you to propound even this basic discovery, you should seriously consider whether you want to continue to represent him. In any event, you should write a letter to your client confirming that he does not want you to serve discovery.

C. INTERROGATORIES

Interrogatories are written questions that are served upon parties. R. 4:17. It has been said that the longer one practices law, the fewer interrogatories one asks. That is because a lawyer quickly learns the limited utility of most interrogatories and their potential for abuse.

In a typical case, a lawyer will prepare draft answers to interrogatories. Those draft answers are then sent to her client for review. The answers, while perhaps responsive to the interrogatories, will be designed to say as little as possible. The client may add certain facts but will not alter the basic framework of the answers. As a result, you end up with carefully drafted answers that often use many words to say absolutely nothing. It is a "skill" that takes years to develop. Interrogatories can also be used as a means to harass a party. For example, it is not uncommon in large commercial cases to see interrogatories propounded that contain a hundred questions with multiple subparts. The strategy in propounding hundreds of interrogatories is not for the most part to obtain information, but rather to force the adversary to expend legal fees to answer the questions. However, lawyers who propound abusive interrogatories often find

themselves on the receiving end of the same or an even more burdensome set of questions. In the end, the parties waste thousands of dollars having lawyers draft non-answers to a series of unnecessary questions.

To avoid some of these abuses, the Court Rules limit the type and number of interrogatories that may be served in certain cases. For example, R. 4:17-1(b)(1) provides that in cases involving automobile property damage, personal injury (other than wrongful death, toxic torts and professional malpractice, excluding medical malpractice, and product liability cases either involving pharmaceuticals or giving rise to a toxic tort claim), a party must utilize uniform interrogatories included in the Appendix to the Court Rules. *See* **Examples 32-42. Make sure you use the current version of the interrogatories.** In all cases filed **before** September 5, 2000, a party seeking to use these uniform interrogatories may simply send a demand letter to all adverse parties without actually serving the interrogatories. R. 4:17-1(b)(2). The party is also permitted to serve ten supplemental interrogatories, without subparts. R. 4:17-1(b)(1). A request to propound more than ten supplemental interrogatories must be made by motion. *Id.*

In other types of cases, the Court Rules do not limit the number of interrogatories "except as required to protect the party from annoyance, expense, embarrassment or oppression." R. 4:17-6. A party may apply for a protective order if it believes that the interrogatories are being used as a means of harassment. *Id.* It should be noted that other jurisdictions have gone to greater lengths to limit the number of interrogatories. For example, the Federal Rules of Civil Procedure limit the number of interrogatories to twenty-five without leave of court. Fed. R. Civ. P. 33(a). Some judges, particularly in cases to which they are specially assigned for management purposes, may enter orders limiting the number of interrogatories or subparts.

In cases filed **after** September 5, 2000, a defendant served with a complaint in a case described in R. 4:17-l(b)(l) is deemed to have been served with the uniform interrogatories referenced above. R. 4:17(b)(2). The defendant is required to provide answers to the interrogatories within sixty days after service. *Id.* The plaintiff is deemed to have been served with the uniform interrogatories simultaneously with service of the defendant's answers to interrogatories. *Id.* The plaintiff is required to provide answers to those interrogatories within *thirty* days after service. *Id.* All interrogatories must be answered unless subject to a claim of privilege, a protective order or other court order. *Id.*

Despite the potential for abuse, interrogatories can be a valuable discovery tool in commercial cases to obtain certain basic information. *See* **Examples 43-44.** When drafting interrogatories, you should sometimes be guided by the maxim "less is more." For example, you should ask that the person answering the interrogatories supply the names and addresses of all individuals who know facts regarding the dispute. You can then use this answer to determine who must be deposed and to prevent your adversary from ambushing you at trial with a "surprise" witness.

You should use interrogatories to obtain information regarding insurance agreements. R. 4:10-2(b). You should also seek information concerning expert witnesses. *See* R. 4:10-2(d). Interrogatories are very useful to learn the amount of damages and how those damages were calculated. This can sometimes be a very difficult question to answer because it forces your adversary, often for the first time, to document his damage claim and certify to the truth of that documentation. (The separate request for a statement of the amount of damages pursuant to R. 4:5-2, *see* **Example 45,** is not binding. *See* Chapter II.)

Where appropriate, you may use interrogatories to solicit simple "yes or no answers" to direct questions (though you will often receive a lengthy explanation in response without either a yes or no answer). You should also require your adversary to detail all facts that support the separate counts in his Complaint or significant affirmative defenses. Finally, you may also use interrogatories to obtain relevant documents in lieu of or in conjunction with a formal document request. R. 4:17-1(a).

In short, your interrogatories should be narrowly drafted to obtain basic facts that are subject to a minimum of "revisions" by your adversary. You can ask more detailed questions at a deposition.

Interrogatories may be served after the commencement of the action with or after the service of the complaint. R. 4:17-2. They should be propounded within forty days after the expiration of the time allowed for service of the last permissible responsive pleading as to each defendant. *Id.* That means if the defendant's answer is due on April 1, you should serve your interrogatories by May 10. The method of service varies from lawyer to lawyer. Of course, if you serve the interrogatories by certified mail, e-mail or a courier service you will have proof that your adversary received them.

When you serve interrogatories you need only provide your adversary with the original set. R. 4:17-3. Multiple copies are not necessary. The interrogatories must leave sufficient room after each question to enable the answering party to type in his response. *Id.* As a result, you are limited to asking no more than several questions on each page. This requirement has been criticized as a waste of paper because with the proliferation of computers answers to interrogatories are rarely "typed in" on the original set. However, it is the rule and you must comply with it.

As noted above, answering interrogatories has become a dubious "skill" in which the attorney representing the answering party attempts to construct answers that say as little as possible. That aside, there are certain fundamental requirements governing answers to interrogatories. The most important to remember is that answers to interrogatories must be signed under oath. R. 4:17-4. Thus, answers to interrogatories may be used against a party in a motion, deposition and a trial. *See* R. 4:17-8. They can also support a criminal prosecution for perjury. *State v. Angelo's Motor Sales*, 125 N.J. Super. 200 (App. Div. 1973), *aff'd*, 65 N.J. 154 (1974). As a result, it is your obligation to make sure that they are correct.

Lawyers have different methods of answering interrogatories. Some attorneys meet in their office with the client to prepare the answers. Other lawyers simply send the interrogatories to the client and ask her to fill in the answers, which are then "redrafted" by the attorney. Some lawyers initially answer the interrogatories based on their knowledge of the case and send draft answers to the client for her comments. Whatever you do, remember that, unlike a deposition, you have considerable control over the process of answering interrogatories. Accordingly, do not permit your client to sign under oath answers to interrogatories unless you are confident that she has read and understands both the interrogatories and answers. Remember that your client may be confronted with her answers at a deposition or at trial. A response that "I only signed what the lawyer gave me" will be unpersuasive or devastating, even if true.

Answers to interrogatories are due sixty days after they are served. R. 4:17-4(b). The first thing you should do when you receive interrogatories (or propound them) is to calendar when they are due. Interrogatories are not fun to answer. And they are easy to set aside. However, sixty days is more than enough time to work with your client to provide responsive

answers (in federal court you have only thirty days) providing you do not wait until the last minute.

In preparing the answers, you are not required to "type in" your answer in the space following the interrogatory. Instead, you may answer the interrogatories on separate pages. R. 4:17-4(a). Some lawyers, however, use the magic of computer technology to "scan in" the interrogatories and proceed to "type in" the answers directly below the questions. If a document is requested, you should annex it directly to the answers. *Id.* That includes expert reports. R. 4:17-4(e). Be aware, however, that a party who answers an interrogatory by saying "see my expert's report" has made a binding admission that may limit the expert's testimony at trial. *Skibinski v. Smith,* 206 N.J. Super. 349, 354 (App. Div. 1985). Of course, if any documents or reports are voluminous, common sense should prevail and you should not feel compelled to actually staple the accompanying documents to the answers. You may choose instead to make the documents available to your adversary for inspection. R. 4:17-4(d).

A party answering interrogatories must only serve the original answers upon the propounding party. R. 4:17-4(c). Multiple copies are unnecessary. The propounding party must then serve copies of both the interrogatories and answers to all parties who are not in default. *Id.* While you should obtain your client's original signature, it is common practice to serve a fax signature upon your adversary pursuant to R. 1:4-4(c) where time becomes a consideration.

Substantively, a party answering interrogatories is obligated to do so fully and responsively. R. 4:17-4(a). However, if the propounding party is essentially seeking a summary of business records, the answering party may instead, afford the propounding party the opportunity to review the documents themselves. R. 4:17-4(d).

An answering party may object to a particular interrogatory on the basis that it is "improper." R. 4:17-5(a). An interrogatory may be considered "improper" for a variety of reasons. For example, it may seek information regarding a trade secret, a confidential tax return or discussions protected by the attorney-client privilege.

If you determine that an interrogatory is improper, you have several options. Most common, you may simply state in response to the interrogatory that "The question is improper" and briefly explain why. *Id.* Alternatively, you may file a motion within twenty days after being served with the interrogatories to have the offending interrogatory or interrogatories stricken. *Id.* In so moving, however, you must provide responsive answers to the other interrogatories to which you have no objection. *Id.* Note that if a party amends its answers to interrogatories by letter, as is the common practice, your adversary may request that you send him a certification as to the amended answers. R. 4:17-7.

A party may amend its answers to interrogatories no later than twenty days prior to the end of the discovery period, as fixed by the track assignment or subsequent order. R. 4:17-7. Thereafter, a party may only amend his answers if the party certifies that the information requiring the amendment was not reasonably available or discoverable by the exercise of due diligence prior to the discovery end date. *Id.*

The many problems associated with answers to interrogatories often serve as the first battleground for young lawyers. In the end, however, even if you are successful in your struggle to obtain answers to interrogatories, or even more complete answers to interrogatories, you will often be left to wonder "was this worth fighting for?"

Setting aside issues regarding privilege, battles over interrogatories generally involve two situations: (1) a party has failed to answer interrogatories, and (2) a party has supplied incomplete answers to interrogatories. Each situation will be addressed in turn.

1. Failure to Answer Interrogatories

For a variety of reasons, a party may not answer interrogatories within sixty days. A common reason for not answering interrogatories is that the parties informally agree not to spend money on discovery while they engage in settlement talks. Other times a client may be less than cooperative in the discovery process. An attorney may also face a personal or work-related crisis that makes it impossible to answer interrogatories in a timely fashion. In such cases, the attorney representing the answering party will either (1) do nothing and hope that you forget the answers are due, or (2) request an extension of the time to answer.

As noted above, you should calendar when answers to interrogatories that you propound are due. If you do not receive answers within a week or so after that date, you should send a professional but firm "reminder" letter to your adversary asking that answers be served within ten days or some other time period you think is fair. *See* **Example 46**. In your letter, you should never threaten or bully your adversary. Instead, your goal is to obtain the answers in a timely and cost-efficient manner, without filing a motion if possible.

Whenever you write a letter in this context or, for that matter, in any context as an attorney, you should always consider one basic question: How will this letter look to a judge? Some young lawyers find out the hard way (and clients often do) that *every email or letter you send may someday be read by a judge in a motion or at trial.* Thus, your letter should be professional in tone and give the reader a basic understanding of the issue at hand, since the "reader" may not always be the recipient or even your client. Instead, the "reader" may

be a judge if you are later required to file a motion. Thus, avoid flippant, sarcastic or personal references in your letter.

After you send your letter, one of two things will happen. More often than not, your adversary will contact you to request an extension of the time to serve the answers. Your response to this or any request by your adversary for an extension or adjournment should be guided by a simple issue: Will my client be prejudiced if I grant this request? Almost invariably, the answer is no. Further, a time may come when you or your client may need an extension or adjournment of some date. Thus, absent exceptional circumstances, you should extend your adversary the courtesy of an extension. In any event, your adversary always has the option to file a motion to enlarge the time to serve the answers. R. 4:17-4(b).

You should never grant an extension to an unspecified time in the future. Rather, the extension must be for a set time period. That way, everyone knows what is expected. Your adversary will invariably send you a letter confirming the extension. **Example 47.** If that does not happen, you should send a letter confirming your conversation. Your goal is to build a "record" in the event that your adversary fails to answer the interrogatories and you are compelled to file a motion.

Occasionally, you may send a "reminder" letter to an adversary concerning delinquent answers to interrogatories who fails to contact you to request an adjournment. In such cases, to protect your client, consistent with the requirements of R. 1:6-2(c), you must then write a stronger letter threatening to file a motion if you do not receive answers to interrogatories within ten days or some other time period you think is fair. **Example 48.** Hopefully, this letter will have the desired effect and you can then engage in a dialogue with your adversary about obtaining the interrogatories. Otherwise, as detailed below, you may have to file a motion.

Motions for failure to answer interrogatories are governed by R. 4:23-5. *See Zimmerman v. United Services Automobile Assoc.,* 260 N.J. Super. 368 (App. Div. 1992). In *Zimmerman,* the Appellate Division explained the philosophy of the Rule:

> [T]he 1990 rule represents a significant departure from prior methodology and philosophy. It is designed to elicit answers rather than to punish the offender by the loss of his cause of action or defense. Scrapping the former practice of an *ex parte* motion for dismissal by the offended party followed by a motion for relief made by the offending party, the 1990 rule prescribes a two-step procedure intended to give the offended party an effective mechanism for obtaining answers to interrogatories and the offending party an effective mechanism for preserving his action or defense. [*Id.* at 374].

If a party fails to answer interrogatories in a timely fashion you may move to dismiss the delinquent party's complaint or suppress his answer. R. 4:23-5(a)(1). This motion must be supported by your certification (1) detailing the default, (2) stating that your client is not in default in answering interrogatories, and (3) noting that you have complied with the obligations to confer with your adversary prior to filing the motion. R. 4:23-5(a)(1), (3). **Example 49.** Remember, in any discovery motion, you must comply with the requirements of R. 1:6-2(c). Thus, in addition to conferring with your adversary prior to filing the motion, the moving papers must state "the date of pretrial conference, calendar call or trial date or state that no such dates have been fixed."

Upon the filing of a motion to dismiss, many delinquent parties belatedly provide answers to interrogatories. Those answers may or may not be "fully responsive." At that point, you may elect (at your adversary's urging) to withdraw your motion. If you decide to proceed, understand that the court will not dismiss the complaint or suppress the answer as long as the dispute concerns the adequacy of the answers, as opposed to the failure to provide *any* answers. *Adedoyin v. Arc of Morris County,* 325 N.J. Super. 173 (App. Div. 1999). Instead, as discussed below, the court will treat the motion as one to compel to more specific answers to interrogatories. *Id.* at 377-78. Nevertheless, some parties still fail to provide answers to interrogatories even after a motion is filed. In those cases, absent good cause, the court will

either dismiss the delinquent party's complaint or suppress his answer without prejudice. R. 4:23-5(a)(1). Counsel for the delinquent party must then serve the client with a copy of the order by regular and certified mail, accompanied by a court prescribed form explaining the consequences of the failure to serve fully responsive answers. *Id.*

Even after the case is dismissed without prejudice, the delinquent party may file a motion to vacate the order of dismissal. *Id.* To do so, the motion must be supported by a certification stating that fully responsive answers to interrogatories have been served and must also include the payment of a restoration fee to the Clerk of the Superior Court. *Id.* A $100 restoration fee must be paid if the motion is filed *within* thirty days after the order of dismissal was entered while a $300 restoration fee is due if the motion was filed *more than* thirty days after the order of dismissal. *Id.* However, if the delinquent party does not file the motion within ninety days after the order was entered, the court may order the delinquent party to pay sanctions or counsel fees and costs or both as a condition of restoration. *Id.*

The moving party must wait ninety days after the entry of the order dismissing the Complaint or suppressing the Answer *without* prejudice to seek an order of dismissal or suppression *with* prejudice. R. 4:23-5(a)(2). After the motion is filed, the attorney for the delinquent party must, no later than seven days before the return date of the motion, file a certification stating that the client has been served with a court prescribed form regarding the pendency of the motion. *Id.* Alternatively, the attorney for the delinquent party must certify that despite diligent inquiry the client's whereabouts cannot be determined. *Id.* The attorney representing the diligent party must also appear for oral argument on the return date of the

motion. *Id.* While the rule does not require that counsel for the moving party appear on the return date of the motion, you should obviously attend. The court will grant the motion to dismiss or suppress with prejudice unless the delinquent party: (1) filed a motion to vacate the order or dismissal or suppression without prejudice and (2) either served answers to interrogatories or demonstrated exceptional circumstances. *Id.*

2. Failure to Provide Responsive Answers to Interrogatories

As noted above, answers to interrogatories are often carefully drafted to reveal as little information as possible. There is not much you can do about that. However, some "answers," such as *"See* pleadings," or *"See* documents produced," or some other non-answer are totally unresponsive to the questions.

When that happens, you should send your adversary a letter describing the issue and asking her to provide a complete answer within a reasonable amount of time. **Example 50.** Again, your goal is to obtain the necessary discovery without filing a motion while, at the same time, creating a record in case you must file a motion.

In most cases, your adversary will provide you with a more detailed answer. In some cases, however, your adversary will not, either because she believes her answer is sufficient or because her client has not provided the necessary information. If you do not receive the necessary information, you should write a stronger letter and this time, consistent with your obligations under R. 1:6-2(c), threaten to file a motion.

Despite your efforts, you may be forced to file a motion to compel more specific answers to interrogatories pursuant to R. 4:23-1. While the rule provides that attorneys' fees and costs may be awarded, that rarely happens. As a result, you must balance the need to obtain more specific answers to interrogatories with the costs to your client and consider whether you should

simply wait to obtain the information at a deposition. Often, however, there is a tactical advantage in showing the opposing party that you and your client are not to be trifled with and that you will firmly enforce your client's rights.

D. DOCUMENT REQUESTS

A party has several ways to obtain copies of relevant documents within the possession, custody or control of its adversary. A party may demand a copy of any document referenced in a pleading within five days. R. 4:18-2. That request, discussed in Chapter II, is typically included in an Answer or made in a separate letter before the Answer is filed. Further, as noted above, a party may also request that documents be produced in its interrogatories. R. 4:17-1(a). A party may also make a demand for discovery of insurance coverage. **Example 51.**

However, the most common method to request documents is to serve what is known as a document request pursuant to R. 4:18-1(a). **Example 52.** A document request may be served only upon a party. *Id.* To obtain documents from a non-party, you must utilize a subpoena and comply with the requirements of R. 4:14-7(c). As its name implies, a document request is a discovery method designed to obtain the inspection and thereafter copies of relevant documents. The document request should broadly define the term "document" to encompass all forms of computer generated communications including, but not limited to, e-mails. It may also specify the form or forms in which electronically stored information is to be produced. R. 4:18(b).

A party may serve a document request with the service of the Summons and Complaint. R. 4:18-1(b)(2). A copy of that request must be served on all parties. *Id.* A party who receives a document request in this fashion has 50 days to serve its response. *Id.* Typically, however, a party serves its document request later in the case. In that event, the party who receives the document request has 35 days to serve its response. *Id.*

If you are on the receiving end of a document request you should immediately send it to your client along with an appropriate cover letter. **Example 53**. Depending upon the volume of

documents, you should either ask your client to send you the responsive documents or make arrangements to visit the client's office or facility to determine for yourself which documents, including email, are responsive to the document request.

As noted above, the party receiving a document request not served with a complaint must serve a written response upon the party that propounded the request and all other parties within thirty-five days stating which documents requested will be produced and which requests are objectionable. R. 4:18-l(b)(2)(4). **Example 54.** Note, however, that general objections to a document request are no longer permitted. R. 4:18-1(b)(4). Rather, each objection must be made on specific grounds as to each request. *Id.* Contrary to prior practice, the response to the document request must be signed by a party if an individual, or by an officer or agent if a governmental, commercial or charitable entity. R. 4:18-1(b)(2). Further, the person signing the response shall swear or certify in the form prescribed by paragraph (c) that the response is complete and accurate based on personal knowledge and/or upon information provided by others, whose identity and source must be disclosed. *Id.* The point of this rule change is to place the burden on the client, not the attorney, to make sure that documents responsive to the document request (which are not otherwise privileged) are produced.

Paragraph (c), which is new, must be signed by the client or its representative, makes this clear, and is worthy of quoting at length:

> **(c) Certification or Affidavit of Completeness.** The person responding to the request shall submit with the response a certification stating or affidavit averring as follows:
>
> I hereby certify (or aver) that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to the request. I further certify (or aver) that as of this date, to the best of my knowledge and information, the production is complete and accurate based on ( ) my personal knowledge and/or ( ) information provided by others. I acknowledge my continuing obligation to make a good faith effort to identify additional documents that are responsive to the request and to promptly serve a supplemental written response and production of such documents, as appropriate, as I become aware of them. The following is a list of the identity and source of knowledge of those who provided information to me:

As with answers to interrogatories, extensions are commonly granted among attorneys. That said, any extension should only be for a specified time and should be confirmed in writing. The responding party must make the documents available to all parties in the case. *Id.*

It is your job to review the documents before they are shown to your adversary. That is

because the file may contain communications that should not be produced on the basis of the attorney-client privilege, a variety of other recognized privileges or because they constitute documents prepared in anticipation of litigation. *See* R. 4:10-2(a), (c).

If you determine that a document should not be produced because it is privileged you must list the document on what is known as a "privilege log." R. 4:10-2(e). A privilege log states the privilege asserted and describes the document in such a fashion to permit your adversary to assess the applicability of the privilege. *Id.* A privilege log typically contains the names of the author and recipients of the document, the date of the document, and a brief subject matter description of the document. **Example 55.** It is generally supplied in connection with or shortly after service of the response to the document request.

In addition to issues of privilege, a document request may seek documents that are highly confidential, such as tax returns, or documents containing trade secrets. In such cases, you may elect to move for a protective order to shield the information from discovery pursuant to R. 4:10-3. *Under no circumstances, however, may you withhold a document that is responsive to a document request without stating why you have elected not to produce it.* Otherwise, your adversary will not know that the document even exists or be able to challenge the asserted reason why it was not produced.

Occasionally, despite the best of intentions, documents that are privileged will "fall through the cracks" and be inadvertently produced to the other side. In that event, you must immediately notify your adversary of the situation and demand that the document be returned to you, sequestered or destroyed and, in any event, may not be utilized. R. 4:10-2(e)(2). Your adversary must either do as you asked or, at a minimum, present the information to the court under seal for a determination that you waived the privilege. *Id.* If your adversary disclosed the information before he was notified of the inadvertent production, he must take reasonable efforts to retrieve the documents. *Id.*

1. Review of Documents

After the service of the response to the document request, the parties must coordinate the review and exchange of the responsive documents. Whatever method is used, note that the documents must be produced as they were kept in the usual course of business or organized and labeled to correspond with the categories in the document request. R. 4:18-1(b)(2)(A). A party is not required, however, to produce the same electronically-produced information in more than one form. R. 4:18-1(b)(2)(C).

Many parties in large cases "Bates Stamp" documents to keep track of what was produced and for general identification purposes. "Bates-Stamping" is a process whereby each document is given a separate number at the bottom of the page. Obviously, it is far easier to keep track of documents if they are "Bates-Stamped."

Attorneys use two primary methods to exchange documents. The method utilized depends upon the sheer number of documents and cost considerations. In a case where there are relatively few pages of documents, you may request that your adversary simply mail you the documents and bill you for the copying charges. However, before making this arrangement and to avoid later disputes, confirm in writing the price per page that you will be charged for copying. In larger cases, you and your adversary may agree to send the documents to a copying service. Again, confirm the charges to avoid any unpleasant surprises. The parties may also agree to produce documents on a CD-ROM.

Obtaining the documents in this fashion, in smaller cases, will save attorneys' fees (or your time in a contingency case) because you will not have to travel to your adversary's office to review the documents in person. Alternatively, in large cases, you may arrange to review the documents where they are stored, either at your adversary's office or his client's office. In doing so, you can eliminate unnecessary documents and thereby save copying charges. If you conduct a document review in this manner, you will simply clip or affix post-its to the documents you select and ask your adversary to copy them. You should keep track of what documents you choose to have copied to avoid future disputes.

2. Electronic Discovery

The production of e-mail and other forms of electronic discovery pose particular challenges that are beyond the scope of this book. Indeed, entire books have been devoted to this. Generally, few clients will permit an adversary to rummage through his computer files. Producing e-

mail and other forms of electronic communication is often very expensive and often requires direct involvement by the court. A primary concern is which party is obligated to pay to retain a computer expert to copy the hard drive(s) and search the hard drive for documents that contain particular key words that counsel agree or the court mandates must be produced. That said, as a result of recent amendments, the Court Rules have began to address various issues regarding electronic discovery. For example, R. 4:10-2(t) provides that "[a] party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost." Further, R. 4:23-6 provides that absent exceptional circumstances a court may not impose sanctions against a party "for failing to provide electronically stored information lost as a result of routine, good faith operation of an electronic information system."

Nevertheless, a party may still file a motion to compel electronic discovery. *Id.* The party opposing the production of electronic discovery must demonstrate that it will be too costly or burdensome to produce the information. *Id.* Even if that showing is made, the court may still order the production of electronic discovery if the requesting party demonstrates good cause under subparagraph (g). *Id.* Among other things, subparagraph (g) directs the court to consider: (1) whether the discovery is duplicative and, in any event, may be obtained from a less expensive or burdensome source and (2) whether the burden or expense of obtaining the discovery outweighs its likely benefits taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. R. 4:10-2(g).

In dealing with electronic discovery issues, in addition to reviewing the New Jersey Court Rules, you should consider leading federal cases such as *Zubulake v. UBS Warburg LLC,* 217 F.R.D. 309 (S.D. N.Y. 2003) (and its *Zubulake* progeny) and take a seminar on the fast-

changing world of electronic discovery in dealing with the issue in state court. At a minimum, once you have notice of a potential claim you should instruct your client to preserve all relevant e-mail and other forms of electronic information and to take the necessary steps to make sure that e-mail is not automatically deleted by the client's computer system.

Additionally, if your client intends to assert a claim against another party, you should send that party's counsel a letter directing her to take the necessary steps to preserve all forms of electronic communications regarding the matter.

3. Failure to Respond to a Document Request

If a party fails to serve a response to your document request and/or to produce the documents in a timely fashion, you should respond as if the party had failed to serve answers to interrogatories. That means you should send the delinquent party a reminder letter setting forth a date certain when the response is due. If that does not work, you should telephone your adversary and, thereafter, send a letter stating that you will file a motion if the discovery is not forthcoming.

Ultimately, if your efforts to obtain the documents are unsuccessful, you may have to file a motion to dismiss the delinquent party's complaint or suppress his answer pursuant to R. 4:23-5(a)(l). To do so, you should follow the same procedures as outlined in the prior section involving a party's failure to provide answers to interrogatories. *Id.* You may also elect to file a motion to compel the production of documents.

E. INSPECTION OF PROPERTY OR OTHER THINGS

In certain circumstances, you may wish to inspect more than just documents. For example, in a dispute regarding an easement you may wish to visit the land itself. Or, in

litigation regarding allegations that a large packaging machine is defective, the client may instruct you to inspect the machinery personally.

R. 4:18-1(a) governs these and other requests to permit entry on land for the "purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of R. 4:10-2." Absent an agreed upon extension, a party must respond to a request to inspect land or other things within thirty days. R. 4:18-1(b).

F. PHYSICAL AND MEDICAL EXAMINATION OF PERSONS

In any matter involving a claim for personal injuries or where the physical or mental condition of a party is at issue, you can serve a notice requesting that the party submit to a physical or mental examination within forty-five days. R. 4:19. That request may include the taking of x-rays and other tests of physical or mental condition and should specify the time, place, manner, conditions and scope of the examination and who will perform the examination. *Id.*

A party who receives a notice to submit to an examination may do one of three things: (1) submit to the examination as scheduled, (2) reschedule and submit to the examination within a reasonable time period after the date originally noticed and (3) move for a protective order. *Id.* A party who refuses to utilize these options and simply ignores the notice risks a dismissal of his case pursuant to R. 4:23-5.

G. REQUEST FOR ADMISSIONS

Another discovery method that is often underutilized is the request for admissions. *See* R. 4:22-1. This device is intended to learn a party's position as to the truth of facts and the genuineness of documents. *Id.* Requests for admissions can be very useful because, if well

drafted, they may force a party to admit a fact that they could evade when answering an interrogatory. As such, they can be utilized to support a motion for summary judgment.

Requests for admissions are generally simple. **Examples 56 and 57.** For example, a typical request might ask if your client signed the contract annexed as an exhibit to the requests. Another request might ask if the client was a tenant at certain described premises.

Requests for admissions may be served upon the plaintiff at the commencement of the case and upon any other party with or after the service of the summons and complaint. *Id.* Each request should be separately numbered. *Id.* If you are requesting that a party admit the genuineness of a document, the document should be annexed to the requests in order to preclude evasion (though that is not a requirement if the documents have otherwise been furnished or are made available for inspection and copying). *Id.*

The requirements of R. 4:22-1 are somewhat confusing, especially as the rule has no subsections. These are the highlights:

(1) The recipient of the requests must admit or deny each individual requested admission within thirty days (or forty-five days if the requests are served with the Summons and Complaint) unless that time is lengthened or shortened by the court (or extended by the parties).

(2) If a party fails to specifically deny a request it is deemed admitted;

(3) If a party objects to a proposed admission it must set forth the basis for the objection;

(4) A party must either admit or deny the proposed admission or explain in detail why it cannot do so;

(5) If a party in good faith must qualify its answer or deny only a part of the proposed admission it must explain what part of the admission is true and deny the remainder;

(6) A party may not give lack of information or knowledge as a reason why it cannot admit or deny the answer unless it states that a reasonable inquiry was

made and that the information known or readily obtainable is insufficient to permit an admission or denial; and

(7) The answers must be signed by the party or attorney.

If the requesting party is dissatisfied with the answers or objections it may file a motion. If the court determines that the answering party failed to comply with the rule, it may either order that the matter requested be admitted or that an amended answer be served. *Id.* Counsel fees are also available in the court's discretion. *Id.*

Once a matter is admitted pursuant to R. 4:22-1 it is deemed "conclusively established" unless the court permits the admission to be withdrawn. R. 4:22-2. In determining whether to permit a party to withdraw or amend an admission, the court must determine that the requesting party will not be prejudiced and that "presentation of the merits of the action will be subserved thereby." *Id.* Any admission is binding only in the pending action and may not be utilized in any other proceeding. *Id.*

If a party fails to admit the authenticity of a document or the truth of a requested matter, the requesting party may apply to the court for expenses and counsel fees if it subsequently proves the truth of a requested matter or the authenticity of the subject document. R. 4:23-3. The court is obligated to award a party's expenses in making that proof unless it determines that: (a) the request was previously ruled objectionable, (b) the admission sought was of no substantial importance, or (c) the party had reasonable ground for not making the admission. *Id.*

H. DEPOSITIONS

Depositions are the most important method of pretrial discovery. A deposition permits you to question a witness under oath to obtain facts, with minimal interference from your adversary. Unlike answers to interrogatories, which are often crafted by attorneys, a deponent

must answer your questions without any assistance from his lawyer at the deposition. As a result, a deposition offers a preview of how a witness will perform at trial.

Depositions may be taken of both parties and non-parties. R. 4:14-1. Absent leave of court, a plaintiff must wait thirty-five days after the defendant is served with a copy of the Summons and Complaint before scheduling a deposition unless the defendant has already sought discovery. *Id.*

It is the obligation of the attorney scheduling the deposition to obtain the court reporter. While you may delegate that task to your assistant, it is your obligation to make sure that it is done.

There are two primary methods to schedule the deposition of an individual: (1) a Notice to Take Oral Deposition (or deposition notice), which is served on parties and (2) a Subpoena, which is served on non-parties. Though both result in a deposition, there are important procedural differences. Each will be considered in tum.

1. Depositions of Parties

To schedule the deposition of a party you must serve a deposition notice upon your adversary and all other parties who have entered an appearance at least ten days prior to the deposition. R. 4:14-2. **Example 58.** As to individual parties, R. 4:14-2 provides that the deposition notice shall include:

> (1) the name and address of the person who is to be deposed, if known, or if not known, a general description sufficient to identify the person or group of persons to which the person belongs; and
>
> (2) the time and place for taking the deposition.

Occasionally, you may wish to depose a representative of a corporation or governmental body but do not know the name of the individual(s) with relevant knowledge. In that case,

pursuant to R. 4:14-2, you should name the particular entity as the deponent and state "with reasonable particularity the matters on which examination is requested." The organization named in your notice will then select one or more individuals to testify as to the matters at issue. A drawback to this is that it permits the entity being deposed to designate a particularly canny witness for the deposition, but that comes with the territory.

There is no requirement as to where a deposition will occur except that it be "reasonably convenient for all parties." *Id.* Typically, an attorney scheduling the deposition of a party will schedule the deposition at her office. Thereafter, the attorney issuing the deposition notice and the attorney for the deponent will discuss where the deposition will actually occur. In many cases, the attorneys agree that the deposition shall occur at the offices of the attorney defending the deposition. However, that is subject to modification depending upon the location of the parties, the attorneys and the volume of documents that may need to be transported. Above all, the attorneys should cooperate to ensure that common sense prevails.

Cooperation also applies to the timing of depositions. As noted above, depositions must be scheduled upon ten days' notice. However, the date noticed for a deposition may be inconvenient both for the prospective deponent and one or more of the lawyers in the case. Thus, counsel must work together to schedule the deposition that is convenient for all involved. Once a new date is selected it should be confirmed in writing.

A deposition notice may also include a demand for the production of documents. R. 4:14-2(c). A party will then be compelled to bring the requested documents to the deposition.

While obtaining the documents on the date of the deposition is permissible under the rules, it is not recommended in all but the simplest cases. As discussed below, preparation is the most important part of a deposition. Preparation requires that you be familiar with the

relevant documents. It is impossible to understand the nuances of documents if you are presented with them for the first time at a deposition. Remember, your goal is to know more about the documents than the deponent. Thus, in all but the most routine case, you should obtain the documents pursuant to a formal document request well before the deposition.

2. Depositions of Non-Parties

An attorney may also schedule the deposition of an individual by subpoena. R. 4:14-7(a). A subpoena is used to obtain testimony and documents from a non-party. **Examples 59 and 60.** Unlike a deposition notice, which is simply mailed or faxed to your adversary, a subpoena must be personally served on the deponent at least ten days prior to the deposition. R. 4:14-7(a), (c). It also must be served (though not personally) on your adversaries at the same time. *Id.*

The subpoena may also demand that the deponent produce documents or other evidence within the scope of R. 4:10-2. *See* R. 4:14-7(a). However, contrary to the Federal Rules of Civil Procedure, you may not issue a subpoena to a witness purely to obtain documents. R. 4:14-7(c). Instead, the subpoena must compel the attendance of a witness for a deposition at the same time the documents are to be produced. *Id.* This requirement is intended to give parties the opportunity to file a motion for a protective order or to quash the subpoena. In fact, the rule specifically requires that the subpoena state that "the subpoenaed evidence shall not be produced or released until the date specified for the taking of the deposition and that if the deponent is notified that a motion to quash the subpoena is filed, the deponent shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by all parties to the action." *Id.*

Another goal of R. 4:14-7(c) is to prevent a party from engaging in unilateral discovery with third parties. In many cases, however, a witness simply produces the documents requested by the subpoena without ever appearing for a deposition. In such cases, the party that obtains the subpoenaed evidence shall make it available to all other parties for inspection and photocopying. R. 4:14-7(c).

A New Jersey *resident* subpoenaed may be compelled to appear for his deposition only in the following places: (1) the county in which he resides, is employed or transacts business, (2) at a location in New Jersey within twenty miles from the witness's residence or place of business or (3) another convenient place fixed by court order. R. 4:14-7(b)(l). Alternatively, a *nonresident* of New Jersey subpoenaed within the state may be compelled to appear for his deposition only in the following places: (1) the county in which he is served, (2) a place within New Jersey not more than forty miles from the place of service, or (3) another convenient place fixed by court order. *Id.*

As a result, unlike a deposition notice, *do not schedule the deposition in your subpoena at your office without considering the requirements of R. 4:14-7(b)(l).* This is a common mistake made by junior attorneys. Instead, you should schedule the deposition at a place that complies with the rule. If you do not have an office in the county where the deposition must occur, consider using the office of another attorney with whom your firm has a relationship, the office of the county bar association or the county courthouse. Of course, if you schedule the deposition at the county bar association (which may charge a fee) or the courthouse, you must receive permission (the available rooms fill up quickly) and provide the location of the room on the subpoena. Otherwise, your prospective deponent may be wandering aimlessly through the courthouse.

A witness subpoenaed for a deposition is entitled to be reimbursed for out-of-pocket expenses and loss of pay incurred in appearing for the deposition. R. 4:14-7(b)(1). The latter requirement is often waived or is subject to negotiation.

The payment of expenses to expert witnesses and treating physicians compelled to give a deposition is governed by R. 4:14-7(b)(2). Absent alternative arrangements made by counsel (or by court order), an expert witness or treating physician who resides or works in New Jersey is entitled to be reimbursed for his travel time and expenses if the deposition takes place at a location other than his home or office. *Id.* If the witness does not reside in New Jersey, the proponent of the witness (the party that is utilizing the expert or treating physician) shall either (1) produce the witness at the proponent's expense in the county in which the action is pending or some other place in New Jersey that the parties agree, or (2) pay all reasonable travel and lodging expenses incurred by the parties in attending the out-of-state deposition.

3. Unilateral Cancellation of Depositions

Obviously, if you schedule a deposition either by a deposition notice or a subpoena you must either attend that deposition or adjourn it in a timely fashion. If you fail to do so, and either an attorney or deponent appears at the scheduled deposition, the court may award sanctions against your client, including reasonable expenses of both the witness and his attorney. R. 4:14-8.

It is rare for an attorney not to appear at a deposition that he schedules. Far more common is the unhappy situation where the prospective deponent (or his attorney) cancels the scheduled deposition, sometimes at the eleventh hour.

Technically, a party cannot unilaterally adjourn a deposition. Nevertheless, it happens all the time. There are many reasons why a deposition is canceled at the eleventh hour. A party

may have a personal or business problem. Your adversary may be facing a litigation crisis in another matter. But more often than not, a deposition is canceled at the eleventh hour simply because the witness chooses not to attend.

Upon receiving notification that your deposition has been canceled, you will undoubtedly be disappointed. You will have spent considerable time preparing for the deposition at the expense of your other cases. Your client may have altered his schedule to attend the deposition.

The first thing you should do after you learn that the deposition will not go forward is to cancel the court reporter. If you fail to cancel the court reporter and the reporter appears at the scheduled deposition, you may be charged an appearance fee.

Thereafter, you have several choices: (1) threaten to or actually file a motion to compel the deponent to appear for a deposition on a date certain; or (2) grit your teeth and agree to reschedule the deposition.

There are several practical reasons simply to reschedule. For example, while you could file a motion pursuant to R. 4:23-4, you must first prepare it. That takes time and money. Then, after you file the motion you must wait a minimum of sixteen days (and often longer) before a judge will hear it pursuant to the motion calendar. Ultimately, if this is the first cancellation, the court will merely order that the deposition occur on a date that will be at least seven days after the motion is heard and often longer. As a result, over a month may elapse before a deposition sought by motion actually takes place.

Second, lawyers soon learn that most judges hate dealing with routine discovery disputes. Thus, it behooves counsel to cooperate before involving the court in relatively minor disputes.

Third, you must consider whether your client will truly be prejudiced because the deposition was canceled. If not, it is probably a waste of time to file a motion.

Finally, there may come a time that your client must cancel a deposition at the last minute. Your adversary will likely extend you the same courtesy (or lack thereof) that was extended to her in deciding whether or not to seek judicial intervention.

On the other hand, as discussed above, if you believe that you need to show that you and your client will not allow the other side to run roughshod over you, a motion may be the appropriate course despite the above considerations. It may be wise to discuss this with your client before acting.

If you choose to reschedule the deposition, make sure that you receive a mutually agreeable new date from your adversary as soon as possible. After receiving the new date you should send your adversary a confirming letter. That way you build a record in the event that the deponent fails to appear at the rescheduled deposition.

Often the deponent attends the rescheduled deposition and the issue resolves itself. Occasionally, however, you will be confronted by an individual who repeatedly adjourns his deposition. In that event, you should advise your adversary that you will file a motion unless your adversary agrees to execute a Consent Order that: (1) sets the date of the deponent's deposition, and (2) provides for attorneys' fees in the event that you are forced to file a motion to enforce the terms of the document. **Example 61.**

If your adversary refuses to execute a Consent Order after repeatedly adjourning a scheduled deposition you should immediately file a motion pursuant to R. 4:23-4. Most lawyers, however, will agree to sign a Consent Order because of the likelihood that their client will be compelled to appear for a deposition at an inconvenient time and the possibility of sanctions. If your adversary agrees to sign the Consent Order you should send it (after it has

been signed by the lawyers) to the judge who has handled the case for her signature. **Example 62**. If a judge has not been assigned to the case you should send it to the assignment judge.

Unlike discovery disputes between counsel, which judges expect lawyers to resolve among themselves, judges are very protective of their Orders. A party who ignores a Consent Order to appear for a deposition is subject to the sanctions detailed in R. 4:23-2.

4. Preparing for the Deposition

Most depositions go forward as scheduled. The key to successfully taking a deposition can be summed up in one word: preparation. You may be far less experienced than your adversary. However, you can level the playing field by working harder and following these simple steps *before* the deposition takes place:

1. If possible, obtain the relevant documents and answers to interrogatories before the deposition;

2. Study the relevant documents and answers to interrogatories. Your goal is to be more knowledgeable about the facts of the case and documents than the deponent;

3. Organize the documents in some fashion that makes sense. Some lawyers create a three ring notebook of the documents that they intend to use at a deposition. Others use separate folders for each document. Some simply put the documents in chronological order in a redweld. Do whatever makes sense for you based on the number of documents;

4. Meet with your client or other witnesses to review the relevant documents and discuss areas of inquiry that may not have been reduced to writing;

5. Research the law. You must know the elements of the claims and defenses;

6. Prepare a written outline of the topics and questions. Some lawyers even prepare a detailed list of many of the actual questions they intend to ask at the deposition; and

7. Formulate a game plan of what you hope to achieve in the deposition.

Preparation applies with equal force if you are defending a deposition. Remember that many prospective deponents have never seen a real deposition. They have absolutely no idea what to expect. You must help them.

With rare exceptions, you cannot change the personality of a witness overnight. What you can offer them (and insist they take) is your assistance in preparing them for the deposition. A fully prepared witness will be a confident witness. And a confident witness will make a favorable impression on your adversary in terms of settlement. Conversely, a witness who is ill-prepared will have the opposite effect.

Unfortunately, many lawyers skimp in preparing their own clients for a deposition. Contrary to the practice of some attorneys, meeting with a client thirty minutes before a deposition does not constitute adequate preparation. Instead, in all but the smallest cases, you should do the following *before* the date of the deposition:

1. Obtain and familiarize yourself with the relevant documents and facts of the case.

2. Research the law.

3. Prepare an outline of the probable topics of the deposition.

4. Meet with your client and review the possible areas of inquiry. It is often helpful to pose likely questions to your client. Make sure that your client has reviewed and is familiar with the pleadings, any certifications she signed and all relevant documents.

5. A deposition is the best gauge of how a witness will perform at trial. As a result, though a deposition is generally conducted in the informality of a lawyer's office, advise your client to conduct herself in the deposition as if a judge was in the room listening to her testimony. Instruct your client not to argue with the other lawyers or storm out of the room in response to a question she does not like. (All of these things happen).

6. Remind your client to listen to question and only answer the question asked. Many clients are so anxious to "tell their story" that they do not answer the question and launch into a detailed explanation of their side of the case which will

only invite follow-up questions. Occasionally, you may even instruct a particularly "challenging" client to count to three (or ten) before answering questions.

7. Instruct your client never to guess at an answer. If your client does not know the answer to a question, it is perfectly appropriate (assuming it is the truth) to state that "I do not know" or "I do not recall at this time."

8. A deposition is conducted under oath. That means your client must tell the truth. All clients need to be reminded of that fact (some more strongly than others) before a deposition.

5. Conducting the Deposition

As with a court appearance, you should arrive early for a deposition that you are taking. That extra time will allow you to organize your documents and collect your thoughts. If you are defending a deposition, you should also arrive early to conduct a review session with your client. If possible, prior to taking or defending your first deposition you should attend, or at least read, a deposition conducted or defended by a more experienced lawyer.

Depositions are generally conducted at a large conference table. If you are taking a deposition, you should sit directly across the table from your deponent. The attorney defending the deposition will sit at the table to the side of the deponent. The court reporter will sit at the side of the table between you and the deponent.

A complete discussion of the methods of taking a deposition is beyond the scope of this book. We strongly recommend that every litigator take a seminar on how to conduct a deposition. That said, you should keep several goals in mind in deposing a witness:

1. Establish the facts to support the elements of the claim or defense.

2. Determine what the deponent knows or does not know about the facts.

3. Review key provisions of the documents with the deponent.

4. Ask the deponent to confirm relevant facts.

5. Establish the existence and extent of potential damages.

6. Determine whether the deponent discussed the facts with anyone else.

7. Learn what, if anything, the deponent did to prepare for the deposition.

See McElhaney, *Preparing Yourself for Deposition*, 8 New Jersey Lawyer 2399 at 7, 33 (November 15, 1999).

One of the most important things to remember in taking a deposition is to *listen to the deponent's answer*. This may seem obvious. However, many lawyers are so anxious to blurt out their next question that they forget to listen to the answers and miss a golden opportunity to ask follow-up questions.

Depositions in New Jersey were once fraught with objections to questions on the grounds of relevance or involved other improper conduct such as "speaking objections" (objections that suggested the answer to the question). In fact, many deposition transcripts contained more colloquy among the lawyers than actual testimony by the witness.

The Court Rules were changed to prevent such abuses. Specifically, R. 4:14-3 was amended to provide that an attorney may not object to a question at a deposition unless his objection is based on: (1) the form of question, (2) to assert a privilege, right of confidentiality or limitation contained in a court order. R. 4:14-3(c). If an attorney objects to the form of the question he must explain why the question was objectionable so the interrogator may amend the question. *Id.* All other objections are preserved for trial. *Id.*

An attorney may not object to a question in a manner so as to suggest an answer. *Id.* Thus, if you ask the question "What do you know about the dispute between Mary and John," an attorney cannot say "Objection, if she knows." That is because the attorney is suggesting that the deponent answer that she does not know about the dispute. Further, an attorney may

not direct the deponent not to answer the question unless the basis of the objection concerns the assertion privilege, a right of confidentiality or a limitation pursuant to a previously entered court order. *Id.* Finally, during the course of the deposition, an attorney may not confer with the deponent "while testimony is being taken" unless the consultations concern the assertion of the exceptions noted above. R. 4:14-3(f).

There is debate as to the phrase "when testimony is being taken." Does that provision mean that after a witness is sworn at a deposition an attorney may not speak with him during recesses or lunch breaks or are such communications permissible? *Compare 2012 Court Rules* at 1519 ("Since the rule speaks only to 'while the deposition is being taken' it clearly does not address consultation during overnight, lunch and other breaks.") *with In re PSE&G Shareholder Lit*, 320 N.J. Super. 112, 116-118 (Ch. Div. 1998) (applying rule to bar communications between counsel and the witness during recesses and a lunch break, but permitting such consultations at the conclusion of the daily depositions to prepare for the next day's deposition). *See also Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993) (excellent discussion of practice under the federal rule that many state court judges have also adopted). The practical answer is that you may speak to your client about his testimony during breaks absent a court order holding otherwise.

If you believe that a deposition is being conducted or defended in bad faith or to annoy, embarrass or oppress the deponent, or if a party or his attorney has violated R. 4:14-3(c) or (f), you may either (1) file a formal motion or (2) suspend the deposition, make a telephone application to the court, and seek a protective order limiting the scope of the deposition or even an order terminating the deposition. R. 4:14-4. If the court terminates the deposition, it may only be resumed upon further order of the court. *Id.* The court may award counsel fees

pursuant to this rule "unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." *See* R. 4:23-1.

As a general rule, attorneys are (and should be) able to resolve any disputes that arise during a deposition among themselves. Thus, attorneys do not often contact the court during the middle of a deposition, especially as the judge may be unavailable. Further, while the sanctions of R. 4:14-4 are available and should be utilized in appropriate situations, do not make threats to "call the judge" unless you mean it. You will find that such threats, especially when they are not acted upon, will fall on deaf ears and are not taken seriously by experienced litigators. It is often far better in the vast majority of cases to try and work out the problem with your adversary.

6. Videotaped Depositions

It is becoming more common to rely on videotaped depositions. R. 4:14-9. Videotaped depositions are often used for treating physicians and expert witnesses who reside outside the state. Judge Pressler and Justice Verneiro explained:

> The self-evident purposes of these provisions is to avoid the necessity of producing these witnesses at trial since trial production of experts has become increasingly burdensome to litigants. The expense of expert testimony has, inordinately, escalated. Many experts are willing to give opinions but not to testify in court. Those who are willing are frequently not available when required causing delays in trial, the necessity for continuances and adjournments and frequently, undesirable bifurcations. These problems are intended to be substantially alleviated by permitting the videotaped deposition to be introduced at trial in lieu of the expert's court appearance. [2012 *Court Rules* at 1527].

The court has also approved the use of video conference discovery depositions if the appropriate technical facilities are available. *Haynes v. Ethicon*, 315 N.J. Super. 338 (Law Div. 1998).

7. Costs of the Deposition

It is the obligation of the party requesting the deposition to pay for the costs of the court reporter and for the transcript. R. 4:14-6(c). Copies must be made available to the deponent and all adverse parties. *Id.* Typically, the court reporter will distribute the transcript to you and all parties. It generally takes about two weeks to obtain the transcript, depending on its length. If you need the transcript sooner you may request that it be prepared on an expedited or even daily basis. Obviously, you will pay more for these additional services. Finally, if you do not obtain it as a matter of course, you should request a minuscript, which is a condensed version of the transcript and contains an index. Essentially, four to six pages of the transcript are reduced to one page. Because it substantially reduces the size of the transcript, a minuscript is invaluable when you need to carry a number of transcripts home or to court. You can also obtain a transcript on a CD Rom or other electronic device.

Most court reporters in New Jersey are very good. However, they are not perfect. Accordingly, after you receive a copy of the deposition transcript you should carefully review it for errors. If you find an error, you should contact the reporter. If that does not solve the problem, you may be compelled to file a motion to correct the record. R. 4:16-4.

8. Written Questions

A deposition can be conducted upon written questions. R. 4:15-1. This is rarely done. A party utilizing this device is required to serve a copy of the questions upon all other parties along with a deposition notice or subpoena. *Id.* Within thirty days after the notice and written questions are served, the other parties are permitted to serve cross questions. *Id.* Within ten days after receiving the cross questions, the deposing party may serve redirect questions. *Id.* The other parties may then serve recross questions within ten days after being served with the redirect questions. *Id.* These time frames can be enlarged or shortened by the court. *Id.*

9. Use of Deposition Testimony

Deposition transcripts can be used for a variety of purposes including at trial or in connection with a motion. R. 4:16-1. A party seeking to utilize deposition testimony in a motion typically attaches the relevant excerpt of the transcript to an attorney's certification. **Example 63.** At trial, a party may use deposition testimony to impeach the credibility of a witness. R. 4:16-1(b). Further, an attorney may also read in the deposition testimony of an adverse party as an admission. *Id.* However, in doing so, a party is bound by the "rule of completeness." R. 4:16-1(d). That rule requires that a party read in all portions of the transcript that in fairness should be considered together. *Id.*

Deposition testimony of any witness (as opposed to live testimony) may be used by any party for any purpose if the court determines that the witness is unavailable because of (1) death, (2) age, (3) illness, (4) infirmity, (5) imprisonment, (6) being out of the state, or (7) beyond the subpoena power of the party offering the deposition testimony, provided that the absence of the witness was not caused by the offering party. R. 4:16-1(e). The deposition testimony of an absent but not unavailable witness can be utilized in the court's discretion upon a finding that "such exceptional circumstances exist as to make such use desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court." *Id.*

Example 32: Plaintiff's Property Damage Interrogatories in Motor Vehicle Cases (Special Civil Part)

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY SPECIAL CIVIL PART LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION Interrogatories MOTOR VEHICLE CASES INVOLVING PROPERTY DAMAGE TO BE ANSWERED BY PLAINTIFF

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following questions with respect to the collision described in plaintiff's complaint in accordance with R. 4:17-1.

1. State the registration number, make, model and year of the plaintiff's vehicle.

2. Specifically describe the condition of the vehicle immediately before the collision.

3. Specifically describe how the vehicle was damaged in the collision.

4. Please state:
   a. Did you obtain an estimate of repairs for the damage to the vehicle? If so,
   b. list the estimated cost of each repair and attach a copy of the estimate of repairs including the name and address of the person or company providing the estimate.

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Example 32 - Continued

5. Please state:
   a. Has the vehicle been repaired since the collision? If so,
   b. list each repair;
   c. the price paid for each repair;
   d. the date of each repair;
   e. the name and address of each person or company performing the repairs. Attach copies of all repair bills.

6. If the motor vehicle was declared a total loss, attach all documents relating to the Actual Cash Value of the vehicle, salvage value and any related expenses.

7. Please state:
   a. Did the plaintiff rent a replacement vehicle? If so,
   b. list the name of the company;
   c. the price paid;
   d. the length of time the rental was required; and
   e. the reasons the rental was required.

8. Please state:
   a. Did the plaintiff have any other expenses as a result of the collision? If so,
   b. give an itemized statement of each such expense;
   c. the cost of each such expense; and
   d. an explanation of the reason for the expense.

9. List the names and addresses of anyone who may have direct knowledge of any facts relating to the collision or this case. Include in your answer eyewitnesses and experts or other witnesses who may testify. Attach copies of expert reports, if any.

10. Give details of the accident:
   a. date;
   b. time;
   c. weather;
   d. visibility; and
   e. road condition.

11. Who was driving your vehicle at the time of the accident? Name and address.

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Example 32 - Continued

12. List the names and addresses of the occupants of the vehicle and their location in the vehicle.

13. Where did the accident happen? Street and town.

14. Which street was your vehicle on at the time of the accident?

15. Which direction was your vehicle going at the time of the accident?

16. Where on the roadway did the collision take place? You may include a sketch for greater clarity.

17. Please state:
    a. How did this accident happen?
    b. Who was at fault and how?
    c. any other factors you believe contributed to the accident.

18. Did the other driver break any laws? If so, which laws?

19. Please state:
    a. Were there traffic lights, signs, or other controls for any of the vehicles involved in the accident? If so,
    b. What kind of light, sign or control?
    c. Where were they?
    d. Who were they for?

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Example 32 - Continued

20. Please state:
    a. Did the accident happen in an intersection?
    b. Who was in the intersection first?
    c. Did your car stop before it entered the intersection?
    d. How fast was your vehicle going when it entered the intersection?

21. Please state:
    a. How far was your vehicle from the other vehicle when it was first seen?
    b. How fast was your vehicle going when the other vehicle was first seen?
    c. How fast was the other vehicle going when it was first seen?

22. After the accident, where did the vehicle stop?

23. State what part of your vehicle came into contact with what part of the other vehicle or vehicles involved.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated:

_____
Plaintiff

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Example 33: Plaintiff's Property Damage Interrogatories in Motor Vehicle Cases (Superior Court)

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION Interrogatories PROPERTY DAMAGE TO MOTOR VEHICLE TO BE ANSWERED BY PLAINTIFF

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1.

1. Was the claimant the sole owner of the motor vehicle involved in the alleged accident?

2. State the name and address of the person, firm or corporation, from whom the claimant purchased the motor vehicle and the date of purchase.

3. Was the motor vehicle new or used at the time of purchase?

4. State make, model and year of motor vehicle.

5. State amount paid by claimant for the motor vehicle.

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Example 33 - Continued

6. State whether the motor vehicle has been repaired since the accident.

7. If so, give name and address of person, firm, or corporation making the repairs.

8. If so, state specifically the part or parts of the motor vehicle alleged to have been damaged in the accident and furnish a copy of the repair bill.

9. State date upon which claimant authorized the repair of the motor vehicle.

10. State date on which repairs were completed.

11. State the market value of this motor vehicle immediately before the accident.

12. State the market value of the motor vehicle in its damaged condition immediately after the accident.

13. State the market value of the motor vehicle in its repaired condition.

14. Was the motor vehicle used in connection with claimant's business and, if so, state whether claimant was obliged to hire another motor vehicle for use in connection with that business, giving the name and address of person, firm or corporation from whom claimant hired the motor vehicle, the dates during which it was hired and the amount paid for its hiring.

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Example 33 - Continued

15. If no repairs have been made, but an estimate of repairs has been obtained, attach a copy of the estimate to the answers to these Interrogatories, stating further the name and address of the person, firm or corporation who made the estimate.

16. Has the claimant sold or otherwise disposed of the motor vehicle?

17. If so, give the name and address of the person, firm or corporation to whom the motor vehicle was transferred, the date of the transfer, and the amount of consideration paid to the claimant thereof.

18. If it is alleged that the claimant incurred any other expenses or losses as a result of the alleged damage to the motor vehicle, set forth these additional alleged losses in detail, giving an itemized statement.

19. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

20. State the names and addresses of any and all proposed expert witnesses and annex true copies of all written reports provided to you by any such proposed expert witnesses.

NOTE: If Form A (ALL-STATE Form #433S) is not needed (claim for property damage only), questions 1, 2, 15, 16, 17, 18, 19 and 20 of Form A must still be completed (where applicable) and attached with the answers to this interrogatory.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated:

_____
Plaintiff

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Example 34: Defendant's Property Damage Interrogatories in Motor Vehicle Cases

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY SPECIAL CIVIL PART LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION **Interrogatories** MOTOR VEHICLE CASES INVOLVING PROPERTY DAMAGE TO BE ANSWERED BY DEFENDANT

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following questions with respect to the collision described in plaintiff's complaint in accordance with R. 4:17-1.

1. Did you own one of the vehicles involved in the accident?
   - ☐ Yes
   - ☐ No

2. Were you driving one of the vehicles involved in the accident?
   - ☐ Yes
   - ☐ No

3. If it was your vehicle, but you were not driving, who was?

4. If it was your vehicle, but you were not driving, what was the driver doing with your vehicle?

5. If you were not the owner of the vehicle you were driving, give the name, address and telephone number of the owner.

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Example 34 - Continued

6. If you were not the owner of the vehicle you were driving, list the vehicles you owned on the date of the accident.

7. If you were not driving your vehicle, give the name, address and telephone number of the person who was driving.

8. If you were not the driver, how did the driver get your vehicle and what was the driver doing with it?

9. List the names and addresses of the occupants of the vehicle and their location in the vehicle.

10. List the registration number, year, make and model of the vehicles involved in the collision.

11. Give details of the accident:
    a. date;
    b. time;
    c. weather;
    d. visibility; and
    e. road condition.

12. Where did the accident happen? Street and town.

13. Which street was your vehicle on at the time of the accident?

14. Which way was your vehicle going at the time of the accident?

15. Where on the roadway did the collision take place? You may include a sketch for greater clarity.

16. Please state:
    a. How did this accident happen?
    b. Who was at fault and how?
    c. Any other factors you believe contributed to the accident.

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Example 34 - Continued

17. Did the other driver break any laws? If so, which laws?

18. Please state:
    a. Were there traffic lights, signs, or other controls for any of the vehicles involved in the accident?
    b. What kind of lights, signs or controls?
    c. Where were they?
    d. Who were they for?

19. Please state:
    a. Did the accident happen in an intersection?
    b. Who was in the intersection first?
    c. Did your vehicle stop before it entered the intersection?
    d. How fast was your vehicle going when it entered the intersection?

20. Please state:
    a. How far was your vehicle from the other vehicle when it was first seen?
    b. How fast was your vehicle going when the other vehicle was first seen?
    c. How fast was the other vehicle going when it was first seen?

21. After the accident, where did the vehicles stop?

22. State what part of your vehicle came into contact with what part of the other vehicle or vehicles involved.

23. List the names and addresses of anyone who may have direct knowledge of any facts relating to the collision or case. Include in your answer eyewitnesses and experts or other witnesses who may testify at trial. Attach copies of expert reports, if any.

24. State whether you had insurance at the time of the accident. If yes, state name and address of all insurance companies and policy numbers.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated:

_____ _____

Defendant If Corporation, Title of Signitor

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Example 35: Defendant's Automobile Accident Interrogatories

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION Interrogatories AUTOMOBILE ACCIDENT CASES ONLY TO BE ANSWERED BY DEFENDANT

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1, in addition to those responded to in Form C.

1. With respect to the vehicle involved in the incident referred to in the complaint:
   Underline answer

a. Do you admit ownership?	Yes	No
b. Do you admit operation?	Yes	No
c. Do you admit agency?	Yes	No
d. Do you admit control?	Yes	No
e. Do you admit the date and place?	Yes	No

2. If you do not admit ownership, state:
   a. the name and address of the owner;
   b. whether you were operating the motor vehicle with permission of the owner; and
   c. the registration number, year, make, model and color of each motor vehicle owned by you on the date of the collision as alleged in the complaint.

3. If you do not admit operation, state the name and address of the operator.

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Example 35 - Continued

4. If you do not admit agency and the owner was not also the operator, state:
   a. the circumstances under which the vehicle came into the possession of the operator;
   b. the purpose for which the vehicle was being used; and
   c. its destination.

5. If you do not admit control:
   a. state the name and address of the one in control; and
   b. if control was in another by agreement, state the names and addresses of the parties to the agreement, whether the agreement was oral or written and briefly, the terms of the agreement.

6. If you do not admit the date and place of the collision as alleged in the complaint, state the date and place of the collision as you recall it.

7. State whether your vehicle was licensed under an Interstate Commerce Commission permit.
   ☐ Yes
   ☐ No
   If the answer is "Yes," state:
   a. the number of such permit;
   b. the name and address of the permittee; and

   c. the name and address of the lessee or other person in control, if any.

(Note: The term "your vehicle" in this and other questions herein has reference to the vehicle in which you were an occupant at the time of the collision.)

8. State on what street, highway, road or other place (designate which) and in what general direction (north, south, east or west) your vehicle was proceeding immediately prior to the collision. (You may include a sketch for greater clarity.)

9. With respect to fixed objects at the location of the collision, state as nearly as possible the point of impact. If you included a sketch, place an X thereon to denote the point of impact.

(Note: The term "point of impact" as used in this and other questions has reference to the exact point on the street, highway, road or other place where the vehicles collided.)

10. State whether there were any traffic control devices, signs or police officers at or near the place of the collision. If there were, describe them (i.e., traffic lights, stop sign, police officers, etc.) and state the exact location of each.

Example 35 - Continued

11. If you contend that there was a malfunction of a motor vehicle or equipment, state:
    a. make, model and year of the motor vehicle and whether or not that vehicle was equipped with power brakes and steering;
    b. the nature of the malfunction;
    c. the date the motor vehicle was purchased and the name and address of the person from whom the motor vehicle was purchased;
    d. the date that that portion of the motor vehicle in which the malfunction occurred was last inspected and the name and address of the person inspecting same;
    e. the last date prior to the accident that that portion of the motor vehicle was repaired or replaced, the nature and extent of the repairs, the name and address of the person repairing or replacing same;
    f. if the motor vehicle was repaired after the accident, state the name and address of the person repairing same and the nature of the repairs; and
    g. attach a copy of any repair bills.

12. If the collision occurred at an uncontrolled intersection, state:
    a. which vehicle entered the intersection first;

    b. whether your vehicle came to a full stop before entering the intersection; and

    c. if your vehicle did not come to a full stop before entering the intersection, state the speed of your vehicle when it entered the intersection.

13. State in terms of feet, the distance between:
    a. the front of your vehicle and the point of impact at the time you first observed the other vehicle or vehicles collided with, and state your speed at that time;

    b. the front of the other vehicle or vehicles collided with and the point of contact at the time you first observed it or them and state its or their speed at that time; and

    c. your vehicle and the vehicle or vehicles collided with at the time you first saw it or them.

14. State where each vehicle came to rest after the impact. Include the distance in terms of feet from the point of impact to the point where each vehicle came to rest.

15. State what part of your vehicle came into contact with what part of the other vehicle or vehicles involved.

16. State the following facts with respect to the collision:
    a. time;
    b. condition of weather;

    c. condition of visibility; and

    d. condition of roadway.

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Example 35 - Continued

17. State the names and addresses of all persons occupying your vehicle.

18. Did you observe the plaintiff's vehicle prior to the accident?
☐ Yes
☐ No
If the answer is "Yes," set forth the time that elapsed from the time you first saw the plaintiff's vehicle until the impact occurred.

19. At the time of the impact, state the speeds of all vehicles involved in the collision.

20. Were you charged with a motor vehicle violation as a result of the collision?
☐ Yes
☐ No
If the answer is "Yes," state:
a. charge;
b. plea; and
c. disposition.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated:

_____ _____
Defendant Title (if Corporation)

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Example 36: Defendant's Falldown Interrogatories

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
COUNTY

Plaintiff(s)

vs.

Defendant(s)

DOCKET NO.

CIVIL ACTION
Interrogatories
FALLDOWN CASES ONLY
TO BE ANSWERED BY DEFENDANT

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1, in addition to those responded to in Form C.

1. If the accident or occurrence took place on or about any particular premises, area or location, or involved the use or presence of any object, thing, vehicle, equipment or property, state the name and address of the owner thereof.

2. If anyone other than the owner had any interest, custody, or possession or was in charge of such premises, area, location, object, thing, vehicle, equipment or property, state:
   a. the name and address of such person, firm or corporation; and

   b. the nature and extent of such interest, custody, possession or charge.

3. If you were not present at the time of the accident or occurrence, state:
   a. whether you had notice or knowledge thereof;

   b. when, where, in what manner and from whom such notice or knowledge was received or acquired, and

   c. whether there was any person(s) acting on your behalf present on the premises at the time of plaintiff's injury and, if so, include their name(s) and address(es).

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Example 36 - Continued

4. If prior to the accident or occurrence, you had actual notice or knowledge of the conditions, artificial or natural, alleged by the plaintiff to have caused or resulted in the accident or occurrence, state:
   a. on what date you had such actual notice or first acquired such knowledge, and

   b. the manner in which such notice or knowledge was received or acquired.

5. If the complaint or any answers to interrogatories by plaintiff allege that artificial conditions caused or resulted in the accident or occurrence or was causally related thereto, state when and by whom such artificial conditions were created.

6. If you had notice of or were in any manner made aware of any such artificial conditions, state when and what steps you took to eliminate them or make them safe or give any notice of their existence.

7. Do you, or does any person acting on your behalf, have any reports concerning the occurrence of plaintiff's injury?
   ☐ Yes
   ☐ No
   If the answer is "Yes," state:
   a. the full name, present or last-known address and telephone number of the person making it;

   b. the date made;

   c. the purpose of each report, including, but not limited to, investigatory or accident report;

   d. the field of expertise and relationship to you of the person making it;

   e. whether or not it was made in the regular course of business;

   f. the findings;

   g. whether it was written or oral; and

   h. if written, attach a copy hereto, and if oral, set forth the substance thereof.

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Example 36 - Continued

8. State whether any repairs were made to the premises or property after plaintiff's injury.
   ☐ Yes
   ☐ No
   If the answer is "Yes," state:
   a. the full name and present or last-known address of each person who endeavored to correct the condition;

   b. indicate the nature of the work performed; and

   c. describe in detail the exact nature and location of the condition as it was found to exist prior to any work performed.

9. Do you claim that plaintiff was not lawfully on said premises at the time of the occurrence of the injury?
   ☐ Yes
   ☐ No
   If the answer is "Yes," state:
   a. what you claim to be the legal status of plaintiff at said time; and

   b. the factual basis of your claim.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated:

_____ Defendant

_____ Title (if Corporation)

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Example 37: Plaintiff's Personal Injury Interrogatories

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION Interrogatories ALL PERSONAL INJURY CASES TO BE ANSWERED BY PLAINTIFF

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1.

1. Full name, present address and date of birth.

2. Describe in detail your version of the accident or occurrence setting forth the date, location, time and weather.

3. Detailed description of nature, extent and duration of any and all injuries.

Example 37 - Continued

4. Detailed description of injury or condition claimed to be permanent together with all present complaints.

5. If confined to a hospital, state its name and address, and dates of admission and discharge.

6. If any diagnostic tests were performed, state the type of test performed, name and address of place where performed, date each test was performed and what each test disclosed. Attach a copy of the test results.

7. If treated by any health care provider, state the name and present address of each health care provider, the dates and places where treatments were received and the date of last treatment. Attach true copies of all written reports provided to you by any such health care provider whom you propose to have testify on your behalf.

8. If still being treated, the name and address of each doctor or health care provider rendering treatment, where and how often treatment is received and the nature of the treatment.

Example 37 - Continued

9. If a previous injury, disease, illness or condition is claimed to have been aggravated, accelerated or exacerbated, specify in detail the nature of each and the name and present address of each health care provider, if any, who ever provided treatment for the condition.

10. If employed at the time of the accident, state:
    a. name and address of employer;

    b. position held and nature of work performed;

    c. average weekly wages for past year;

    d. period of time lost from employment, giving dates; and

    e. amount of wages lost, if any.

11. If there has been a return to employment or occupation, state:
    a. name and address of present employer;

    b. position held and nature of work performed; and

    c. present weekly wages, earnings, income or profit.

12. If other loss of income, profit or earnings is claimed:
    a. state total amount of the loss;

    b. give a complete detailed computation of the loss; and

    c. state the nature and source of the loss of income, profit and earnings, and the dates of the deprivation.

13. Itemize in complete detail any and all moneys expended or expenses incurred for hospitals, doctors, nurses, diagnostic tests or health care providers, x-rays, medicines, care and appliances and state the name and address of each payee and the amount paid and owed each payee.

14. Itemize any and all other losses or expenses incurred not otherwise set forth.

Example 37 - Continued

15. Identify all documents that may relate to this action, and attach copies of each such document.

16. State the names and addresses of all eyewitnesses to the accident or occurrence, their relationship to you and their interest in this lawsuit.

17. State the names and addresses of all persons who have knowledge of any facts relating to the case.

18. If any photographs, videotapes, audio tapes or other forms of electronic recording, sketches, reproductions, charts or maps were made with respect to anything that is relevant to the subject matter of the complaint, describe: (a) the number of each; (b) what each shows or contains; (c) the date taken or made; (d) the names and addresses of the persons who made them; (e) in whose possession they are at present; and (f) if in your possession, attach a copy, or if not subject to convenient copying, state the location where inspection and copying may take place.

19. If you claim that the defendant made any admissions as to the subject matter of this lawsuit, state:
    a. the date made;
    b. the name of the person by whom admissions were made;
    c. the name and address of the person to whom made;
    d. where made;
    e. the name and address of each person present at the time the admission was made;

Example 37 - Continued

f. the contents of the admission; and

g. if in writing, attach a copy.

20. If you or your representative and the defendant have had any oral communication concerning the subject matter of this lawsuit, state:

a. the date of the communication;

b. the name and address of each participant;

c. the name and address of each person present at the time of such communication;

d. where such communication took place; and

e. a summary of what was said by each party participating in the communication.

21. If you have obtained a statement from any person not a party to this action, state:

a. the name and present address of the person who gave the statement;

b. whether the statement was oral or in writing and if in writing, attach a copy;

c. the date the statement was obtained;

d. if such statement was oral, whether a recording was made, and if so, the nature of the recording and the name and present address of the person who has custody of it;

e. if the statement was written, whether it was signed by the person making it;

f. the name and address of the person who obtained the statement; and

g. if the statement was oral, a detailed summary of its contents.

Example 37 - Continued

22. If you claim that the violation of any statute, rule, regulation or ordinance is a factor in this litigation, state the exact title and section.

23. State the names and addresses of any and all proposed expert witnesses. Set forth in detail the qualifications of each expert named and attach a copy of each expert's current résumé. Also attach true copies of all written reports provided to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians who are expected to testify at trial and with respect to any person who has conducted an examination pursuant to Rule 4:19, who may testify, state each such witness's name, address and area of expertise and attach a true copy of all written reports provided to you. If a report is not written, supply a summary of any oral report provided to you.

State the subject matter on which your experts are expected to testify.

State the substance of the facts and opinions to which your experts are expected to testify and a summary of the grounds for each opinion.

24. State whether you have ever been convicted of a crime:

☐ Yes
☐ No

If the answer is "Yes," state:
a. date;
b. place; and
c. nature.

Example 37 - Continued

Note: THIS QUESTION TO BE ANSWERED ONLY IN AUTOMOBILE ACCIDENT CASES

25. Do you have insurance coverage and/or PIP benefits under an applicable policy or policies of automobile insurance? As to each such policy provide the name and address of the insurance carrier, policy number, the named insured and attach a copy of the declaration sheet.

If you are making a claim for property damage to a motor vehicle, provide answers to the uniform interrogatories contained in Form B, questions 1 through 18.

FOR MEDICAL MALPRACTICE CASES, ALSO ANSWER FORM [ASI Form #434S]
FOR PRODUCT LIABILITY CASES (OTHER THAN PHARMACEUTICAL AND TOXIC TORT CASES), ALSO ANSWER A(2) [ASI Form #442S]

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

_____ Date

_____ Plaintiff

Example 38: Defendant's Personal Injury Interrogatories

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
COUNTY

Plaintiff(s)

vs.

Defendant(s)

DOCKET NO.

CIVIL ACTION
Interrogatories
TO BE ANSWERED BY DEFENDANT
IN ALL PERSONAL INJURY CASES

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1.

1. State:
   a. the full name and residence address of each defendant;
   b. if a corporation, the exact corporate name; and
   c. if a partnership, the exact partnership name and the full name and residence address of each partner.

2. Describe in detail your version of the accident or occurrence setting forth the date, location, time and weather.

Example 38 - Continued

3. If you intend to set up or plead or have set up or pleaded negligence or any other separate defense as to the plaintiff or if you have or intend to set up a counterclaim or third-party action.
   a. state the facts upon which you intend to predicate such defenses, counterclaim or third-party action; and
   b. identify a copy of every document relating to such facts.

4. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

5. State:
   a. the name and address of any person who has made a statement regarding this lawsuit;
   b. whether the statement was oral or in writing;
   c. the date the statement was made;
   d. the name and address of the person to whom the statement was made;
   e. the name and address of each person present when the statement was made; and
   f. the name and address of each person who has knowledge of the statement.

   Unless subject to a claim of privilege, which must be specified:
   g. attach a copy of the statement, if it is in writing;
   h. if the statement was oral, state whether a recording was made and, if so, set forth the nature of the recording and the name and address of the person who has custody of it; and
   i. if the statement was oral and no recording was made, provide a detailed summary of its contents.

Example 38 - Continued

6. If you claim that the plaintiff made any statements or admissions as to the subject matter of this lawsuit, state:
   a. the date made;
   b. the name of the person by whom made;
   c. the name and address of the person to whom made;
   d. where made;
   e. the name and address of each person present at the time the admission was made;
   f. the contents of the admission; and
   g. if in writing, attach a copy.

7. If you contend that the plaintiff's damages were caused or contributed to by the negligence of any other person, set forth the name and address of the other person and the facts upon which you will rely in establishing that negligence.

8. State the names and addresses of all eye witnesses to the accident or occurrence, their relationship to you and their interest in this lawsuit.

9. If any photographs, videotapes, audio tapes or other forms of electronic recording, sketches, reproductions, charts or maps were made with respect to anything that is relevant to the subject matter of the complaint, describe:
   a. the number of each;
   b. what each shows or contains;
   c. the date taken or made;
   d. the names and addresses of the persons who made them;
   e. in whose possession they are at present; and
   f. if in your possession, attach a copy, or if not subject to convenient copying, state the location where inspection and copying may take place.

Example 38 - Continued

10. State the names and addresses of any and all proposed expert witnesses. Set forth in detail the qualifications of each expert named and attach a copy of each expert's current résumé. Also attach true copies of all written reports provided to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians, who are expected to testify at trial, and with respect to any person who has conducted an examination pursuant to Rule 4:19, state each such witness's name, address and area of expertise and attach a true copy of all written reports provided to you. If a report is not written, supply a summary of any oral report provided to you.

State the subject matter on which your experts are expected to testify.

State the substance of the facts and opinions to which your experts are expected to testify and provide a summary of the factual grounds for each opinion.

11. If you contend or intend to contend at the time of trial that the plaintiff sustained personal injuries in any prior or subsequent accident, state:

a. the date of said accident;
b. the injuries you contend that plaintiff sustained;
c. the parties involved in said accident;
d. the source from which you obtained the information; and
e. attach a copy of any written documents regarding this information.

12. If you intend to rely on any statute, rule, regulation or ordinance, state the exact title and section.

Example 38 - Continued

13. Pursuant to R. 4:10-2(b), state whether there are any insurance agreements including excess policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

☐ Yes
☐ No

If the answer is "Yes," attach a copy of each insurance agreement or policy, or in the alternative state:

a. number;
b. name and address of insurer or issuer;
c. inception and expiration dates;
d. names and addresses of all persons insured thereunder;
e. personal injury limits;
f. property damage limits;
g. medical payment limits;
h. name and address of person who has custody and possession thereof; and
i. where and when each policy or agreement can be inspected and copied.

14. Identify all documents that may relate to this action, and attach copies of each such document.

15. State whether you have ever been convicted of a crime.

☐ Yes
☐ No

If the answer is "Yes," state:

a. date;
b. place; and
c. nature.

Example 38 - Continued

Note: Please check one of the boxes below:

- ☐ For AUTOMOBILE cases, also answer Form C(1) (ASI #437S).
- ☐ For FALLDOWN cases, also answer Form C(2) (ASI #438S).
- ☐ For MEDICAL MALPRACTICE cases, also answer Form C(3) (ASI #439S).
- ☐ For PRODUCT LIABILITY cases (Other Than Pharmaceutical and Toxic Tort Cases), also answer Form C(4) (ASI #447S)

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated:

_____ _____

Defendant Title (if Corporation)

Example 39: Plaintiff's Medical Malpractice Interrogatories

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION Interrogatories Medical Malpractice Cases Only To Be Answered by Plaintiff

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1.

1. State your full name, address, date and place of birth and Social Security number.

2. State the date on which you first came under the medical care of the defendant(s).

3. State the reason(s) you first consulted the defendant(s).

Example 39 - Continued

4. State in detail the medical history you gave the defendant(s).

5. Describe the examination performed by the defendant(s) the first time you came under defendant's medical care.

6. Set forth each date on which you presented yourself to defendant(s) for examination and/or treatment and describe in detail the treatment given to you on each date.

7. State the name of each defendant that you contend was negligent, and state what you contend that each such defendant did that should not have been done and what you contend that each defendant did not do that should have been done, and the dates thereof. Set forth all facts on which you base your contentions. If you are relying on any written documents or records, identify those documents and records, and state the material in each document which you contend demonstrates negligence.

8. State the names and addresses of all persons having knowledge of relevant facts relating to this lawsuit and specify those who are eyewitnesses to any act of negligence.

Example 39 - Continued

9. State the names and addresses of any and all proposed expert witnesses. Set forth in detail the qualifications of each expert named and attach a copy of each expert's current resume. Also attach true copies of all written reports provided to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians, who are expected to testify at trial, and with respect to any person who has conducted an examination pursuant to Rule 4:19, state each such witness's name, address and area of expertise and attach a true copy of all written reports provided to you. If a report is not written, supply a summary of any oral report provided to you.

State the subject matter on which your experts are expected to testify.

State the substance of the facts and opinions to which your experts are expected to testify and provide a summary of the factual grounds for each opinion.

10. If you or your expert intend to rely on or use in any way at trial any treatise, identify the treatise by title, author and edition and indicate the pertinent portions to be relied on or used at trial.

11. State whether or not you have been admitted to any hospital or other medical treatment facility in the last ten years and if so, state the name of the hospital or facility, the dates of admission and discharge, the illness, disease or condition that caused such admission and the names and addresses of the doctor(s) who treated you during such admission.

12. State whether you have undergone a physical examination in connection with employment or any application for employment in the last ten years. If so, state the date of any such examination, where it was conducted, who conducted the examination and whether there is a report of such physical examination. If a report was made, attach a true copy. If any such physical examination resulted in action being taken on your behalf or against you, please describe such action.

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Example 39 - Continued

13. State whether you have ever suffered from any injury or disease other than the condition for which you consulted the defendant(s). If so, specify in detail the nature of each such injury or disease and the name and present address of each health care provider, if any, who ever provided treatment for the condition.

14. State whether you have ever had a family physician and if so, state physician's name, address and telephone number. Specify and describe any illness or injury for which the family physician has treated you during the past ten years.

15. State whether you have consulted any other health care provider in the past ten years. If so, specify in detail the nature of the condition for which you consulted the health care provider and the name and present address of each health care provider who ever provided treatment for the condition.

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Example 39 - Continued

16. State whether any admissions or statements were made by any party to this action or their agents, servants or employees and if so, state:

a. whether oral, written or otherwise recorded;
b. the date, time and place made;
c. if oral, the words used, or a summary of same;
d. if written, attach a copy; and
e. the names and addresses of all persons present at the time and place the statements or admissions were made.

17. State whether you have ever made a claim or filed a lawsuit against anyone arising out of any personal injury and if so, state for each such claim or lawsuit:

a. the date and place the injury occurred;
b. the court or place of filing;
c. the date of filing;
d. the names and addresses of all parties and their attorneys;
e. the nature and extent of all injuries;
f. the docket or claim number; and
g. the present status of each such lawsuit or claim, and if concluded, describe the manner in which the lawsuit or claim was concluded and the payment, if any, you received.

18. Describe the injuries you sustained as a result of the negligence claimed in this lawsuit.

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Example 39 - Continued

19. If you were treated, attended or examined by any physician(s) or others for the injuries identified in response to Question 18, state:

a. the names and addresses of all such persons;
b. whether you were admitted to a hospital or other medical treatment facility and if so provide the name and address of the facility and the dates of admission and discharge;
c. the dates of every treatment or examination and where they took place; and
d. state the nature of the medical treatment given by each physician or other person.

20. State whether you are still afflicted with or suffering from the effects of any injury, illness or disability as a result of defendant's negligence. If so, describe in detail.

21. Set forth all claims for economic damages against the defendant(s), including lost wages, and itemize the amounts paid or owed, dates incurred, and the names and addresses of each person to whom paid or owed.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated:

_____
Plaintiff Signature

Example 40: Defendants' Medical Malpractice Interrogatories

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION Interrogatories MEDICAL MALPRACTICE CASES ONLY TO BE ANSWERED BY DEFENDANT

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1, in addition to those responded to in Form C.

1. Identify and describe the appearance of each and every person who was present in the vicinity of the alleged occurrence, giving the name, address and occupation of each such person and stating your relationship to each.

2. Describe in detail all aspects of your professional medical relationship with the plaintiff, indicating the date of commencement, the nature and extent of your medical relationship prior to the alleged occurrence, and the date and circumstances of the termination of your professional medical relationship.

Example 40 - Continued

3. In reference to the condition that forms the basis of the complaint, set forth:
   a. the date(s) and circumstances under which you saw plaintiff;
   b. any all medical history given to you;
   c. the examination(s) conducted of the plaintiff;
   d. your findings on each examination;
   e. your prognosis and diagnosis following each examination; and
   f. any treatment or medication prescribed.

4. Attach your Curriculum Vitae or describe in detail your education, training, experience, published materials, service on boards and committees, continuing education and certifications, prior work and hospital affiliations, licenses and specialties.

5. Have your full rights or privileges to practice medicine been suspended, revoked or terminated in any state or hospital since you started to practice medicine?

☐ Yes
☐ No

If the answer to this question is "Yes," state:

a. the reason why your full rights or privileges to practice medicine or any hospital association were suspended, revoked or terminated; and

b. the name of the state or hospital that suspended, revoked or terminated your full rights or privileges to practice medicine.

6. If you have ever been a defendant in a malpractice suit other than the present one, identify the case by name, court and docket number, and summarize the allegations against you and the outcome of the case, including the terms of any settlement.

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Example 40 - Continued

7. Attach a complete copy of any written records or documents that you have regarding plaintiff, along with a typed transcription of any handwritten records and documents.

8. Attach a copy of all documents that the plaintiff signed consenting to any treatment or procedures performed or prescribed by you, as well as a copy of any literature, material, pamphlets, instructions or other information or documents that you supplied to plaintiff.

9. List all risks that you described to the plaintiff with respect to any treatment or procedures you prescribed or performed.

10. If you contend that the plaintiff's injuries were caused in whole or in part by an inherent defect in a drug, instrument, implement or other type of product or substance, identify each such allegedly defective item, including in your identification:

a. a complete description of its appearance, and appearance of its container or wrapper, if any;
b. the name and address of its manufacturer;
c. the name and address of the dealer or seller who sold it to the person who owned it at the time of the alleged occurrence;
d. the name, occupation, title, address and professional relationship to you of the person who owned it at the time of the occurrence;
e. a description of the use to which it is normally put;
f. its serial number, batch number or other specific identifying characteristics; and
g. the medical name for this product and a lay description of it and its use.

11. If there were any reviews performed, including investigations undertaken, hearings held or reports prepared, by the hospital, its medical staff or any officer, committee or agency of the hospital or any public body or other person or persons concerning the condition that forms the basis of the complaint, state:

a. the name and position of the person, persons or committee that performed the review;
b. the date and time of each review;
c. the name, address, profession or professional relationship to you of all persons present at each review;
d. the nature and purpose of each review;
e. whether the review was recorded; and
f. the name and address of each person who has any records concerning each review.

12. Did you refer to or rely upon any medical texts or publications in connection with the diagnosis or treatment of plaintiff?

☐ Yes
☐ No

If the answer to this question is "Yes," identify those items by title, author and publisher.

Example 40 - Continued

13. If you or your expert intend to rely on or use in any way at trial any treatise, identify the treatise by title, author and edition and indicate the pertinent portions to be relied on or used at trial.

14. If you claim that the alleged occurrence resulted from the plaintiff's own lack of care set forth as fully and specifically as you can what acts, conduct or omissions constituted such lack of due care.

15. State the names and addresses of all consultants or other physicians who saw, examined and treated plaintiff at your request for the condition forming the basis of the complaint, and in relation to all such consultations or examinations by other physicians indicate:

a. the reason you requested consultations or further examination;
b. when the consultation or examination took place; and
c. all opinions or reports rendered to you by the consultant or examining physician, and if the reports were oral, set forth the contents in detail.

16. The plaintiff in the complaint alleges that while under your care he/she sustained the injury and disability which is the subject matter of this lawsuit. In relation to such injury and disability, indicate in your opinion the cause of that injury and disability.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Date:

_____
Defendant

Example 41: Plaintiff's Product Liability (Other than Pharmaceutical and Toxic Tort Cases) Interrogatories

Attorney(s):
Law Firm:
Office Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION INTERROGATORIES PRODUCT LIABILITY CASES (OTHER THAN PHARMACEUTICAL AND TOXIC TORT CASES) TO BE ANSWERED BY PLAINTIFF

TO:

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1.

1. Describe in detail and with specificity the product involved in the incident that is the subject of this lawsuit, including the manufacturer's name, brand name, model number, serial number or other identifying decal or feature on the product.

If the product involved is a motor vehicle or any other product with component parts or systems, describe any part(s) or system(s) claimed to be defective or negligently designed, manufactured or distributed, or otherwise complained of.

2. Do you claim (a) that the product was defectively designed; (b) that the product was defectively manufactured; and/or (c) that the labelings or warnings on, attached to or accompanying the product were inadequate, misleading or insufficient? If so, set forth all facts (not legal conclusions) in support of your contention(s).

Example 41 - Continued

3. Do you claim that the defendant was negligent? If so, set forth all facts (not legal conclusions) in support of your contention. Do you claim that the defendant breached a warranty? If so, set forth all facts (not legal conclusions) in support of your contention. Set forth why any claims of negligence or breach of warranty are not subsumed in the product liability claim.

4. Identify all correspondence between plaintiff and the defendant or its representatives, and attach copies.

5. How did plaintiff come into possession of or contact with the product involved in the accident incident?

6. How long had the product involved in this incident been in the possession of or used by the plaintiff before the incident?

7. During the time given in response to the immediately preceding interrogatory, where was the product kept?

8. Where was the product immediately after the incident?

9. With respect to the product involved in the incident, set forth: (a) the name and address of the person presently having custody of the product; (b) the present location of the product; and (c) the last date that the product was in your possession.

10. State whether the product is currently in the same condition as immediately after the incident. If not, fully describe the changes that have occurred, who made them, the reason for such changes and the date they were made.

11. Did the product have any words or symbols on it or its packaging, or any written or pictured warnings attached to it? If so, set forth each writing and describe each symbol or picture.

Example 41 - Continued

12. Was an owner's manual or other literature provided with the product? If so, attach such manual or literature or, if a copy is not available, describe the manual or other literature and summarize its contents.

13. Have you ever pursued a workers' compensation claim for injuries sustained as a result of the incident that is the subject of this lawsuit? If so, set forth: (a) the title and venue of every workers' compensation proceeding to which you have been a party; (b) the date upon which each such proceeding was instituted; (c) the date on which each such proceeding was tried and settled; (d) the name and address of each doctor who examined you in connection with each such proceeding; (e) the amount of the award you received from each such proceeding; and (f) the name and address of every employer or insurance company that has actually paid you workers' compensation benefits.

14. Do you contend that the design, labeling and warnings, manufacture or distribution of the product was governed by any governmental and/or industry codes, standards, regulations or advisories? If so: (a) state the name and address of the governmental agency or department, or the industry office; and (b) specifically identify the codes, standards, regulations or advisories by title and numerical, alphabetical or other coded designation.

15. Did you sustain any property damage or other economic loss as a result of the incident that is the subject of this lawsuit? If so, specify all such damages.

16. Do you contend that the product contained a design defect? If so, set forth your contention as to how the product should have been designed in a safer, more appropriate manner.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

_____ Date

_____ *Plaintiff Signature*

Example 42: Plaintiff's Product Liability (Other than Pharmaceutical and Toxic Tort Cases) Interrogatories

Attorney(s):
Law Firm
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION COUNTY DOCKET NO. CIVIL ACTION INTERROGATORIES Product Liability Cases (OTHER THAN PHARMACEUTICAL AND TOXIC TORT CASES ONLY) TO BE ANSWERED BY DEFENDANT

All questions must be answered unless the court otherwise orders or unless a claim of privilege or protective order is made in accordance with R. 4:17-1(b) (3).

INSTRUCTION:
In propounding the interrogatories, plaintiff should provide this information:

a) A description of the product, as specific as possible.

b) The date and place of purchase, if known.

c) The make, model and any serial number or other identifying decal or feature on the product.

d) Any words printed on the product.

e) If the product involved is a motor vehicle or has component parts, a description of any part(s) or system(s) claimed to be defective or negligently designed, manufactured or distributed, or otherwise complained of.

f) A general description of the manner in which plaintiff claims to have been injured.

Answers to these interrogatories should be furnished within the context of the information provided by plaintiff in (a) through (f) above.

Example 42 - Continued

TO:

In compliance with your demand, the undersigned hereby submits Certified Answers to the following Interrogatories in accordance with R. 4:17-1, in addition to those responded to in Form C.

1. Did you manufacture the product? If so, state: (a) the date and place of manufacture; (b) the date you sold or otherwise distributed the product; and (c) the name and address of the person or entity that purchased the product from you. If you did not manufacture the product, state the name and address of the person or firm who did so. State the name and address of the person or entity from which you purchased the product.

2. Did you sell or otherwise distribute the product? If so, state: (a) the date on which you sold or otherwise distributed the product; (b) the names and addresses of all persons and entities that sold or otherwise distributed the product; and the dates of sale and distribution for each such person or entity.

3. State the name and address of any person, firm or entity that did the following with respect to the product (if the product is a motor vehicle or has component parts, this question pertains to the subpart(s) or system(s) complained of): (a) designed it; (b) manufactured it; (c) assembled it; (d) packaged it; (e) distributed it, through sale or otherwise; (f) advertised it; (g) installed it; and (h) serviced or otherwise maintained it.

4. Were there any writings or warnings on the product itself, on its packaging, or on anything attached or appended to the product, when it left your control? If so, state specifically and fully the exact words used and their location. If a warning was given in other than words, attach copies of any and all symbols or depictions used.

5. State whether you provided to a distributor, possible user or any person or firm that you expected to come in contact with the product, any form of written material, such as an owner's manual, repair manual, parts manual or any other writing pertaining to the product. If so, attach a copy of any such written material. If you do not have a copy, state specifically what was written or depicted.

Example 42 - Continued

6. Have you or any other person or entity repaired, altered, or otherwise changed the design or specifications of the product (in the case of a motor vehicle or a product with component parts, this question refers to the subpart(s) or system(s) complained of) from the date of manufacturing to the date of the incident? If so, state: (a) the name and address of the person or entity who made the repair, alteration or change; (b) the date of each such change; (c) the specific details of the change; (d) the name and address of the officer or managing agent or other person(s) in your organization most involved with such change; and (e) the names and addresses of all your employees or agents who were involved in such change. If the change is displayed on plans, specifications, blueprints or other drawings, or described in any document, attach a legible copy of such plans, specifications, blueprints, drawings or documents.

7. If, from the date the product was manufactured until the date of the incident, any writings pertaining to the product were added, altered, or otherwise changed, state: (a) the date of each such change; (b) the specific words or symbols used in each such change; (c) the name and address of the officer, managing agent or other person(s) in your organization most involved with such change; and (d) the names and addresses of all of your employees who were involved in such change.

8. Identify all correspondence between plaintiff and the defendant or its representatives, and attach copies.

9. State whether you intend to assert any defenses at the time of trial.
(a) If so, and the defenses are based upon the common-law, state the principle involved and fully provide the factual basis for any such defense.
(b) If so, and the defenses are based upon a statute, regulation or other written rule, identify each such statute, regulation or rule and fully provide the factual basis for any such defense.
(c) If so, and your defense is based upon an alteration, use, misuse of or other change in the product, indicate each such defense and fully provide the factual basis for any such defense.

10. State whether at any time prior to answering these interrogatories and subsequent to the date of manufacturing or distribution of the product itself or similar products by this defendant, any person complained or alleged that he, she or anyone suffered bodily injuries or death as a result of using the product in the manner in which plaintiff claims to have used the product when the injury occurred. If so: (a) identify all such claimants and their attorneys; (b) describe as specifically as possible the product involved, including but not limited to the model and serial numbers; and (c) if a lawsuit was instituted against the defendant, state the names and addresses of the claimants, their attorney(s) and the court in which such claim was instituted.

Example 42 - Continued

11. If you allege that any other person or entity or product manufactured by any other person or entity is responsible for the incident, provide the name and address of that person or entity, identify the product, if any, and fully provide the factual basis for the allegation.

12. Are you a member of or affiliated with any trade organization or industry group that promulgates written standards, habits or customs pertaining to the product involved in the accident? If so, provide the address of each such organization or group, and attach a copy of the written promulgation.

13. Do you contend that the design, manufacture or distribution of the product was governed by any governmental and/or industry codes, standards, regulations or advisories? If so, (a) state the name and address of the governmental agency or department, or the industry office; and (b) specifically identify the codes, standards, regulations or advisories by title and numerical, alphabetical or other coded designation.

Certification

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts, written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated:

_____ _____

Defendant *Title (if Corporation)*

Example 43: First Set of Interrogatories

Attorney(s)
Office Address
Telephone No.
Fax No.
Attorney(s) for

Plaintiff,	SUPERIOR COURT OF NEW JERSEY DIVISION COUNTY
v.	DOCKET NO.
Defendant.	**CIVIL ACTION**
	FIRST SET OF INTERROGATORIES TO [insert] ON BEHALF OF [insert]

TO: **[insert attorney name]**
[insert firm name and address]
Attorneys for **[insert]**

PLEASE TAKE NOTICE that **[insert]** hereby demand that **[insert]** provide answers to these Interrogatories within the time and in the manner prescribed by the New Jersey Court Rules. The person answering these Interrogatories shall designate which information is not within his or her personal knowledge and, as to that information, shall state the name and address of every person from who it was received, or, if the source of the information is documentary, a full description including the location thereof.

These Interrogatories are deemed continuing so as to require supplemental answers should one obtain further or supplemental information subsequent to the service of answers. If a privilege not to answer is claimed by you, identify each matter to which the privilege is claimed, the nature of the privilege and the legal and factual basis for each such claim. If objection is raised to any Interrogatory contained herein, identify in exact detail the nature of the objection and the legal and/or factual basis for each such objection.

Example 43 - Continued

[insert name of firm]
Attorneys for [insert name of party]

By: _____
[insert attorney name]

Dated:

Example 43 - Continued

INSTRUCTIONS

As used herein:

A. "Document" or "documents" shall include, inter alia, computer disks and/or tapes, and copies thereof, and any data contained or stored on said computer disks and/or tapes, and copies thereof, whether copied or transferred to other disks, tapes, hard drives, hard paper copies or other formats, E-Mail, including records or hard copies of E-Mail, records, correspondence, reports, memoranda, notes, diaries, studies, directives, bulletins, checks (front and reverse), drawings of any nature, photographs, notebooks, logs, financial statements, ledger and journal entries, books of account, vouchers and deposit slips, invoices, shipping documents, receipts, files, press releases and any other writings regardless of the manner in which produced, whether handwritten, typed, printed or produced by any other process, including records of any telephone conversations or recordings by electronic or dictating equipment and videotapes.

B. "Identify", "identity" or "identification" means when used in reference to:

(1) a natural person, his or her:

(a) full name;

(b) Present or last known home and business address (including street name and number, city or town and state); and

(c) present or last known position, business affiliation and job description.

(2) a company, corporation, association, partnership or any legal entity other than a natural person, its:

(a) full name and type of organization or entity;

(b) address of principal place of business; and

(c) jurisdiction and date of incorporation or organization, if known.

Example 43 - Continued

(3) a document:

(a) its description (e.g., letter, memorandum, report, etc.);

(b) its title and date, and number of pages thereof;

(c) its subject matter;

(d) the identity of its author, signer, and any person who participated in its preparation;

(e) the identity of its addressee or recipient;

(f) the identity of each person to whom copies were sent and each person who received copies; and

(g) its present location and the identity of its custodian. (If any such document was, but is no longer in the possession of or subject to control of plaintiff, state what and when disposition was made of it).

(4) an oral communication:

(a) the date, time and place when and where it occurred;

(b) the complete substance of the communication; and

(c) the identity of each person to whom such communication was made, each person by whom such communication was made, and each person who was present when such communication was made.

In lieu of compliance with instructions 3(a-g), supra, you may attach a duplicate copy of each such document to your answers to these interrogatories, marking each copy with the number(s) of the interrogatory answer(s) to which each corresponds.

C. The terms "you" and "your" refers to **[insert name of party]**.

Example 43 - Continued

INTERROGATORIES

1. Set forth the name, address and telephone number of all persons who possess knowledge of any facts relevant to the issues of this suit and describe in detail the extent and nature of their knowledge.

2. Identify each person whom you expect to call at trial as an expert witness.

3. As to each expert witness named in the answer to the preceding Interrogatory, state the subject matter on which he (she) is expected to testify.

4. As to each expert witness named in the answer to Interrogatory No. 2, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Example 43 - Continued

5. As to each expert witness named in the answer to Interrogatory No. 2, state his (her) field of expertise.

6. As to each expert witness named in the answer to Interrogatory No. 2, set forth the full and detailed qualifications, training, professional and practical experience, education and degree obtained by such person. As to each item listed in the answer to this Interrogatory, set forth the dates and/or years of same, as well as the names and addresses of each institution attended; furthermore, set forth the nature of each place at which experience or training was received.

7. Attach to the answers to these Interrogatories one copy of each written report submitted to you (or detailed resume if report was oral) of each expert witness named in the answer to Interrogatory No. 2.

8. State whether there are any other reports in existence from the particular experts named in the answer to Interrogatory No. 2, including draft reports; if any such reports, either written or oral, subsequently become known to you or become available, submit copies thereof as supplemental answers to these Interrogatories.

Example 43 - Continued

9. Identify all articles, treatises or writings of any nature authored by each of the experts identified in the answer to Interrogatory No. 2 touching upon the subject matter of his (her) proposed testimony, or report relating to:

   (a) the within litigation; and

   (b) any other matter, even if not related to this litigation.

10. State whether any experts other than those named in the answer to Interrogatory No. 2 have been retained, specifically employed or consulted by you in anticipation of litigation or preparation for trial and who are not expected to be called as a witness at trial.

11. If your answer to the preceding Interrogatory is in the affirmative, state the subject matter on which each such expert was consulted.

12. List and identify all documents your expert reviewed and/or created including, but not limited to, drafts and handwritten notes, in rendering his report.

Example 43 - Continued

13. State whether any declaration has been made by any person with regard to the issues in this lawsuit, which was against that person's interest; i.e., any statement at the time made which was so far contrary to the declarant's pecuniary or proprietary interest or subjected him to a civil or criminal liability, or rendered invalid a claim by him against another or created such a risk of making him an object of hatred, ridicule or disapproval in the community that a reasonable man in his position would not have made the statement unless he believed it to be true.

14. If the answer to the preceding Interrogatory is in the affirmative, set forth and/or identify the exact words, if known, and if not known, the substance of each such declaration, the persons making each declaration, all persons present when the declaration was made, the place where and the date when each declaration was made. If the declaration was reduced to writing, annex a copy hereto.

15. State whether any admissions, any authorized admissions, any adoptive admissions and/or any vicarious admissions with regard to the issues in this lawsuit have been made by any person.

Example 43 - Continued

16. If the answer to the preceding Interrogatory is in the affirmative, set forth and/or identify the exact words, if known, and if not known, the substance of each such admission, the person making each admission, all persons present when the admission was made, the place where and the date when each admission was made. If the admission was reduced to writing, annex a copy hereto.

17. Set forth the name of each person (except your attorney) with whom you consulted in the preparation of these answers.

18. Set forth, without reference to the pleadings, the factual basis for the allegations contained in Count One of the Complaint. State all persons who have knowledge of your answer, a summary of their knowledge and produce copies of all documents that refer or relate to your answer.

19. Set forth, without reference to the pleadings, the factual basis for the allegations contained in Count Two of the Complaint. State all persons who have knowledge of your answer, a summary of their knowledge and produce copies of all documents that refer or relate to your answer.

Example 43 - Continued

20. Set forth, without reference to the pleadings, the factual basis for the allegations contained in Count Three of the Complaint. State all persons who have knowledge of your answer, a summary of their knowledge and produce copies of all documents that refer or relate to your answer.

21. Set forth, without reference to the pleadings, the factual basis for the allegations contained in Count Four of the Complaint. State all persons who have knowledge of your answer, a summary of their knowledge and produce copies of all documents that refer or relate to your answer.

22. Have you suffered any damages as the result of the defendants' conduct?

23. If the answer to the preceding Interrogatory is anything but an unequivocal no, set forth in detail the amount of your damages and how you calculated same. Produce copies of all documents that refer or relate to your answer.

24. Add other Interrogatories based on the facts of your case.

Example 43 - Continued

CERTIFICATION

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment for contempt of court.

_____

Dated:

Example 44: Interrogatories and Answers

460 SG — INTERROGATORIES, Sale of Merchandise — Services
(To be served on Defendant) PAGE 1

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269 SHEFFIELD STREET, MOUNTAINSIDE, N.J. 07092

Attorney(s):

Office Address & Tel. No.:

Attorney(s) for

Plaintiff(s)

vs.

Defendant(s)

Docket No.

CIVIL ACTION
INTERROGATORIES AND ANSWERS

TO:

Demand is hereby made by the Plaintiff(s) of the Defendant(s)

for answers, under oath or certification, to the following Interrogatories, within the time and in the manner prescribed by the rules of this Court.

Unless otherwise indicated, "merchandise" in these questions refers to the goods and merchandise which are the subject of this suit.

1. State:(a) the full name and residence address of each defendant; (b) if a corporation, the exact corporate name; (c) if a partnership, the full name and residence address of each partner.

2. State in detail:(a) what payments were made by defendant(s) to plaintiff(s); (b) the dates, manner and amount of each payment; (c) if any credits or set-offs other than such payments are claimed, set forth the nature and amounts thereof; (d) attach hereto copies of all checks and receipts pertaining to such payments.

3. If delivery of any of the merchandise is denied, state:(a) which items were not delivered; (b) if notice of non-delivery was given state to whom, when and in what manner; (c) attach copies of any written notices.

4. If delivery of defective merchandise is claimed, state in detail the nature and extent of each defect.

5. State:(a) whether any of the merchandise was returned by defendant(s) to plaintiff(s); (b) what merchandise was returned; (c) the date, place and manner of each return; (d) attach copies of receipts for such returns.

(WHERE SPACE IS INSUFFICIENT FOR FULL ANSWER ATTACH RIDER)

Example 44 - Continued

460 SG — INTERROGATORIES, Sale of Merchandise — Services
(To be served on Defendant) PAGE 2

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269 SHEFFIELD STREET, MOUNTAINSIDE, N.J. 07092

6. If defendant(s) sold, used or otherwise disposed of any of the merchandise, state in detail:(a) which merchandise was so disposed of; (b) the dates thereof; (c) the consideration or price received therefor; (d) the present location of the remaining merchandise.

7. State what amount is owed by defendant(s) to plaintiff(s) on account of the indebtedness upon which this suit is based.

8. State in detail every defense to this suit not already set forth in any of the preceding answers or in the Answer to the Complaint, which will be offered by defendant(s) at the trial of this action, to support any defense or allegation set forth in these answers, attaching hereto a copy of every writing, record or paper forming a part of such proof.

9. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

10. State the names and addresses of any and all proposed expert witnesses and annex true copies of all written reports rendered to defendant(s) by any such proposed expert witnesses.

CERTIFICATION

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: *19* .....

(WHERE SPACE IS INSUFFICIENT FOR FULL ANSWER ATTACH RIDER)

Example 45: Request for Statement of Amount of Damages Claimed

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY DIVISION COUNTY DOCKET NO. CIVIL ACTION **Request for Statement of Amount of Damages Claimed**

TO:

Pursuant to R. 4:5-2 you are hereby requested to submit to the undersigned, in the space below, within 5 days after service hereof upon you, a statement of the amount of damages claimed by you in each count of the Complaint, in the above-entitled action.

Dated:

_____
Attorney(s) for

STATEMENT: The following is the amount of damages claimed in the above-entitled action:

Dated:

_____
Attorney(s) for

5010 - Request for Statement of Amount of Damages Claimed
Rev. 3/99 P3/99

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Example 46: Outstanding Discovery Letter

Woodbridge

March 15, 2000

Benjamin Daniel, Esq.
1 Apple Lane
Westview, NJ 02331

Re: ABC Corp. v. Acme, Inc.

Dear Mr. Daniel:

As you know, we represent plaintiff ABC Corp. in the above-referenced matter. On January 15, 2000, I served you with ABC's First Set of Interrogatories and its Notice to Produce Documents. To date, I have received neither a response to ABC's document request nor answers to its Interrogatories from your client. Kindly provide me with this outstanding discovery within the next ten (10) days.

Thank you for your anticipated cooperation.

Very truly yours,

Lawrence Lawyer

LL/cap

Example 47: Extension to Respond to Discovery Requests

Woodbridge

March 16, 2000

Lawrence Lawyer
1 Apple Street
Westview, NJ 07712

Re: ABC Corp. v. Acme, Inc.

Dear Mr. Lawyer:

Pursuant to our telephone conversation today, this will confirm that you have agreed to give Acme an additional thirty days to respond to ABC's discovery requests.

Thank you for your courtesy.

Very truly yours,

Benjamin Daniel

BD/cap

Example 48: Letter Warning that Discovery Motion Will be Filed

Woodbridge

April 16, 2000

VIA FACSIMILE

Benjamin Daniel
1 Apple Lane
Westview, NJ 02331

Re: ABC Corp. v. Acme, Inc.

Dear Mr. Daniel:

On January 15, 2000, I served you with ABC's First Set of Interrogatories and First Notice to Produce Documents. As a result, Acme's response to ABC's document request was due on February 15, 2000 and its answers to ABC's Interrogatories were due on March 15, 2000. That discovery was never produced. Thereafter, at your request, I extended Acme's time to provide this discovery for an additional thirty days. Nevertheless, I still do not have Acme's discovery.

Please be advised that if I do not have Acme's response to ABC's document request and Acme's answers to ABC's Interrogatories in my office within the next seven days, I will file a motion to suppress Acme's Answer. Please telephone me if you would like to discuss this matter.

Very truly yours,

Lawrence Lawyer

LL/cap

Example 49: Letter to Motions Clerk Filing Motion to Strike Defendants' Answer and Affirmative Defenses, and Accompanying Papers

Woodbridge

January 6, 2000

Motions Clerk
Superior Court of New Jersey
[insert]

Re: **[insert name of case]**
Docket No. [insert]

Dear Sir/Madam:

We represent plaintiff in the above-entitled matter. I have enclosed an original and two copies of the following documents:

1. Notice of Motion to Strike Defendants' Answer and Affirmative Defenses;
2. Certification of **[insert attorney name]**;
3. Certification of Service; and
4. Proposed form of Order.

Kindly file the originals on our behalf and return one copy of each document to me in the enclosed envelope. Please charge our account number **[insert number, if any]** for the filing fees.

Thank you for your attention to this matter.

Very truly yours,

[insert attorney name]

GKW/cap
Enclosures
cc: **[insert names of counsel]**

Example 49 - Continued

Attorney(s)
Office Address
Telephone No.
Fax No.
Attorney(s) for

Plaintiffs, vs. Defendants.	SUPERIOR COURT OF NEW JERSEY **[insert]** DIVISION **[insert]** COUNTY DOCKET NO. **[insert]** **CIVIL ACTION** **NOTICE OF MOTION TO STRIKE DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

TO: **[insert attorney and law firm with address]**
Attorneys for **[insert]**

PLEASE TAKE NOTICE that the undersigned attorneys for plaintiff shall move before the Superior Court of New Jersey, **[insert]** County, **[insert]** Division, on **[insert date]** at **[insert time]**, or as soon thereafter as the matter can be heard, for an Order striking defendant's Answer and Affirmative Defenses without prejudice for failing to answer Interrogatories.

PLEASE TAKE FURTHER NOTICE that in support of this motion, plaintiff will rely on the accompanying Certification of **[insert attorney name]**. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that no dates have been scheduled for a calendar call, trial or pretrial conference.

PLEASE TAKE FURTHER NOTICE that, as detailed in the Certification of **[insert name of attorney]**, plaintiff has complied with the requirements of R. 1:6-2.

PLEASE TAKE FURTHER NOTICE that plaintiff is not in default in responding to any discovery requests propounded by defendant.

Example 49 - Continued

PLEASE TAKE FURTHER NOTICE that plaintiff waives oral argument unless defendant files papers in opposition to this motion.

[insert firm name]
Attorneys for Plaintiff

By: _____
[insert name of attorney]

Dated: **[insert date]**

Example 49 - Continued

Attorney(s)
Office Address
Telephone No.
Fax No.
Attorney(s) for

Plaintiff,	SUPERIOR COURT OF NEW JERSEY **[insert]** DIVISION **[insert]** COUNTY
vs.	DOCKET NO. **[insert]**
Defendant.	**CIVIL ACTION** **CERTIFICATION OF [insert attorney name]**

[insert name of attorney], of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a member of the law firm of **[insert name of firm]**, attorneys for plaintiff. I make this certification in support of plaintiff's motion to strike defendant's Answer and Affirmative Defenses for failing to provide answers to Interrogatories.

2. By letter dated **[insert date]**, I served defendant's attorney, **[insert atty name]** with plaintiffs' First Set of Interrogatories. True and correct copies of the cover letter and Interrogatories are annexed hereto as Exhibits A-B.

3. Defendant has failed to provide answers to plaintiffs' Interrogatories.

4. As detailed in my letter to **[insert atty name]** dated **[insert date]**, a true and correct copy of which is annexed hereto as Exhibit C, I have complied with the requirements of R. 1:6-2, in an effort to resolve this matter without filing a motion. Notwithstanding my efforts, defendant has refused to provide any discovery.

Example 49 - Continued

5. Plaintiff is not in default in responding to any discovery requests propounded by defendant.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____
[insert attorney name]

DATED: **[insert]**

Example 49 - Continued

Attorney(s)
Office Address
Telephone No.
Fax No.
Attorney(s) for

Plaintiff,	SUPERIOR COURT OF NEW JERSEY **[insert]** DIVISION **[insert]** COUNTY
vs.	DOCKET NO. **[insert]**
Defendant.	**CIVIL ACTION** **ORDER**

THIS MATTER having been opened to the Court by **[insert firm name]**, attorneys for plaintiff, seeking an order dismissing defendant's Answer and Affirmative Defenses without prejudice for failing to provide answers to Interrogatories and the Court having considered the papers submitted by the parties, and good cause appearing,

IT IS on this _____ day of _____, 2000

ORDERED as follows:

1. Defendant's Answer and Affirmative Defenses are hereby dismissed without prejudice for failing to answer Interrogatories.

2. Plaintiff shall serve a copy of this Order upon defendant within seven (7) days of plaintiff's counsel's receipt of same.

_____
, J.S.C.

Example 49 - Continued

Attorney(s): **[insert firm name]**
Office Address: **[Insert address]**
Telephone No.: **[Insert telephone no.]**
Fax No.: **[Insert fax no.]**
Attorneys for **[Insert name of party]**

Plaintiff,	SUPERIOR COURT OF NEW JERSEY **[insert]** DIVISION **[insert]** COUNTY
vs.	DOCKET NO. **[insert]**
Defendant.	**CIVIL ACTION** **CERTIFICATION OF SERVICE**

I hereby certify that on the date set forth below, I caused an original and two copies of a Notice of Motion, Certification of **[insert name of attorney]**, proposed Order and the within Certification of Service to be sent via regular mail to:

Motions Clerk
Superior Court of New Jersey
[insert address]

I also caused one copy of the above-named documents to be sent via regular mail to:

[insert names and addresses of counsel to be served]

_____
[insert name of attorney]

Dated: **[insert]**

Example 50: Letter Requesting More Specific Answers to Interrogatories

Woodbridge

April 30, 2000

Benjamin Daniel, Esq.
1 Apple Lane
Westview, NJ 02331

Re: ABC Corp. v. Acme, Inc.

Dear Mr. Daniel:

I have reviewed Acme's answers to ABC's Interrogatories. The answers are entirely deficient. For example, Acme has failed to provide the names and addresses of individuals who have knowledge of the facts of this case. Instead, Acme has stated in response to Interrogatory 1, See documents produced. Additionally, in response to Interrogatories 22 and 23 asking if Acme has suffered any damages, Acme responded "To be supplied."

Please provide more specific answers to these Interrogatories within the next ten (10) days. If I do not receive this information, ABC will file a motion to compel Acme to provide this information. Please telephone me if you would like to discuss this matter in greater detail.

Very truly yours

Lawrence Lawyer

LL/cap

Example 51: Demand for Discovery of Insurance Coverage

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY DIVISION COUNTY DOCKET NO. CIVIL ACTION **Demand for Discovery of Insurance Coverage**

TO:

Pursuant to R.4:10-2 (b) demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. YES ☐ NO ☐

If the answer is "yes," attach a copy of each or in the alternative state, under oath or certification (a) number (b) name and address of insuror or issuer (c) inception and expiration dates (d) names and addresses of all persons insured thereunder (e) personal injury limits (f) property damage limits (g) medical payment limits (h) name and address of person who has custody and possession thereof (i) where and when each policy or agreement can be inspected and copied.

(a)

Dated:

Attorney(s) for

Answering Party Attach Oath or Certification

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(908) 272-0800

Example 52: First Document Request

[insert firm name]
[insert address]
[insert telephone number]
[insert fax number]
Attorneys for **[Insert name of party]**

Plaintiff,	SUPERIOR COURT OF NEW JERSEY **[insert]** DIVISION **[insert]** COUNTY
v.	DOCKET NO. **[insert]**
	CIVIL ACTION
Defendant.	**FIRST DOCUMENT REQUEST TO [insert] ON BEHALF OF [insert]**

TO: **[insert attorney name and address]**
Attorney for **[insert name of party]**

PLEASE TAKE NOTICE that **[insert name of party]** requests that **[insert]** produce at **[insert attorney's office]** the documents described herein.

PLEASE TAKE FURTHER NOTICE that, for the purposes of this notice, the term "documents" shall include, inter alia, computer disks and/or tapes, and copies thereof, and any data contained or stored on said computer disks and/or tapes, and copies thereof, whether copied or transferred to other disks, tapes, hard drives, hard paper copies or other formats, copies of all forms of electronic communications including, but not limited to, E-Mail or data derived from personal digital assistants such

Example 52 - Continued

as Blackberries, Palm Pilots or other handheld wireless devices, records, correspondence, reports, memoranda, notes, diaries, studies, directives, bulletins, checks (front and reverse), drawings of any nature, photographs, notebooks, logs, financial statements, ledger and journal entries, books of account, vouchers and deposit slips, invoices, shipping documents, receipts, files, press releases and any other writings regardless of the manner in which produced, whether handwritten, typed, printed or produced by any other process, including records of any telephone conversations or recordings by electronic or dictating equipment and videotapes.

PLEASE TAKE FURTHER NOTICE that each request for a document or documents shall be deemed to call for the production of the original document or documents to the extent that they are in or subject to, directly or indirectly, the control of the person/entity responding to this request or any of their employees or agents. As to each document produced, you are to identify the person in whose file(s) the document was located. In addition, each request should be considered as including all copies and preliminary drafts of documents which, as to content, differ in any respect from the original or final draft or from each other (e.g., by reason of handwritten notes or comments having been added to one copy of a document but not on the original or other copies thereof).

Example 52 - Continued

PLEASE TAKE FURTHER NOTICE that if you contend that you are entitled to withhold from production any or all documents identified herein on the basis of attorney-client privilege, the work product doctrine or other ground, then do the following with respect to each and every document:

(a) Describe and identify the nature of the document, e.g., letter or memorandum;

(b) State the date of the document;

(c) Identify the persons who sent and received the original and a copy of the document;

(d) State the subject matter of the document; and

(e) State the basis upon which you contend you are entitled to withhold the document from production.

PLEASE TAKE FURTHER NOTICE that you are under a continuing obligation to supplement your response to this Document Request.

PLEASE TAKE FURTHER NOTICE that you must produce the following documents:

1. All documents referring or relating to **[insert category of relevant documents]**.

2. All documents referring or relating to **[insert category of relevant documents]**.

3. All documents referring or relating to **[insert category of relevant documents]**.

[insert firm name]
Attorneys for **[insert name of party]**

By: _____
[insert attorney name]

Dated: **[insert]**

Example 53: Letter to client Regarding Document Requests

Woodbridge

April 16, 2000

Mary Smith
President of ABC, Inc.
20 New Street
Anytown, NJ 07712

Re: ABC Corp. v. Acme, Inc.

Dear Mary:

I have enclosed a Document Request from Acme. Kindly provide me with copies of all documents that Acme has demanded. Please telephone me if you have any questions regarding the Document Request, or if you do not understand what documents must be produced. If the documents are voluminous, I will be happy to come to your office and review the documents with you or your staff.

Thank you for your prompt attention to this matter.

Very truly yours,

Lawrence Lawyer

LL/cap

Example 54: Response to Notice to Produce

Attorney(s): **[insert firm name]**
Office Address: **[Insert address]**
Telephone No.: **[Insert telephone no.]**
Fax No.: **[Insert fax no.]**
Attorneys for **[Insert name of party]**

Plaintiff, v. Defendant.	SUPERIOR COURT OF NEW JERSEY **[insert]** DIVISION **[insert]** COUNTY DOCKET NO.: **[insert]** **CIVIL ACTION** **[Insert name of party]'S RESPONSE TO [insert Name of Party] NOTICE TO PRODUCE**

TO: **[insert name of attorney & firm address]**
Attorneys for **[insert name of party]**

[insert name of party] hereby responds to **[insert name of party]**'s First Notice to Produce (the "Notice") as follows:

SPECIFIC RESPONSES

1. Documents responsive to this request are available for inspection and review upon reasonable notice at the office of **[insert name of party]**'s counsel.

2. See response to request 1.

3. See response to request 1.

4. Objection. This request is overboard, burdensome, and not likely to lead to the discovery of admissible evidence.

Example 54 - Continued

5. See response to request 1.

6. Objection. This request seeks information protected by the attorney client privilege.

Example 54 - Continued

CERTIFICATION OF COMPLETENESS

I hereby certify that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to the request. I further certify that as of this date, to the best of my knowledge and information, the production is complete and accurate based on my personal knowledge. I acknowledge my continuing obligation to make a good faith effort to identify additional documents that are responsive to the request and to promptly serve a supplemental written response and production of such documents, as appropriate, as I become aware of them. The following is a list of the identity and source of knowledge of those who provided information to me:

By: _____

Date: [Name of Party]

Example 55: First Privilege Log

BATES #	DATE	DOCUMENT TYPE	AUTHOR	RECIPIENT	CC:	SUBJECT	COMMENTS
001	2/3/92	Handwritten Notes	Benjamin Daniel, Esq.	John Smith	Don Harris	Lease Negotiation	Attorney/Client
002	2/4/92	Letter	Benjamin Daniel, Esq.	John Smith	Don Harris	Lease Negotiation	Attorney/Client
003	2/8/92	Letter	John Smith	Benjamin Daniel, Esq.	Don Harris	Lease Negotiation	Attorney/Client
064	2/16/92	Draft Contract	Don Harris	John Smith	Benjamin Daniel, Esq.	Underground Storage Tanks	Attorney/Client
078	9/14/98	Letter	Benjamin Daniel, Esq	John Smith	Don Harris	Underground Storage Tanks	Attorney/Client
083	10/3/92	Letter	Benjamin Daniel, Esq.	Don Harris	John Smith	Underground Storage Tanks	Attorney/Client

Example 56: Request for Admissions

Attorney(s): **[insert firm name]**
Office Address: **[Insert address]**
Telephone No.: **[Insert telephone no.]**
Fax No.: **[Insert fax no.]**
Attorneys for **[Insert name of party]**

Plaintiff, vs. Defendant.	SUPERIOR COURT OF NEW JERSEY DIVISION COUNTY Docket No. **CIVIL ACTION** **REQUEST FOR ADMISSIONS**

PLEASE TAKE NOTICE that **[insert name of party]** demands that **[insert name of party]**, admit to the truth of the statements set forth below pursuant to New Jersey Court Rule 4:22-1. Those statements which are not admitted or denied within 30 days shall be deemed admitted. A denial shall fairly meet the substance of the requested admission. If you must qualify the answer or deny only part of a request for admission, you must specifically set forth so much of each statement as is true and qualify or deny the remainder.

REQUESTS FOR ADMISSIONS

1. Do you admit that plaintiff and defendant entered into a lease dated April 1, 1998 (the "Lease") for premises located at 1 Apple Lane, Edgeton, New Jersey (the "Premises").

2. Do you admit that a true copy of the Lease is annexed hereto as Exhibit A?

Example 56 - Continued

3. Do you admit that the monthly rent due under the Lease is $10,000.00, plus sums designated as additional rent?

4. Do you admit that plaintiff has failed to pay the rent for its occupancy of the Premises from January 1, 1999 through September 1, 1999.

[insert name of firm]
Attorneys for **[insert name of party]**

By:_____
[insert attorney name]

Dated: **[insert]**

Example 57: Request for Admissions Form

Attorney(s):
Office Address & Tel. No.:
Attorney(s) for Plaintiff(s)

Plaintiff(s)
vs.
Docket No.
Defendant(s)

CIVIL ACTION
REQUEST FOR ADMISSIONS

TO:

REQUEST is hereby made by the plaintiff(s) of the defendant(s) for the admission of the genuineness of the documents and the truth of the matters hereinafter set forth, within ..... days after the service hereof upon you.

TAKE NOTICE that if you fail to do so each of the matters as to which an admission is requested shall be deemed admitted, unless by the abovementioned time, you have acted or otherwise moved with regard to this request in accordance with the provisions of court rule R. 4:22-1 [District Court R. 6:4-3(c)].

Unless otherwise indicated, "merchandise"or"services" as used herein refers to the goods, merchandise or services which are the subject of this suit.

1. The merchandise or services were ordered from plaintiff by defendant.

2. The merchandise or services were delivered or performed by plaintiff to defendant, as agreed, and were received by defendant free from defects and in good condition.

3. Defendant agreed to pay the price or charges set forth in the complaint.

4. No part of the merchandise has been returned to plaintiff nor has any offer to or tender of return thereof been made by defendant to plaintiff.

5. The copy of the book account or statement annexed to the complaint accurately sets forth the reckoning of the transactions between defendant and plaintiff and of the true amount due and owing from defendant to plaintiff.

6. All credits or setoffs, if any, have been allowed to defendant by plaintiff.

7. The sum of $, as claimed in the complaint, is still due and owing from defendant to plaintiff.

8. There are no defenses, counterclaims or set-offs to this suit which can be set up by defendant against the plaintiff.

Dated: *19* *By*.....

5095-REQUEST FOR ADMISSIONS—ALL COURTS
Sale of Merchandise-Services
ADGR ST—1
COPYRIGHT© 1971 ALL-STATE LEGAL SUPPLY CO.
ONE COMMERCE DRIVE, CRANFORD, N. J. 07016

Example 58: Notice to Take Oral Deposition Form

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY DIVISION COUNTY DOCKET NO. CIVIL ACTION **Notice to Take Oral Depositions**

TO:

PLEASE TAKE NOTICE that in accordance with R. 4:14, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths on , at o'clock M. at New Jersey, with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following person(s) whose testimony is to be taken:

If the foregoing is a corporation or other organization, you shall produce one or more officers, directors, managing agents or other persons deposable on its behalf (R. 4:14-2).

TAKE FURTHER NOTICE that at the same time and place the testimony of the following person(s) will also be taken:

☐ This deposition will be videotaped.

Dated: _____

Service of a copy of the foregoing Notice is hereby acknowledged this day of

_____

4085 - Notice to Take Oral Depositions
R. 4:14-2(a), R. 4:14-9(b)
Rev. 3/99 P3/99

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Example 59: Subpoena

[insert firm name]
[insert address]
[insert telephone number]
[insert fax number]
Attorneys for **[insert name of party]**

Plaintiff, v. Defendant.	SUPERIOR COURT OF NEW JERSEY **[insert]** DIVISION **[insert]** COUNTY DOCKET NO. **[insert]** **CIVIL ACTION** **SUBPOENA DUCES TECUM**

THE STATE OF NEW JERSEY TO: **[insert name and address of witness]**

PLEASE TAKE NOTICE that **[insert name of party]** requests that you (1) produce the documents requested herein on **[insert date]** at **[insert time]** at **[insert location]**, and (2) at the same time and place appear for a deposition.

PLEASE TAKE FURTHER NOTICE that, for the purpose of this notice, the term "documents" shall include inter alia, computer disks, and/or tapes, and copies thereof, and any data contained or stored on said computer disks and/or tapes, and copies thereof, whether copied or transferred to other disks, tapes, hard drives, hard papers copies or other formats, E-Mail, including records or hard copies of E-Mail, records of Voice-Mail, records, correspondence, reports, memoranda, notes, diaries, studies, directives, bulletins, checks (front and reverse), drawings of any nature, photographs, notebooks, logs financial statements, ledger and journal entries, books of account, vouchers and deposit slips, invoices, shipping documents, receipts, files, press releases and any other writings regardless of the manner in which produced, whether handwritten, typed, printed or produced by any other process, including records or any telephone conversations or recordings by electronic or dictating equipment and videotapes.

PLEASE TAKE FURTHER NOTICE that each request for a document or documents shall be deemed to call for the production of the original document or documents to the extent that they are in or subject to, directly or indirectly, the control of the person/entity responding to this request or any of its/her/their employees or agents. As to each documents produced, you are to identify the person in whose file(s) the document was located. In addition, each request should be considered as including all

Example 59 - Continued

copies and preliminary drafts of documents which, as to content, differ in any respect from the original or final draft or from each other (e.g., by reason of handwritten notes or comments having been added to one copy of a documents but not on the original or other copies thereof).

The subpoenaed evidence shall not be produced or released until the date specified for the taking of the deposition. If the deponent is notified that a motion to quash the subpoena has been filed, the deponent shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by all parties to the action.

PLEASE TAKE FURTHER NOTICE that if you contend that you are entitled to withhold from production any or all documents identified herein on the basis of attorney-client privilege, the work product doctrine or other ground, then do the following with respect to each and every document:

(a) Describe and identify the nature of the document, e.g., letter or memorandum;

(b) State the date of the document;

(c) Identify the persons who sent and received the original and a copy of the document;

(d) State the subject matter of the document; and

(e) State the basis upon which you contend you are entitled to withhold the documents from production.

PLEASE TAKE FURTHER NOTICE that you must produce the following documents:

1. All documents (including back-up documents) referring or relating to **[insert category of documents]**.

2. All documents (including back-up documents) referring or relating to **[insert category of documents]**.

3. All documents (including back-up documents) referring or relating to **[insert category of documents]**.

[insert name of firm]
Attorneys for **[insert name of party]**

By: _____
[insert attorney name]

Dated: **[insert]**

Example 60: Deposition Subpoena Form

Attorney(s):
Law Firm:
Address:

Telephone No.:
Fax No.:
Attorney(s) for:

Plaintiff(s) vs. Defendant(s)	SUPERIOR COURT OF NEW JERSEY DIVISION COUNTY DOCKET NO. CIVIL ACTION **Deposition Subpoena**

THE STATE OF NEW JERSEY, TO:

YOU ARE HEREBY COMMANDED TO APPEAR AT:

on at o'clock .M., to testify on oral deposition before a person authorized by the laws of the State of New Jersey to administer oaths, in the above-entitled action. If you are a corporation or other organization, one or more of your officers, directors, managing agents or other persons deposable on your behalf (R. 4:14-2) shall appear at the deposition.

YOU ARE FURTHER COMMANDED to bring with you and produce at that time and place the following books, paper, documents and tangible things:

Pursuant to R. 4:14-7(c) the subpoenaed evidence shall not be produced or released until the date specified for the taking of the deposition. If you are notified that a motion to quash the subpoena has been filed, you shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by all parties to this action.

☐ This deposition will be videotaped.

Failure to comply with this subpoena will subject you to such penalties as are provided by law.

Dated:

Clerk of the Superior Court

19 - Deposition Subpoena
Rev. 3/99 P3/99

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Example 61: Consent Order

Attorney(s)
Office Address:
Telephone No.:
Fax No.:
Attorneys for

Plaintiffs,	SUPERIOR COURT OF NEW JERSEY **[insert]** DIVISION **[insert]** COUNTY
v.	DOCKET NO. **[insert]**
Defendants.	**CIVIL ACTION** **CONSENT ORDER**

THIS MATTER having been opened to the Court by **[insert name of firm]**, attorneys for plaintiffs **[insert name of party]**; **[insert name of attorney and lawfirm]**, seeking an Order scheduling the deposition of **[insert name of party]**, and the parties having mutually agreed that **[insert name of party]** shall appear for a deposition on **[insert date]** at **[insert time]** at the **[insert location of deposition]**, and good cause having been shown;

IT IS on this day of , 2000

ORDERED as follows:

1. **[Insert name of party]** shall appear for her deposition on **[insert date]** at **[insert time]** at the **[insert location of deposition]**; and

2. **[Insert name of party]** shall be liable for attorneys' fees and costs in any motion to enforce the terms of this Order if she fails to appear for the aforesaid deposition unless that deposition is adjourned by agreement of counsel for **[insert party's name]**.

Example 61 - Continued

3. Counsel for plaintiffs shall serve a copy of this Order upon all counsel within seven days of his counsel's receipt of same.

_____
, J.S.C.

The undersigned hereby consent
to the form and entry of
the within Order

[insert name of firm]
Attorneys for Plaintiffs

By: _____
[insert attorney name]

[Insert name of firm]
Attorneys for Defendants

By: _____
[Insert attorney name]

Example 62: Consent Order Scheduling Deposition

Woodbridge

April 1, 2000

Honorable Frank Smith, J.S.C.
Superior Court of New Jersey
Middlesex County - Law Division
1 Kennedy Square
New Brunswick, NJ 08901

Re: ABC Corp. v. Acme, Inc.

Dear Judge Smith:

I have enclosed an original and one copy of a Consent Order scheduling the deposition of Frank James. If it is acceptable, kindly return a signed copy to me in the enclosed envelope. If Your Honor has any questions regarding the Consent Order, I will be pleased to arrange a conference call at the Court's convenience with my adversary.

Thank you for the Court's attention to this matter.

Respectfully yours,

Lawrence Lawyer

LL/cap
cc: Benjamin Daniel, Esq.

Example 63: Certification of Attorney

Attorney(s)
Office Address
Telephone No.
Fax No.
Attorney(s) for

Plaintiff,	SUPERIOR COURT OF NEW JERSEY DIVISION COUNTY
v.	DOCKET NO.
Defendant.	**CIVIL ACTION**
	CERTIFICATION OF **[insert name of attorney]**

[insert name of attorney], of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a member of the law firm of Greenbaum, Rowe, Smith, Ravin, Davis & Himmel LLP, attorneys for **[insert name of party]**. I make this Certification in support of **[insert name of party]**'s motion for **[insert relief you are seeking]**.

2. Annexed hereto as Exhibit A is a true and correct copy of an excerpt of the transcript of the deposition of **[insert name of deponent]**.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____
[insert name of attorney]

Dated: **[insert date]**

V. MOTIONS

A motion is a request that the court enter an order. The types of motions that may be filed are limited only by the creativity of counsel, though certain kinds of motions are expressly authorized by Court Rules. Many of those motions have been mentioned in other sections of this book. *E.g.*, R. 4:6-2 (motions to dismiss complaint); R. 4:6-4(a) (motion for more definite statement); R. 4:23-1(a) (motion to compel discovery). Discovery motions were discussed in Chapter IV.

A. GENERAL RULES

Any pretrial motion should be brought by way of written notice of motion. R. 1:6-2(a). As its name implies, a notice of motion gives notice to the court and other parties and counsel of the fact that your client is filing and serving a motion. R. 1:6-2(a) requires that the notice of motion state the time and place when the motion is to be presented to the court, the grounds on which it is made, and the nature of the relief that is being sought. For the ease of persons receiving the notice of motion, the title of that paper should identify the type of motion being filed and the party filing it (for example, "Plaintiff's Notice of Motion for Summary Judgment"; "Defendant John Doe's Motion to Compel Answers to Interrogatories") rather than simply being titled "Notice of Motion." *See* R. 1:4-1(a)(1). Moreover, a notice of motion must state the discovery end date (or that no end date has been assigned), and whether oral argument is requested or is being waived. You may reserve the right to request oral argument until after you see your opponent's response. *See* **Examples 64, 65, and 66**.

There is a special Rule applicable to parties who move for dismissal from a medical malpractice case pursuant to N.J.S.A. 2A:53A-40. Adopted in 2008, R. 1:6-2(b)(2) requires a movant to attach an affidavit of non-involvement to the notice of motion.

Motions are heard on fixed days, normally every other Friday in most courts. The Judiciary website, www.njcourtsonline.com, *New Jersey Lawyers' Diary*, the *New Jersey Law Journal*, and the *New Jersey Lawyer* newspaper publish lists of scheduled motion return dates. You should consult those lists to determine when a motion may be heard in a particular court, since some courts have different motion hearing schedules. If your notice of motion purports to schedule a motion for consideration on a date that is not designated for motions, the court will normally unilaterally reschedule the motion for the next scheduled motion day. You can avoid inconvenience, or even embarrassment, by ensuring that notices of motion list a recognized motion day as the return date for any motion.

A party filing a notice of motion must also submit a proposed form of order. R. 1:6-2(a). The proposed form of order should contain the exact wording for the relief that the movant wishes the court to order. R. 4:42-1(a) contains the formal requirements for an order. *See* **Examples 67, 68 and 69**. You should always ensure that any proposed order submitted to a court conforms to those provisions. When submitting an order or proposed order, you must always include a self-addressed stamped envelope for the court's use in returning a copy of the entered order stamped "filed" to the attorney. R. 4:42-1(e). This is not only a requirement of the Court Rules but, as a practical matter, it is a cost-saving measure for the court, which shifts the cost of mailing entered orders to the parties. Some judges will not mail an entered order to

counsel without a self-addressed stamped envelope. Middlesex County judges now put their entered orders on the Judiciary website, www.njcourtsonline.com.

The originals of the notice of motion and any affidavits or certifications are to be filed with the Motions Clerk of the county, and the original brief, an original and two copies of the proposed form of order, and copies of the notice of motion and any affidavits or certifications are to be filed with the judge. If no judge has been assigned to the case for all purposes, all of the original papers should be filed with the Motions Clerk. *See* **Examples 70, 71 and 72.** The Clerk will then assign the motion to a judge and transmit the papers to that judge's chambers.

The key documents in connection with any motion are those that support the motion and explain why it should be granted. Some motions, by Court Rule, must be supported with a brief or other specified documents. *E.g.*, R. 4:46-2(a) (motion for summary judgment "shall be served with briefs"); R. 1:6-2(c) (specific requirements for discovery and calendar motions). On all other motions, briefs are optional. Discovery and other relatively routine motions that do not require analysis of cases or statutes often do not include a supporting brief. You should consider whether a brief is necessary to inform the court of the legal arguments involved in the motion, or whether the burden on the court to read an unnecessary brief, and the cost of that brief to the client, suggests that a brief be omitted on a particular motion. On the other hand, you should not expect a judge to decide legal issues on a motion in your favor if you have not supplied a brief to help the judge analyze those issues. Counsel must exercise judgment in this regard. You should consider the level of involvement that the judge has had in the case and how much of the basic factual or legal background needs to be repeated for the judge's benefit. Often, even the most active and able judges require some refreshing about your case due to the

large number of cases that they are handling. Briefs must be served with the rest of the motion papers as required by R. 1:6-5.

If a motion relies on facts that are not either of record or subject to judicial notice, those facts must be submitted to the court by affidavit, R. 1:6-6, or by certification, which is an affidavit that replaces a notary's signature with the signer's own profession that the statements of the certification are true and that if they are wilfully false the signer will be subject to punishment. The required language for a certification is contained in R. 1:4-4(b), which makes a certification the equivalent of an affidavit for motion and other purposes. *See* **Example 73**.

An affidavit must be "made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify." *Id*. Thus, an affidavit must not contain argument. If supporting argumentation is needed, you should submit a brief. Many judges will simply strike all or part of an affidavit that contains argument, as violative of R. 1:6-6; *Sellers v. Schonfeld*, 270 N.J. Super. 424 (App. Div. 1993).

Though it may seem easier for counsel to make himself or herself the affiant rather than the client or another person, you must resist that temptation when only the client or another person has personal knowledge of the facts contained in the affidavit. Swearing to facts that counsel does not actually know constitutes submission of hearsay evidence, for which attorneys have been criticized by the courts, and could amount to false swearing, for which some lawyers have even lost their licenses. Moreover, whenever an attorney submits an affidavit, that attorney becomes a witness as to the facts contained there. While that is not necessarily a problem if the attorney is providing evidence regarding, for example, discovery dealings among counsel, or submitting undisputed documents, an attorney who submits an affidavit regarding facts risks

being turned into a witness who could be deposed or even disqualified from the case. You should take care to limit the scope of any affidavit from yourself to undisputed and other relatively innocuous matters. The affidavit of the client or another person, not yourself, should be offered to prove any contested facts that support a motion. If the affiant is not available to sign the original affidavit, a facsimile may be submitted provided that the attorney certifies to the authenticity of the affiant's signature. R. 1:4-4(c). *See* **Example 74**.

Affidavits may have attached as exhibits copies of papers referred to in the affidavit. R. 1:6-6. Exhibits should not be attached to a brief. Attaching exhibits to an affidavit, provided that the exhibits are relevant, can be very helpful to the court in understanding what key documents say or what deposition testimony has been given. You must not, however, overburden the court with exhibits that add little or nothing to its consideration of the motion. Lengthy or weighty papers do not substitute for strength. Conversely, you should not submit mere fragments that leave the court wondering what has been omitted. Thus, for example, if the motion relies on deposition testimony, counsel should not simply submit those pages on which the testimony being relied upon appears. Instead, the motion should furnish enough of the deposition to allow the court to view that testimony in proper context. This is particularly so if the opposing party can, by supplying that context in its response to the motion, make you appear slippery or untrustworthy. You should attempt to place yourself in the shoes of the judge and determine what materials you would want to have if you were deciding the motion instead of making it, bearing in mind that the motion is one of many that the court will be considering at the same time.

Most of these same considerations apply to the party that opposes a motion. Since the movant gets both the opening submission and the last word in reply papers, while the opponent of a motion receives just one opportunity to be heard, you must be particularly careful to present your case against the motion as completely and persuasively as possible.

R. 1:6-3 sets forth the normal schedule for the filing and service of motion papers. Moving papers must be filed and served 16 days before the specified return date. Responding papers are due 8 days before that date, and the movant's reply papers, if any, must be filed and served 4 days before the return date. *Id.* No other papers are permitted. *Id.* Counsel should therefore stop themselves from filing purported "sur-replies" or other, further rounds of papers unless the court's consent is obtained. Normally, the court will not want any further submissions.

R. 1:6-3(c) provides that service is complete upon receipt, or after three days from regular mailing of papers. Compare R. 1:5-4(b) (service of papers other than motions is complete upon mailing). The appropriate and professionally courteous practice, whether required by the Court Rules or not, is to cause other counsel to receive motion papers on the same day that the court receives them.

If you need more time to file and serve a response or a reply, you should contact the attorney for the opposing party to seek consent to additional time. Once again, unless the client would be prejudiced by such consent, counsel should agree to a reasonable extension as a professional courtesy. Once the consent of opposing counsel has been obtained, the attorney seeking the extension must get the permission of the court. Some judges will not grant motion extensions or adjournments. Others will do so in connection with some or all motions, if all

counsel have consented. If the court extends the time for submission of papers or adjourns the motion, the attorney who obtains the extension should be prepared to confirm that in a letter to the court with copies to all counsel, in order to avoid confusion. *See* **Example 75.**

The parties have the option of requesting oral argument of most motions. However, except in family actions pursuant to R. 5:5-4, unless a party specifically requests oral argument in its moving papers or in timely filed answering papers, the motion will be decided on the papers, without oral argument. R. 1:6-2(d). Motions involving pretrial discovery, or motions addressed to the calendar, such as requests for trial adjournments, will not be argued orally even if a party requests it, unless the party provides a statement of reasons for oral argument and the court advises the parties prior to the return date of the motion that oral argument will be heard. *Id.* Such motions normally do not require extended consideration and are believed not to justify the expenditure of time on oral argument. On any motion, however, the court may direct oral argument even if the parties have not asked for it. *Id.* The court also has the option to order that oral argument be conducted by telephone if that would be more efficient. R. 1:6-2(e).

You should consider oral argument from the point of view of the judge deciding the motion. It is the time to clarify matters that may have been left hazy by the papers, or to answer the judge's policy or other questions. It is not a time for you to show off your rhetorical skills before clients, or to heap abuse on an adversary.

Though few motion arguments are like the dramatic proceedings portrayed on television, oral argument is normally the last opportunity to persuade the judge to adopt a particular viewpoint. You should be fully prepared with the relevant facts and law prior to the oral argument, and should be ready to make a short presentation that summarizes the highlights of

why the client's position on the motion should be adopted. You should always address your remarks to the judge, not to your adversary. Thus, if your adversary says something to which you want to respond at once, tell the *judge* (not your opponent) that, for example, what the adversary said is in error.

Judges typically have many motions for argument on a given day, however, so counsel should not expect to go on at length. The court will make clear whether it wishes to hear more, from whom, and on what subjects.

Often, at the conclusion of oral argument, the judge will announce a decision from the bench. On more complex motions, the judge will normally reserve decision and will thereafter either write an opinion and send it to counsel for the parties or read a decision into the record, either in the presence of or outside the presence of counsel. The court's decision will normally direct one party, usually the victorious party, to prepare a form of order embodying that decision, unless the court finds that it can use the form of order submitted by the movant. The attorney who is directed to prepare the form of order must faithfully attempt to embody the judge's decision in that order, without attempting to take inappropriate liberties. The form of the order must comply with the requirements of R. 4:42-1(a).

If the decision on a motion is mixed, or if the court does not assign a particular attorney to draft the order, you should eagerly volunteer to do so. Often, there is an advantage to be gained by initiating and potentially controlling the drafting process, though there are limits to what you can do to control what goes into the order. Orders are normally to be submitted to the court for consideration under the "five-day rule." R. 4:42-1(c). This means that the attorney who has been directed to prepare and submit the order sends it to the court, with copies

to all other parties, and any party who objects to the form of that order has five days to communicate those objections to the court. *See* **Example 76**. Another procedure, which has been made easier by electronic mail, is to send a draft order to all counsel and seek consent to its form before submitting it to the court. Doing this enables orders to be entered more quickly if consent is obtained. If consent is not forthcoming, then you should submit the order to the court under the five-day rule.

The party who is to draw the form of order should do so promptly. Only an entered order is enforceable. Thus, even if a judge has rendered an opinion favorable to a client, the client has not really won the victory until an order embodying that decision is entered. If you delay submitting an order requested by a judge, you delay your client's victory for which you worked so hard.

Absent receipt of any valid objections to form, the court may sign and enter the form of order submitted. Thus, opposing counsel must be careful to review forms of order carefully when they come in, and to write a letter to the court with any objections to form immediately. If the letter cannot be prepared right away, counsel should protect themselves by telephoning the court to ask for additional time to file objections.

The five-day rule process is not, however, an excuse for parties who lost a motion to delay or obstruct entry of an order embodying that decision. Objections are limited to those addressing the form, not the substance, of the order. Parties retain their right to appeal or, in proper circumstances, to seek reconsideration even if they do not object to the form of the order. *Elliott v. Elliott*, 97 N.J. Super. 10, 11-12 (Ch. Div. 1967).

Once the court has signed a motion order and forwarded a stamped "filed" copy to one counsel, that attorney is responsible for serving a copy of it on all other counsel. *See* **Example 77**. R. 1:5-1(a) requires such service to be made within seven days after the order is signed. In practice, most orders provide that they must be served on all counsel within seven days after receipt of the signed order by the attorney to whom the court sends the order. This accounts for delays in the mail from the court to the attorney.

B. MOTIONS FOR SUMMARY JUDGMENT

R. 4:46 contains special rules for summary judgment motions. Besides that Court Rule, you must familiarize yourself, at a minimum, with the two leading Supreme Court cases on such motions. *Brill v. Guardian Life Ins. Co. of America*, 142 N.J. 520 (1995); *Judson v. Peoples Bank & Trust Co. of Westfield*, 17 N.J. 67 (1954).

A party may seek summary judgment on any or all issues in the case, including liability or damages only. R. 4:46-2(c). The notice of motion must spell out the nature of the summary judgment being sought. *See* **Examples 78 and 79**. Subject to R. 4:42-2, which addresses judgment on multiple claims, a partial summary judgment may be considered a final judgment for purposes of appeal of or execution on that judgment. *Id.*

R. 4:46-1 contains the timing rules applicable to most summary judgment motions. Such a motion may be brought by the party seeking affirmative relief at any time after the expiration of 35 days from the service of the pleading claiming such relief, *id.*, except that in prerogative writ cases that demand the performance of a ministerial act or duty, the plaintiff may seek summary judgment at any time after the filing of the complaint, R. 4:69-2. However, a summary judgment motion must be filed so as to be returnable not later than 30 days before the scheduled trial date. R. 4:46-1.

The briefing schedule on a summary judgment motion differs from that applicable to other motions. A movant must file and serve summary judgment motion papers at least 28 days before the specified motion return date, opposing papers are due 10 days before the return date, and reply papers, if any, must be filed and served at least 4 days before the return date. R. 4:46-1. This schedule was prompted by the fact that movants for summary judgment have, as a practical matter, all the time they need to prepare their motions. In fairness, opponents of such motions are given 18 days instead of the normal 8 days to prepare their responses. And, of course, if additional time is needed, counsel have the option, as discussed above, of seeking consent of their adversaries and the court to an extension of time.

Like R. 1:6-3, R. 4:46-1 states that no other papers besides the moving papers, opposition and reply may be filed without leave of court. Once again, counsel should not presume to file "sur-replies" or other rounds of papers without the court's permission.

Motions for summary judgment assert that there is no dispute of material fact and that, on the undisputed facts, the law compels judgment for the movant. Opponents of such motions try to show either that there are disputes of material fact or that the law does not require judgment for the movant. To aid the court in determining whether there are material facts in dispute, R. 4:46-2(a) requires the movant to submit a statement of material facts with separately numbered paragraphs setting forth each material fact as to which the movant claims no genuine dispute exists, together with citations to the motion record that establish that fact or show that it is undisputed. The opponent of the motion must submit a matching statement addressing each fact cited by the movant as allegedly undisputed and admitting or disputing each such fact, again with citations to the record. R. 4:46-2(b). If there are additional facts that the opponent

contends are material and disputed, each such fact should be included, in a separately numbered paragraph, in the opponent's statement of facts. *Id.* *See* **Examples 80 and 81**.

The aim of this procedure, which was borrowed from the federal practice, is to force parties to confront directly what facts are genuinely disputed and what facts are not, rather than permitting parties to make unsupported assertions that there are or are not genuine disputes of material fact. If you move for summary judgment, you must be careful to document each material fact that allegedly is undisputed or the court may deny summary judgment out of hand. R. 4:46-2(a). If you oppose summary judgment, you must specifically, with record citations, dispute the movant's allegedly undisputed facts or they will be deemed undisputed. R. 4:46-2(b).

A motion for summary judgment may be made with or without supporting affidavits, though a brief is always required. R. 4:46-2(a). If the opponent of the motion requires facts not of record or judicially noticeable to oppose the motion, one or more affidavits must be submitted to establish those facts. R. 4:46-5(a). An opponent who shows, with particularity, that the opponent was unable to present by affidavit facts that are essential to the opposition, may obtain a denial of the motion without prejudice, a continuance to take discovery, or other appropriate relief. *Id.* For example, if the opponent has not been afforded discovery that would help in the opposition, a court will normally deny the motion for summary judgment without prejudice. *Velantzas v. Colgate-Palmolive Co.*, 109 N.J. 189, 193-94 (1988).

You should not, however, fail to serve discovery, wait until a summary judgment motion is made, and then demand discovery. Courts look with disfavor on such tactics. *Auster v. Kinoian*, 153 N.J. Super. 52, 56 (App. Div. 1977). Instead, you should serve discovery in a

timely fashion and require adverse parties to respond properly and promptly to such discovery before a summary judgment motion is presented. *See* Chapter IV.

There are two special sanctions rules in R. 4:46. If any affidavit on a motion for summary judgment is submitted in bad faith or for purposes of delay, the court may award the opposing party the reasonable expenses occasioned by that bad faith filing. R. 4:46-5(b). And, in a case that is tried to conclusion where the prevailing party had made a pretrial motion for summary judgment or partial summary judgment that was denied, the court may award certain counsel fees to the prevailing party after trial if the court finds that the denial of the motion was based on a false or bad faith factual contention raised by the opponent of the motion. R. 4:46-6. As with all sanctions, you should not resort to these procedures as a "knee-jerk" reaction to losing a summary judgment motion. However, there are times when such sanctions are appropriate and should be sought.

If the entire case is not resolved on a summary judgment motion, the court may make an order limiting the factual issues or otherwise setting parameters for trial. R. 4:46-3. Often, the respective R. 4:46-2 statements of the parties expose the fact that there are few, if any, disputed facts for trial. That allows the court to limit the agenda for trial, thus saving both the court and the parties time and money. You should always consider asking the court to enter such an order if the proceedings on a summary judgment motion make clear that the trial can be confined to a few issues.

Finally, if a decision on a summary judgment motion is not communicated to the parties at least 10 days before the scheduled trial date, an adjournment application should be liberally granted. R. 4:46-1. Otherwise, parties might be prejudiced in preparing for trial.

C. MOTIONS FOR RECONSIDERATION

Motions for reconsideration of a court's decision are not favored. Normally, the recourse for a party who disagrees with a decision is to appeal or, where the decision is interlocutory, to seek leave to appeal. The Appellate Division has expressly disapproved the use of a motion for reconsideration as a substitute for a timely appeal. *Palumbo v. Old Bridge Tp.*, 243 N.J. Super. 142, 147 n.3 (App. Div. 1990).

Nonetheless, the Court Rules provide for a motion for reconsideration. R. 4:49-2 allows a party to seek reconsideration of final judgments or orders not later than 20 days after service of the judgment or order on all other parties by the party obtaining it. A motion for reconsideration is required to "state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." *Id.* In other words, the movant for reconsideration has the burden to point to particular, persuasive reasons why the court should reconsider and change its earlier ruling. Absent such a showing, courts will not reconsider their rulings. *See* **Example 82.**

Interlocutory decisions are "subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice." R. 4:42-2. Again, however, mere disagreement with an interlocutory decision does not mean that you should ask a court to reconsider. Judges do not look favorably on requests that they change their minds merely because a party disagrees with their decisions. But if the law has changed since the original decision, if new facts have been developed, or if a party can make a showing comparable to that required by R. 4:49-2, a motion for reconsideration of an interlocutory order may be appropriate.

Example 64: Notice of Motion with Request for Oral Argument

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Charles Dickens

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : : Civil Action : : **DEFENDANT CHARLES DICKENS'S** : **NOTICE OF MOTION FOR** : **[INSERT TYPE OF RELIEF]** : :

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Plaintiff

Arlene Attorney, Esq.
Dewey, Cheatham & Howe
456 Broad Street
Nowheresville, NJ 99999
Attorneys for Defendant Alice Jarndyce

SIR AND MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for defendant Charles Dickens, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert**

Example 64 - Continued

motion return date] at 9 A.M. or as soon thereafter as the matter can be heard, for an Order **[describe relief to be sought].**

PLEASE TAKE FURTHER NOTICE that, in support of this motion, defendant will rely upon the accompanying **[describe supporting papers– brief, certifications of particular persons, etc.]**. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that defendant requests oral argument.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant Charles Dickens

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 65: Notice of Motion Reserving Right to Request Oral Argument

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Charles Dickens

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : Civil Action : **DEFENDANT CHARLES DICKENS'S** : **NOTICE OF MOTION FOR** : **[INSERT TYPE OF RELIEF]**

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Plaintiff

Arlene Attorney, Esq.
Dewey, Cheatham & Howe
456 Broad Street
Nowheresville, NJ 99999
Attorneys for Defendant Alice Jarndyce

SIR AND MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for defendant Charles Dickens, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert**

Example 65 - Continued

motion return date] at 9 A.M. or as soon thereafter as the matter can be heard, for an Order **[describe relief to be sought].**

PLEASE TAKE FURTHER NOTICE that, in support of this motion, defendant will rely upon the accompanying **[describe supporting papers-- brief, certifications of particular persons, etc.].** A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that defendant does not request oral argument at this time, but reserves the right to do so if there is opposition to this motion.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant Charles Dickens

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 66: Notice of Motion Waiving Oral Argument

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Charles Dickens

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : : Civil Action : : **DEFENDANT CHARLES DICKENS'S** : **NOTICE OF MOTION FOR** : **[INSERT TYPE OF RELIEF]** : :

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Plaintiff

Arlene Attorney, Esq.
Dewey, Cheatham & Howe
456 Broad Street
Nowheresville, NJ 99999
Attorneys for Defendant Alice Jarndyce

SIR AND MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for defendant Charles Dickens, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert**

Example 66 - Continued

motion return date] at 9 A.M. or as soon thereafter as the matter can be heard, for an Order **[describe relief to be sought].**

PLEASE TAKE FURTHER NOTICE that, in support of this motion, defendant will rely upon the accompanying **[describe supporting papers-- brief, certifications of particular persons, etc.]**. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that defendant waives oral argument and consents to disposition of this motion on the papers.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant Charles Dickens

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 67: Order Granting Motion

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Charles Dickens

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : : Civil Action : : **ORDER GRANTING MOTION OF** : **DEFENDANT CHARLES DICKENS** : **TO DISMISS COMPLAINT** : :

This matter having been opened to the Court by Lite DePalma Greenberg, LLC, attorneys for defendant Charles Dickens, for an Order dismissing the Complaint with prejudice as against that defendant, on notice to Hungadunga, Hungadunga & McCormick, attorneys for plaintiff, and Dewey, Cheatham & Howe, attorneys for defendant Alice Jarndyce, and the Court having considered the papers submitted by the parties, and having heard oral argument on January 21, 2000, and good cause appearing

IT IS on this _____ day of _____ **[judge will fill in this date when signing the order]** ORDERED as follows:

Example 67 - Continued

1. The motion of defendant Charles Dickens to dismiss the Complaint with prejudice as against him is granted.

2. A case management conference to set a schedule for the remainder of the case shall be conducted on April 1, 2000 at 9 A.M.

_____

[insert judge's name and title, e.g., J.S.C., if known; if not known, simply place "J.S.C." at the far right of the line beneath the signature line]

Example 68: Order Denying Motion

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Charles Dickens

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION PASSAIC COUNTY DOCKET NO. **[insert]** Civil Action **ORDER DENYING MOTION OF DEFENDANT CHARLES DICKENS TO DISMISS COMPLAINT**

This matter having been opened to the Court by Lite DePalma Greenberg, LLC, attorneys for defendant Charles Dickens, for an Order dismissing the Complaint with prejudice as against that defendant, on notice to Hungadunga, Hungadunga & McCormick, attorneys for plaintiff, and Dewey, Cheatham & Howe, attorneys for defendant Alice Jarndyce, and the Court having considered the papers submitted by the parties, and having heard oral argument on January 21, 2000, and good cause appearing

IT IS on this _____ day of _____ **[judge will fill in this date when signing the order]** ORDERED as follows:

Example 68 - Continued

1. The motion of defendant Charles Dickens to dismiss the Complaint with prejudice as against him is denied.

2. A case management conference shall be conducted on April 1, 2000 at 9 A.M.

3. During the pendency of this litigation, all parties shall maintain all documents currently in existence.

_____

[insert judge's name and title, e.g., J.S.C., if known; if not known, simply place "J.S.C." at the far right of the line beneath the signature line]

Example 69: Order Granting in Part and Denying in Part

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Charles Dickens

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : : Civil Action : : **ORDER GRANTING IN PART AND** : **DENYING IN PART MOTION OF** : **DEFENDANT CHARLES DICKENS** : **TO DISMISS COMPLAINT**

This matter having been opened to the Court by Lite DePalma Greenberg, LLC, attorneys for defendant Charles Dickens, for an Order dismissing the Complaint with prejudice as against that defendant, on notice to Hungadunga, Hungadunga & McCormick, attorneys for plaintiff, and Dewey, Cheatham & Howe, attorneys for defendant Alice Jarndyce, and the Court having considered the papers submitted by the parties, and having heard oral argument on January 21, 2000, and good cause appearing

IT IS on this _____ day of _____ **[judge will fill in this date when signing the order]** ORDERED as follows:

Example 69 - Continued

1. The motion of defendant Charles Dickens to dismiss the Complaint with prejudice as against him is granted as to the First Count of the Complaint only. The motion is denied as to all other Counts of the Complaint.

2. A case management conference shall be conducted on April 1, 2000 at 9 A.M.

_____

[insert judge's name and title, e.g., J.S.C., if known; if not known, simply place "J.S.C." at the far right of the line beneath the signature line]

Example 70: Letter to Judge Filing Notice of Motion and Accompanying Papers

Jennifer Jurist, P.J. Ch.
Superior Court of New Jersey
One Kennedy Square
New Brunswick, NJ 08901

Re: Jones v. Smith
Docket No. MID-C-0000-99

Dear Judge Jurist:

This office represents plaintiff in this matter. I am enclosing an original and two copies of plaintiff's notice of motion **[describe nature of relief]**, and supporting Certifications of John Jones, William J. Clinton and Albert Gore for filing, together with plaintiff's supporting brief and an original and two copies of a proposed form of order. Please return the extra copies of the notice of motion and Certifications stamped "filed" to me in the enclosed envelope. Please charge this firm's Superior Court account no. 00000 for the filing fee **[alternative-** This firm's check for the filing fee is enclosed.**]**

By copy of this letter, I am serving one copy of each of the foregoing documents upon my adversary. Thank you for your consideration.

Respectfully,

LAWRENCE LAWYER

LL:nrw
Enclosures
cc: Allen Advocate, Esq. (w/ encs.)
Mr. Charles Client (w/ encs.)

Example 71: Letter to Clerk Filing Notice of Motion and Accompanying Papers

Clerk, Middlesex County
Room 000
One Kennedy Square
New Brunswick, NJ 08901

Re: Jones v. Smith
Docket No. MID-L-0000-99

Dear Sir or Madam:

This office represents plaintiff in this matter. I am enclosing an original and two copies of plaintiff's notice of motion **[describe nature of relief]**, and supporting Certifications of John Jones, William J. Clinton and Albert Gore for filing, together with plaintiff's supporting brief and an original and two copies of a proposed form of order. Please return the extra copies of the notice of motion and Certifications stamped "filed" to me in the enclosed envelope. Please charge this firm's Superior Court account no. 00000 for the filing fee **[alternative-** This firm's check for the filing fee is enclosed.**]**

By copy of this letter, I am serving one copy of each of the foregoing documents upon my adversary. Thank you for your consideration.

Respectfully,

LAWRENCE LAWYER

LL:nrw
Enclosures
cc: Allen Advocate, Esq. (w/ encs.)
Mr. Charles Client (w/ encs.)

Example 72: Letter to Clerk Filing Notice of Motion and Accompanying Papers (Judge already assigned)

Clerk, Middlesex County
Room 000
One Kennedy Square
New Brunswick, NJ 08901

Re: Jones v. Smith
Docket No. MID-L-0000-99

Dear Sir or Madam:

This office represents plaintiff in this matter. I am enclosing an original and one copy of plaintiff's notice of motion **[describe nature of relief]**, and supporting Certifications of John Jones, William J. Clinton and Albert Gore for filing. Please return one copy each of the notice of motion and Certifications stamped "filed" to me in the enclosed envelope. Please charge this firm's Superior Court account no. 00000 for the filing fee **[alternative-** This firm's check for the filing fee is enclosed.**]**

By copy of this letter, I am filing the original supporting brief, the original and two copies of plaintiff's proposed form of order, and one copy of each of the other documents listed above with Hon. Jennifer Jurist, J.S.C., who has been assigned to this matter. I am also serving one copy of each of the foregoing documents upon my adversary. Thank you for your consideration.

Respectfully,

LAWRENCE LAWYER

LL:nrw
Enclosures
cc: Hon. Jennifer Jurist, J.S.C.
Allen Advocate, Esq. (w/ encs.)
Mr. Charles Client (w/ encs.)

Example 73: Certification

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ABC CORP., INC.,	SUPERIOR COURT OF NEW JERSEY
	CHANCERY DIVISION
	PASSAIC COUNTY
Plaintiff,	DOCKET NO. PAS-C-0000-99
vs.	Civil Action
XYZ, INC.,	**CERTIFICATION OF BOB N. WEAVE IN SUPPORT OF PLAINTIFF'S MOTION TO APPOINT A RECEIVER**
Defendant.	

Bob N. Weave, of full age, upon his Certification, says:

1. I am the President of the plaintiff. I have personal knowledge of the facts contained in this Certification.

2. **[Insert factual statements supporting motion, authenticating supporting documents, etc., in this and succeeding paragraphs]**

Example 73 - Continued

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

_____
BOB N. WEAVE

Dated: January ___, 2000

[To convert certification to affidavit- replace "upon his Certification, says:" with "being duly sworn upon his oath, deposes and says," delete "I certify ..." paragraph above, and insert below affiant's signature a notary public or attorney at law signature block similar to that below]

Sworn to and subscribed before me
this ____ day of _____, 2000

_____
[Name of notary or attorney at law],
A Notary Public **[or attorney at law]**
of the State of New Jersey

Example 74: Certification Pursuant to R. 1:4-4(c)

[To be attached to Certification bearing a fax signature]

CERTIFICATION PURSUANT TO R. 1:4-4(c)

The foregoing Certification **[or Affidavit]** of **[name of person]** contains a facsimile signature. Mr. **[Ms., etc., name of affiant]** was not available to sign it. I certify that **[name of affiant]** acknowledged the genuineness of **[his/her]** signature, and that the document or a copy with an original signature affixed will be filed if requested by the Court or any party.

_____
LAWRENCE LAWYER

Dated: January ___, 2000

Example 75: Letter to Judge Confirming Adjournment

Hon. Scott Elliot, J.S.C.
Superior Court of New Jersey
One Kennedy Square
New Brunswick, NJ 08901

Re: Jones v. Smith
Docket No. MID-L-0000-99

Dear Judge Elliott:

This office represents defendant in this matter. This will confirm my telephone conversation this morning with your law clerk, Max Berman, in which it was agreed that, with the consent of all counsel, plaintiff's motion for summary judgment is being adjourned until **[date]**. Defendant's response to that motion will be due on or before **[date]**, and plaintiff's reply papers, if any, will be due on or before **[date]**.

Thank you very much for your consideration.

Respectfully,

LAWRENCE LAWYER

LL:nrw
cc: Allen Advocate, Esq.
Mr. Charles Client

Example 76: Letter to Judge Submitting Proposed Form of Order on Motion

Hon. Scott Elliott, P.J. Civ.
Brennan Courthouse
583 Newark Avenue
Jersey City, NJ 07306

Re: Jones v. Smith
Docket No. HUD-L-0000-99

Dear Judge Elliott:

This office represents defendant John Smith in this matter. I am enclosing an original and two copies of a proposed form of order embodying Your Honor's decision on plaintiff's motion to compel discovery. The order is submitted under the five-day rule. If its form is satisfactory to the Court, and if no valid objections are timely received, please enter the original and return a copy stamped "filed" to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving one copy of the proposed order upon all other counsel. Thank you very much for your consideration.

Respectfully,

LAWRENCE LAWYER

ll:abm
Enclosures
cc: Alan Adversary, Esq. (w/ enc.)
Connie Counsel, Esq. (w/ enc.)

Example 77: Letter to Adversary with Copy of Entered Order

Allen Advocate, Esq.
123 Main Street
Anytown, NJ 00000

Re: Jones v. Smith
Docket No. MID-C-0000-99

Dear Mr. Advocate:

I am enclosing a copy of Judge Jurist's order dated January 3, 2000 on defendant's motion to appoint a receiver. I received this order today.

Very truly yours,

LAWRENCE LAWYER

LL:nrw
Enclosure
cc: Mr. Charles Client (w/ enc.)

Example 78: Notice of Motion for Summary Judgment

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ROBERT JARNDYCE Plaintiff, -vs- CHARLES DICKENS and ALICE JARNDYCE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION PASSAIC COUNTY DOCKET NO. **[insert]** Civil Action **PLAINTIFF'S NOTICE OF MOTION FOR SUMMARY JUDGMENT**

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Defendant Alice Jarndyce

Arlene Attorney, Esq.
Dewey, Cheatham & Howe
456 Broad Street
Nowheresville, NJ 99999
Attorneys for Defendant Charles Dickens

Example 78 - Continued

SIR AND MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for plaintiff, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert motion return date]** at 9 A.M. or as soon thereafter as the matter can be heard, for an Order granting summary judgment in favor of plaintiff on all Counts of the Complaint.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, plaintiff will rely upon the accompanying brief and supporting Certifications of Robert Jarndyce and George W. Bush. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that plaintiff requests oral argument.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 79: Notice of Motion for Partial Summary Judgment

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Alice Jarndyce

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : : Civil Action : : **DEFENDANT ALICE JARNDYCE'S** : **NOTICE OF MOTION FOR** : **PARTIAL SUMMARY JUDGMENT** : **ON FIRST COUNT OF COMPLAINT** :

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Plaintiff

Arlene Attorney, Esq.
Dewey, Cheatham & Howe
456 Broad Street
Nowheresville, NJ 99999
Attorneys for Defendant Charles Dickens

Example 79 - Continued

SIR AND MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for defendant Alice Jarndyce, will move before the Superior Court of New Jersey, Law Division, Passaic County, on **[insert motion return date]** at 9 A.M. or as soon thereafter as the matter can be heard, for an Order granting partial summary judgment in favor of this defendant on the First Count of the Complaint.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, defendant will rely upon the accompanying brief and supporting Certification of Alice Jarndyce and Affidavit of Oliver W. Holmes. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that defendant requests oral argument.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant Alice Jarndyce

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 80: Summary Judgment Movant's Statement of Undisputed Facts

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant

OLIVER HOLMES, Plaintiff, -vs- BRANDEIS INTERNATIONAL, INC., Defendant.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: OCEAN COUNTY DOCKET NO. OCN-L-0000-99 Civil Action **DEFENDANT'S STATEMENT OF UNDISPUTED FACTS PURSUANT TO R. 4:46-2(a)**

1. **[Insert material fact that movant claims is undisputed, supported by citations to record]**

2. **[Insert material fact that movant claims is undisputed, supported by citations to record].**

Example 80 - Continued

3. **[Insert material fact that movant claims is undisputed, supported by citations to the record].**

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant

By: _____
BRUCE D. GREENBERG

Dated: January ____, 2000

Example 81: Summary Judgment Opponent's Response to Statement of Undisputed Facts

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

OLIVER HOLMES,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: OCEAN COUNTY
	:	DOCKET NO. OCN-L-0000-99
Plaintiff,	:	Civil Action
	:	
-vs-	:	
	:	**PLAINTIFF'S RESPONSE TO**
BRANDEIS INTERNATIONAL, INC.,	:	**STATEMENT OF UNDISPUTED**
	:	**FACTS, PURSUANT TO R. 4:46-2(b)**
Defendant.	:	
	:	

1. Mr. Holmes **admits** the facts contained in paragraph 1.

2. Mr. Holmes **admits** the facts contained in the first sentence of paragraph 2, but **disputes** the statements contained in the second sentence. *See* **[insert citations to record that support claimed dispute of fact]**.

Example 81 - Continued

3. Mr. Holmes **disputes** the facts contained in paragraph 3. *See* **[insert citations to record that support claimed dispute of fact]**.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By: _____
BRUCE D. GREENBERG

Dated: January ____, 2000

Example 82: Notice of Motion for Reconsideration

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ROBERT JARNDYCE Plaintiff, -vs- CHARLES DICKENS and ALICE JARNDYCE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION PASSAIC COUNTY DOCKET NO. **[insert]** Civil Action **PLAINTIFF'S NOTICE OF MOTION FOR RECONSIDERATION**

TO: Lawrence Lawyer, Esq.
Hungadunga, Hungadunga & McCormick
123 Main Street
Anytown, NJ 00000
Attorneys for Defendant Alice Jarndyce

Arlene Attorney, Esq.
Dewey, Cheatham & Howe
456 Broad Street
Nowheresville, NJ 99999
Attorneys for Defendant Charles Dickens

Example 82 - Continued

SIR AND MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for plaintiff, will move before the Superior Court of New Jersey, Law Division, Passaic County, Hon. Jennifer Jurist, J.S.C., on **[insert motion return date]** at 9 A.M. or as soon thereafter as the matter can be heard, for an Order granting reconsideration of the Court's Order of **[date]** and entering an Order **[state relief being sought]**.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, plaintiff will rely upon the accompanying brief and supporting Certifications of Robert Jarndyce and George W. Bush. A proposed form of order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that plaintiff requests oral argument.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By: _____
BRUCE D. GREENBERG

Dated: January ___, 2000

VI. OTHER PRETRIAL PROCEEDINGS

A. DEFAULT

If a party against whom affirmative relief is sought fails to plead or defend, the party seeking relief may obtain a default, and then a default judgment. The Court Rules set up this two step process to give parties every opportunity to defend a case on the merits. R. 4:43 contains the rules applicable to defaults and default judgments. Under R. 4:43-4, the same rules apply whether the party entitled to the default or default judgment is a plaintiff, a third-party plaintiff, a counterclaimant, or a crossclaimant.

The first step in the process is the entry of default, which is governed by R. 4:43-1. When you observe that an opposing party has failed to plead or otherwise defend, or if a defendant's answer has been stricken with prejudice, such as for a discovery violation, you may obtain entry of default by writing to the Clerk of the Court in which the case is pending. The request for entry of default must be supported by an attorney's affidavit, which is required to recite the service of process on the defendant, the date of service as appears from the return of process provided by the Sheriff or other process server, and the fact that the time to answer or otherwise move as to the pleading in question has expired and has not been extended. *See* **Example 83**. The request for entry of default is to be made within six months of the actual default. If application is made more than six months after the right to seek that relief has accrued, the application must be made on notice to the defaulting party. R. 4:43-1. This encourages counsel to act in timely fashion. If a defendant was originally served with process either personally or by certified or regular mail, R. 4:43-1 requires that a copy of the default,

once entered, be sent to the defendant by regular mail at the same address where service of the original process was made.

The second step is the entry of a default judgment. That is governed by R. 4:43-2. Once again, the Court Rules encourage timeliness. If a party has failed to apply for a default judgment within four months after the entry of default, the court is to notify that party that the case will be dismissed without prejudice six months after the entry of default unless that party applies for a default judgment or shows exceptional circumstances, by affidavit, for the delay. R. 4:43-2(d). If the court extends the six month time limit, any application for a default judgment thereafter must be made by motion on notice to the defaulting party. *Id.*

In cases involving a sum certain (also known as a liquidated amount), the party seeking the default judgment may simply apply to the Clerk. Once again, the request must be supported by an affidavit. The affidavit must set forth a particular statement of the items of the claim, their amounts and dates, a calculation in figures of the amount of interest, and the payments or credits, if any. R. 4:43-2(a). *See* **Example 84**. The effect of this provision is to substitute the affidavit for a trial. Thus, the affidavit must contain all facts necessary to a final judgment, and must be made by a person with personal knowledge of the facts of the claim, which normally means the client, not the attorney. *See* R. 1:6-6 (affidavits must be on personal knowledge only); *Cafferata v. Peyser*, 251 N.J. Super. 256, 263-64 (App. Div. 1991). If the defendant defaulted for failure to appear, as opposed (for example) to a default entered as a sanction for failure to comply with discovery or other obligations, an affidavit of non-military service, stating that the defendant is not away in any branch of the military service of the United States and

setting forth the basis for that knowledge, must also be submitted. *See* **Example 85**. The Clerk may not enter a default judgment against a minor or an incompetent person. R. 4:43-2(a).

All default judgments not involving a liquidated amount must be obtained from the court. R. 4:43-2(b) deals with the process for doing this. The court has the right to require the party seeking the default judgment to put on whatever proofs, if any, the court feels is appropriate, including proof of the party's right to relief and/or the amount of damages sought. R. 4:43-2(b) contains other details regarding this process. You will be guided primarily, however, by the requirements of the judge who hears the request for a default judgment.

Defaults and default judgments are not favored, since they short-circuit the normal process in which parties have a right to be heard. Entry of default may be set aside for good cause shown, which is a liberal standard. R. 4:43-3. Often, the circumstances are such that, as a matter of professional courtesy, you should agree to set aside entry of default by consent upon the request of an attorney who gets into the case on behalf of the defaulted party, rather than requiring unnecessary procedures and expense to vacate the entry of default. A party may apply under one or more of the subheadings of R. 4:50 for relief from a default judgment.

Moreover, if service is not properly made, a court will vacate a default judgment if the defendant comes to court and shows that defect. *See, e.g., Sobel v. Long Island Entertainment Productions, Inc.*, 329 N.J. Super. 285 (App. Div. 2000). This shows once again the importance of mastering the Court Rules applicable to proper service. *See* Chapter III.

B. OFFER OF JUDGMENT

R. 4:58 deals with offers of judgment, a mechanism that either side may use to induce settlement. The Rule permits any party in any case (except for matrimonial actions) to "offer

to take a monetary judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror . . . for a sum stated therein (including costs)." R. 4:58-1. *See* **Examples 86 and 87**. However, an offer of judgment will not be effective unless, at the time the offer is made, the relief sought by "the parties in the case" (not just the maker of the offer) is "exclusively monetary in nature." R. 4:58-1(a)

To be effective, an offer of judgment must be served on the adverse party and filed with the court. *Id*. Such an offer must be made at least 20 days before the actual trial date in the case. *Id*. If the opposing party accepts the offer at any time before 10 days prior to the actual trial date, the case is settled on the terms of the offer. R. 4:51-1(b). The opposing party may make a counter-offer, and either side may continue to make the same or different offers of judgment following the filing and service of the initial offer of justice.

If an offer of judgment is not accepted, and the party making the offer achieves a result at trial that is at least as favorable to that party as the offer, the other party is required to pay the offering party's costs of suit, certain interest amounts and, perhaps most significantly, "a reasonable attorney's fee, for such subsequent services as are compelled by the non-acceptance." R. 4:58-2; R. 4:58-3. R. 4:58 has more specific rules for offers of judgment in money judgment cases. Where a party claiming money damages makes an offer of judgment, an ultimate result is deemed "at least as favorable as the rejected offer" if it is 120% of the offer or more. R. 4:58-2. Where an offer of judgment is made by a party from whom money damages are sought, R. 4:58-3 specifies that an ultimate result is that 80% of the offer or less "is favorable to the offeror as defined by this rule." No allowances may be granted if the claimant's claim is dismissed, a no- cause verdict is returned, only nominal damages are awarded, or if an

allowance would violate policy or Court Rule or create undue hardship that cannot be mitigated by reducing the award. R. 4:58-3(c).

The ability to require the opposing party to pay attorneys' fees reasonably occasioned by that party's failure to accept an offer of judgment sometimes induces recalcitrant parties to settle a case that should be resolved rather than running the risk of paying not only that party's own attorney's fees, but the fees of opposing counsel. Thus, particularly in relatively simple cases or cases in which there have been significant settlement discussions, counsel should always consider whether an offer of judgment might short-circuit the litigation process and produce a speedy settlement.

C. CONFERENCES WITH THE COURT

Once a case is filed, the court does not merely sit by and wait for the lawyers to move the matter ahead to trial or settlement. Courts have always had the authority to schedule conferences with the attorneys to discuss case management, settlement or trial.

R. 4:5B-2 deals with case management conferences. The Rule provides that in Track I, II and III cases, the designated pretrial judge may conduct a case management conference on his own motion or that of a party "if it appears that such a conference will assist discovery, narrow or define the issues to be tried, or otherwise promote the orderly and expeditious progress of the case." *Id*. In Track IV cases, which are considered the most complex, R. 4:5B-2 *mandates* an initial case management conference "as soon as practicable after joinder and, absent exceptional circumstances, within 60 days thereafter." Case management conferences in actions in lieu of prerogative writ are governed by R. 4:69-4, which requires a conference within 30 days after joinder. *See* R. 4:5B-2. Management conferences in Chancery's General Equity and probate cases may be scheduled at the discretion of the judge. *Id*. In all courts, case management conferences ordinarily should not be conducted after a case is ready for trial. *Id*.

Instead, a pretrial conference may be convened when a case is trial-ready. In all cases, a pretrial conference may be conducted in the discretion of the court, on its own motion or upon a party's written request. R. 4:25-1(a).

The object of the pretrial conference is to produce a pretrial order that will govern the conduct of the trial. Once entered, the pretrial order supersedes the pleadings in case of any inconsistency between them, R. 4:25-1(b). The matters to be covered in a pretrial order are set forth in R. 4:25-1(b). Some judges use their own forms of pretrial order in addition to what the Court Rules require. Among other things, if a particular attorney is to try the case, the pretrial order must designate that attorney as trial counsel, particularly if that designation has not previously been made under R. 4:25-4. *See* R. 4:25-1(b)(14).

Prior to the pretrial conference, counsel for all parties are required to submit pretrial memoranda. *See* **Example 88**. These memoranda serve as the basis for the pretrial order. R. 4:25-2 and 4:25-3 address the parameters for such memoranda. R. 4:25-7 requires that counsel confer before the pretrial conference and attempt to reach agreement on as many matters that will be the subject of the pretrial conference as possible. This is another one of the occasions when the Court Rules require counsel to confer before taking action involving the court. If counsel can work cooperatively to narrow or eliminate issues before the pretrial conference, the conference will be more productive and a better use of the time of counsel and the court.

The pretrial order is normally not modified except on a showing of compelling circumstances, though unrealistically rigid adherence to the pretrial order has been discouraged by the Supreme Court. *Saia v. Bellizio*, 53 N.J. 24, 28 (1968). You should take special care

in preparing pretrial memoranda, and in participating in the pretrial conference, since the resulting pretrial order is likely to be binding for purposes of trial.

Most pretrial conferences also involve discussions of possible settlement. Counsel should come to the conference with authority to discuss settlement. If settlement is discussed, the pretrial order is not to refer to that subject. R. 4:25-1(b). Thus, you need not fear that settlement offers or responses will find their way into the pretrial order, to the prejudice of clients at trial.

In addition to any discussions of settlement at a pretrial conference, settlement possibilities may be the subject of one or more settlement conferences. The court may conduct a settlement conference or schedule any other settlement event in any case on the court's own motion or upon a party's request. R. 4:5B-3. Except in Track IV cases, however, there is to be no more than one such settlement conference or event prior to the trial date. *Id.* Despite that, there may be another settlement conference on the trial date, provided that if settlement efforts fail, trial is to commence immediately. *Id.* The purpose of these provisions is to require counsel and clients to face the reality of trial.

D. PRETRIAL MEETING OF COUNSEL

Prior to trial, counsel are once again required to confer regarding the marking of evidence and stipulating to other matters. R. 4:25-7(b). Again, this requirement seeks to streamline proceedings before the court by resolving in advance as many issues as can be resolved. Judges will be unhappy with attorneys who do not confer on such matters prior to trial, since failing to do so wastes valuable court time. R. 4:25-7(b) also requires counsel to exchange before trial certain information spelled out in Appendix XXIII to the Rules, and to file

that and other material with the court before opening statements. R. 4:25-7(d) allows counsel to waive the exchange of information between themselves, but it must still be provided to the court.

Moreover, R. 4:25-7(b) imposes on counsel an ongoing obligation during trial to attempt to stipulate to specific matters remaining in dispute. This is yet another example of how the Court Rules expressly reject "Rambo litigation" tactics that require the court and counsel to waste time on disputes over procedural matters that should be undisputed or proof of factual matters that should be stipulated.

Example 83: Request for Entry of Default and Supporting Certification

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff Robert Jarndyce

	:	SUPERIOR COURT OF NEW JERSEY
ROBERT JARNDYCE	:	LAW DIVISION
	:	MIDDLESEX COUNTY
Plaintiff,	:	DOCKET NO. **[insert]**
	:	
-vs-	:	Civil Action
	:	
ALICE JARNDYCE and CHARLES DICKENS	:	**REQUEST FOR ENTRY OF DEFAULT**
	:	
	:	
Defendants.	:	

TO: Clerk of the Superior Court of New Jersey
Middlesex County Courthouse
1 Kennedy Square
New Brunswick, NJ 08903

Please enter the default of defendant Charles Dickens for failure to plead or otherwise defend as provided by the New Jersey Rules.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By:_____
BRUCE D. GREENBERG

Dated: January ____, 2000

Example 83 - Continued

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff Robert Jarndyce

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO. **[insert]** Civil Action **CERTIFICATION OF BRUCE D. GREENBERG IN SUPPORT OF DEFAULT**

BRUCE D. GREENBERG, of full age, being duly sworn hereby certifies as follows:

1. I am an attorney at law in the State of New Jersey and a member of the law firm of Lite DePalma Greenberg, LLC.

2. I am familiar with the facts and circumstances of the within action.

3. The Summons and Complaint in this action were served on defendant Charles Dickens on **[date]**, as appears from the attached Affidavit of Service from the Sheriff of Middlesex County, New Brunswick, New Jersey. (See Exhibit A).

4. The time within which defendant Charles Dickens may answer or otherwise move as to the Complaint has expired and has not been extended. Defendant Charles Dickens has not answered or otherwise moved as to the Complaint.

Example 83 - Continued

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By:_____
BRUCE D. GREENBERG

Dated: January _____, 2000

Example 84: Certification of Proof and of Non-Military Service

Attorney(s):
Office Address & Tel. No.:
Attorney(s) for Plaintiff(s)

SUPERIOR COURT OF NEW JERSEY
COUNTY
DIVISION

Plaintiff(s)

vs.

Docket No.

Defendant(s)

CIVIL ACTION

CERTIFICATION OF PROOF AND OF NON-MILITARY SERVICE

1. I am

plaintiff(s), and am duly authorized to make this certification.

2. I am fully familiar with the books and business of the plaintiff(s). The account of the defendant(s) annexed to this certification or set forth in the complaint in this cause is a true and accurate copy of the books of original entry of the plaintiff(s).

3. The goods for which said charges were made, were sold, delivered to and accepted by the defendant(s) at the special instance and request of the defendant(s). Said charges are fair and reasonable, and are as per agreement. The said defendant(s) promised to pay the sum charged therefor.

4. Credit has been duly given for all payments, counterclaims and set-offs and there now remains due and owing from the said defendant(s) to the plaintiff(s) the sum of $ together with interest from 19 , the date of breach, of $ making a total of $. The rate of interest is based on (R.4:42-11(a)) (a document of obligation—copy attached).

5. No defendant named herein is an infant or incompetent person.

6. This claim is not based upon a writ of attachment, capias ad respondendum; replevin or claims based directly or indirectly upon the sale of a chattel wherein a chattel has been repossessed peaceably or by legal process.

7. I know that no defendant named herein is in the military service of the United States. The source of my knowledge is

I certifiy that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: *19* ----------

Copyright© 1971 by ALL-STATE LEGAL SUPPLY CO.
One Commerce Drive, Cranford, N. J. 07016

Example 85: Certification of Non-Military Service

Attorney(s):
Office Address & Tel. No.:

Attorney(s) for

SUPERIOR COURT OF NEW JERSEY
COUNTY
DIVISION

Plaintiff(s)

vs.

Docket No.

CIVIL ACTION
CERTIFICATION OF
NON-MILITARY SERVICE

Defendant(s)

1. I am

in the above entitled action.

2. I know that no defendant named herein is in the military service of the United States. The source of my knowledge is

I certify that the foregoing statments made by me are true. I am aware that if any of the foregoing statments made by me are wilfully false, I am subject to punishment.

Dated: *19* ----------

Example 86: Offer of Judgment by Plaintiff

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO. **[insert]** Civil Action **PLAINTIFF'S OFFER OF JUDGMENT**

Pursuant to R. 4:58, plaintiff hereby offers to take judgment in his favor in the amount of $25,000.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By:_____
BRUCE D. GREENBERG

Dated: January ___, 2000

Example 87: Offer of Judgment by Defendant

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Defendant Alice Jarndyce

ROBERT JARNDYCE Plaintiff, -vs- ALICE JARNDYCE and CHARLES DICKENS, Defendants.	: SUPERIOR COURT OF NEW JERSEY : CHANCERY DIVISION : PASSAIC COUNTY : DOCKET NO. **[insert]** : : Civil Action : : **DEFENDANT ALICE JARNDYCE'S** : **OFFER OF JUDGMENT**

Pursuant to R. 4:58, defendant Alice Jarndyce hereby offers to take judgment against her in the amount of $5,000.

LITE DEPALMA GREENBERG, LLC
Attorneys for Defendant Alice Jarndyce

By: _____
BRUCE D. GREENBERG

Dated: January ____, 2000

Example 88: Pretrial Memorandum

Cal. No.

Attorney(s):
Office Address & Tel. No.:
Attorney(s) for

SUPERIOR COURT OF NEW JERSEY

COUNTY

DIVISION

Plaintiff(s)

vs.

Defendant(s)

Docket No.

CIVIL ACTION

PRETRIAL MEMORANDUM OF

1. *NATURE OF ACTION:*

2. *ADMISSIONS AND STIPULATIONS:*

3-4. *FACTUAL AND LEGAL CONTENTIONS: (Annexed hereto).*

5. *DAMAGE AND INJURY CLAIMS:*

6. *AMENDMENTS:*

7. *ALL ISSUES AND SPECIAL EVIDENCE PROBLEMS:*

8. *LEGAL ISSUES ABANDONED:*

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One Commerce Drive, Cranford, N. J. 07016

Example 88: Continued

9. EXHIBITS:

10. EXPERT WITNESSES:

11. BRIEFS:

12. ORDER OF OPENING AND CLOSING:

13. ANY OTHER MATTERS AGREED UPON:

14. TRIAL COUNSEL:

15. ESTIMATED LENGTH OF TRIAL:

16. WEEKLY CALL OR TRIAL DATE:

17. ATTORNEYS FOR PARTIES CONFERRED ON MATTERS THEN AGREED UPON: *19* .

18. IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED, *except*

19. PARTIES WHO HAVE NOT BEEN SERVED:

PARTIES WHO HAVE DEFAULTED:

By.....

Dated: *19* .

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One Commerce Drive, Cranford, N. J. 07016

VII. ORDERS TO SHOW CAUSE

An order to show cause seeks relief on an expedited basis. Often, orders to show cause are sought in connection with the filing of a complaint in order to preserve the *status quo* or avoid irreparable harm during the pendency of a case. Orders to show cause are also available, however, as a case proceeds. *See* R. 4:52-2.

R. 4:52 contains the essential rules for orders to show cause and restraints. The seminal case on the subject is *Crowe v. DeGioia*, 90 N.J. 126 (1982). That case stated four criteria for injunctive relief. They are: (1) there must be a showing of immediate and irreparable harm to the party seeking such relief; (2) the legal rights underlying that party's claims must be settled; (3) there must be a reasonable probability that the party seeking relief will ultimately prevail on the merits; and (4) the balance of hardships between the parties (and to innocent third parties and the public interest, if applicable) if relief is granted favors the party seeking relief. *Id.* at 132-34. You should become familiar with the application of these criteria whether you are seeking or opposing injunctive relief.

As a practical matter, if you wish to file an order to show cause, and particularly if restraints will be sought, you should telephone the Assignment Judge (for a Law Division case) or the Chancery judge (in a Chancery Division case) and advise the judge's chambers of the nature of the case, the basis for the application, and the type of relief that will be sought. Some judges will schedule a time for oral argument at that point. Others require that your papers first be reviewed by the court to determine whether it is even necessary to proceed with argument. All judges will direct you to contact the opposing party or its counsel, if known, to give notice of the application and to serve a copy of the papers being filed. With the advent of fax

machines and electronic mail, it is rarely impossible to serve an adversary before the time of a court appearance. You should be prepared to submit a certification describing the notice you sent your adversary and the date and means of service of your papers upon him or her.

An order to show cause with temporary restraints requires an opposing party to show cause why an interlocutory injunction should not be granted pending the disposition of the case. R. 4:52-1(a). Normally, such an order is sought at the beginning of the case, in conjunction with the filing of the complaint. Temporary restraints may be sought only on notice to or with the consent of the opposing party, except that the court may dispense with notice if "it appears from specific facts shown by affidavit or verified complaint that immediate and irreparable damage will probably result to the plaintiff before notice can be served or informally given and a hearing had thereon." *Id.* An order to show cause that contains temporary restraints and was issued without notice to the defendant must provide that the defendant may move to dissolve the restraints on two days' notice. *Id.* Temporary restraints may be continued for a period of up to 35 days after their issuance, though the court may extend that time for another 35 days on good cause shown, or for any length of time if the defendant consents. *Id.* *See* **Example 89**.

Essentially, there are three types of restraints. The first, already discussed above, is a temporary restraining order ("TRO"). That imposes restraints until the court can hold a full hearing on whether to impose a restraint that will last until the end of the case (unless the court modifies or vacates it before that time). This second restraint is called a preliminary injunction. The final type of restraint, which can be imposed, if warranted, after a trial, is a permanent injunction. That is often the ultimate relief sought in a case that primarily seeks relief other than monetary damages.

On the return date of the order to show cause, when the court considers whether to impose a preliminary injunction, the court may, in its discretion, hear oral testimony as well as considering the affidavits offered by the contesting parties. R. 4:52-l(c). Briefs are required to be submitted in support of a request for any form of interlocutory injunction. *Id.*

If an order to show cause, with or without temporary restraints, is issued in connection with the filing of the complaint, there is no need for a summons and the order to show cause can serve as process provided that it contains the items listed in R. 4:52- l(b). R. 4:52-4 contains other requirements for an order to show cause or other injunctive order. These include the requirements that such an order set forth the reason for its issuance, shall be specific in terms, shall describe in reasonable detail and without reference to the complaint or any other document the act or acts being restrained, and shall be binding only on such parties to the case and their agents who receive actual notice of the order by personal service or otherwise. Since injunctive relief is extraordinary, it is important that parties understand exactly what relief has been ordered and who is bound. That is the reason for these detailed requirements of an order for injunctive relief of any type.

A court that enters a temporary restraining order or interlocutory injunction may require the party obtaining the relief to post security or otherwise condition the relief as the court deems equitable and appropriate. R. 4:52-3. Security is appropriate where the party that is the subject of the restraint or injunction may sustain damage as a result of the restraint. Restraints thus can be a double-edged sword. A party who seeks restraints to get an unfair advantage over an adversary may find that the tactic boomerangs and the court imposes a requirement for the posting of an onerous amount of security. On the other hand, parties who are subjected to

restraining or injunctive orders should not reflexively demand security as a way of punishing their adversaries for seeking and obtaining restraints.

If an application for a temporary restraining order or an interlocutory injunction is denied, R. 4:52-5 requires that the court state on the complaint or the affidavit that supported the request for such relief that the request was denied. That document is then to be filed. Thus, there is always a record that restraints were sought but denied, without the need for a separate order denying restraints.

Form documents in connection with orders to show cause are available on the judiciary website, www.njcourtsonline.com. Those forms conform to the Court Rules, and judges expect counsel to use those forms. There is normally no reason not to do so.

Example 89: Order to Show Cause with Temporary Restraints

OSC AS ORIGINAL PROCESS –
SUBMITTED WITH NEW COMPLAINT
PRELIMINARY INJUNCTIVE RELIEF AND
TEMPORARY RESTRAINING ORDER
PURSUANT TO RULE 4:52

SUPERIOR COURT OF NEW JERSEY
_____ DIVISION _____ COUNTY
_____ PART

[*Insert the plaintiff's name*] Plaintiff(s), v. [*Insert the defendant's name*] Defendant(s).	Docket No.: CIVIL ACTION ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS PURSUANT TO RULE 4:52

THIS MATTER being brought before the Court by _____, attorney for plaintiff, [*insert the plaintiff's name*], seeking relief by way of temporary restraints pursuant to *R.* 4:52, based upon the facts set forth in the verified complaint filed herewith; and it appearing that [the defendant has notice of this application] *or* [defendant consent's to plaintiff's application] *or* [immediate and irreparable damage will probably result before notice can be given and a hearing held] and for good cause shown.

It is on this ____ day of _____ *ORDERED* that defendant, [*insert the defendant's name*], appear and show cause before the Superior Court at the _____ County Courthouse in _____, New Jersey at _____ o'clock in the _____ noon or as soon thereafter as counsel can be heard, on the _____day of _____, 20 __ why an order should not be issued preliminarily enjoining and restraining defendant, [*insert the defendant's name*], from

A. [*Set forth with specificity the return date relief that the plaintiff is seeking.*];

B. _____;

C. _____;

D. Granting such other relief as the court deems equitable and just.

And it is further *ORDERED* that pending the return date herein, the defendant is [*temporarily*] enjoined and restrained from:

Example 89 - Continued

A. [*Set forth with specificity the temporary restraints that the plaintiff is seeking.*];

B. _____;

C. _____.

And it is further *ORDERED* that:

1. The defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days notice to the [plaintiff's attorney *or alternate:* plaintiff].

2. A copy of this order to show cause, verified complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the defendant [personally *or alternate: describe form of substituted service*] within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

3. The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant no later than three (3) days before the return date.

4. Defendant shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service by _____, 20__. The original documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. You must send a copy of your opposition papers directly to Judge _____, whose address is _____, New Jersey. You must also send a copy of your opposition papers to the plaintiff's attorney whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of $ _____ and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiff is seeking.

5. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 20__. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

6. If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

Example 89 - Continued

7. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

8. Defendant take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be fled with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a $_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

10. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than ___ days before the return date.

_____

J.S.C.

[Lists of county clerk office addresses and lawyer referral/legal service phone numbers omitted]

VIII. SETTLEMENTS

As noted in the Introduction, the vast majority of cases settle prior to trial. They may settle immediately after the filing of a complaint, on the courthouse steps on the day of the trial, and at any time in between.

Settlement negotiations may take place in a variety of settings. Attorneys may discuss settlement over the telephone. Settlement negotiations may take place at a settlement conference convened by a judge. Cases may settle at a mediation session. Sometimes clients even go around their lawyers and settle the litigation on their own.

To avoid future problems, both with your adversary and your client, you should adhere to the following steps in conducting settlement negotiations:

(1) Make sure that your client has the authority to settle the case, and to authorize you to settle it. This requires that you know the chain of command. Obviously, if a settlement requires the approval of the president of the company you should not be receiving your marching orders regarding settlement from the bookkeeper;

(2) Communicate the terms of a prospective settlement with your client in *writing*. *See Ziegelheim v. Apollo*, 128 N.J. 250, 266 (1992);

(3) Send your client drafts of settlement agreements exchanged between counsel;

(4) If a case is settled, write a letter to your adversary confirming the terms of the settlement; and

(5) Your client, not you, should sign the settlement agreement.

After the parties reach agreement as to the terms of a settlement they must decide how to memorialize the terms of that settlement. Some settlements of small cases can be memorialized in a basic letter. **Example 90.** Other more significant settlements require a more detailed agreement. **Example 91.**

Whatever method is utilized, you should advise the court that the case is settled and file either a Stipulation of Dismissal With Prejudice or a Stipulation of Dismissal Without Prejudice. **Examples 92 and 93.** A Stipulation of Dismissal *With* Prejudice means that the case cannot be refiled, while a party can refile a case dismissed via a Stipulation of Dismissal *without* Prejudice. You may also elect to exchange Releases among the parties. **Example 94.** Ultimately, a Stipulation of Dismissal must be filed with the Court. **Example 95.**

It is said that the devil is in the details. Nowhere is that expression more relevant than when you are called to reduce the terms of a verbal settlement (which is entirely permissible) to a formal written settlement agreement. Sometimes parties have an honest dispute as to the terms of an agreement. But often, one party simply changes his mind upon further reflection and may attempt to renege on the deal.

In such circumstances, note that a settlement does not have to be in writing to be binding upon the parties. Instead, all that is required is that the parties agree on the essential terms of the settlement. *Lahue v. Pio Costa*, 263 N.J. Super. 575, 596 (App. Div.) *certif. denied*, 134 N.J. 477 (1993). Accordingly, New Jersey courts have consistently rejected efforts to interject "second thoughts" as a basis to refuse to execute a settlement agreement. *See*, *e.g.*, *Pascarella v. Bruck*, 190 N.J. Super. 118, 125 (App. Div.), *certif. denied*, 94 N.J. 600 (1983). A party who is confronted with such tactics may file a motion to enforce the settlement agreement.

Example 90: Letter Confirming Settlement

Letterhead

January 28, 2000

VIA FAX & REG. MAIL

Benjamin Daniel, Esq.
1 Apple Lane
Westview, NJ 02331

Re: ABC Corp. v. Acme, Inc.

Dear Mr. Daniel:

Pursuant to our January 28, 2000 telephone conversation, this will confirm that this matter has been settled. As we discussed, Acme has agreed to repair the loading dock by February 15, 2000. Assuming that occurs, I will send you a Stipulation of Dismissal with Prejudice, which you can file with the court.

Thank you for your assistance in resolving this dispute.

Very truly yours,

Lawrence Lawyer

LL/cap

Example 91: Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement is made between John Smith ("Smith") residing at 10 Apple Road, Orange, New Jersey and Mary Adams ("Adams") residing at 20 Peach Road, Cranbury, New Jersey.

WHEREAS, Smith asserted various claims against Adams in a Verified Complaint in an action filed in the Superior Court of New Jersey, Middlesex County, Law Division, Docket No. 42000 (the "Litigation").

WHEREAS, the parties are entering into this Settlement Agreement to avoid further expense, inconvenience and delay, dispose of potentially burdensome and protracted litigation, and forever resolve the claims that were asserted or could have been asserted in the Litigation.

WHEREAS, the execution of this Settlement Agreement is not an admission of any wrongdoing or liability by any party to this Settlement Agreement.

NOW THEREFORE, in consideration of the terms, covenants conditions and agreements contained herein, it is hereby agreed by and among the parties as follows:

1. The recitals included in the whereas clauses are incorporated herein.

2. **[Insert terms of settlement]**.

3. Simultaneously with the execution of this Settlement Agreement, Smith and Adams shall sign and exchange mutual Releases in the form annexed hereto as Exhibits A and B.

4. The parties hereby authorize and instruct their respective legal counsel of record to sign a Stipulation of Dismissal with Prejudice and without costs as to all claims in the Litigation within ten (10) days of the execution of this Settlement Agreement and the aforementioned Releases. Counsel for Smith shall file the Stipulations of Dismissal with Prejudice with the Court.

5. This Settlement Agreement, including the Exhibits attached hereto, contains the entire agreement between the parties as to the settlement of their disputes and no amendment, modification or addendum to this Settlement Agreement shall be effective unless in writing dated subsequent to the date hereof. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this Section and this shall be deemed an essential term of the Settlement Agreement.

Example 91 - Continued

6. All of the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties, their heirs, executors, administrators, personal or legal representatives, successors and/or assigned respectively. Wherever any party in this Settlement Agreement shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and/or assigns" had been inserted after each and every designation.

7. The parties agree to execute any and all further documents which may be reasonably required to effectuate the terms of this Settlement Agreement.

8. If any term or condition of this Settlement Agreement or any application of this Settlement Agreement shall be determined to be contrary to the laws of the State of New Jersey or the United States, then such term or condition or application shall not be deemed valid except to the extent permitted by law, but all other terms or conditions or applications shall continue in full force and effect.

9. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

10. New Jersey law shall govern the Settlement Agreement and any suit to enforce the Settlement Agreement shall be brought in the Superior Court of New Jersey.

11. The parties were represented by independent counsel during the negotiation of this Settlement Agreement.

IN WITNESS WHEREOF, this Settlement Agreement is executed and sworn as follows:

WITNESSETH:

_____ _____

_____ _____

_____ _____

Example 92: Stipulation of Dismissal with Prejudice

Attorney(s)
Office Address
Telephone No.
Fax No.
Attorney(s) for

Plaintiff, v. Defendant.	SUPERIOR COURT OF NEW JERSEY COUNTY DIVISION DOCKET NO.: **CIVIL ACTION** **STIPULATION OF DISMISSAL WITH PREJUDICE**

THIS MATTER having been amicably resolved by the parties, it is hereby stipulated and agreed that the Complaint in the above-entitled matter is dismissed with prejudice and without costs.

[Insert firm name]
Attorney for Defendant,
[Insert name of party]

By: _____
DATED: **[insert atty name]**

[Insert firm name]
Attorneys for Plaintiff,
[Insert name of party]

By: _____
DATED: **[insert atty name]**

Example 93: Stipulation of Dismissal without Prejudice

GREENBAUM, ROWE, SMITH & DAVIS LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, NJ 07095-0988
(732) 549-5600
Attorneys for

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

	CIVIL ACTION NO. 98-CV-1512 (JWB)
Plaintiff,	
v.	
	STIPULATION OF DISMISSAL WITHOUT PREJUDICE
Defendants.	

This matter having been amicably adjusted by and between the respective parties hereto, the above-entitled action is hereby dismissed without prejudice and without costs in favor or against any party.

[Insert firm name]
Attorneys for Plaintiff

By:_____
[Insert atty name], Esq.

Dated:

[Insert firm name]
Attorneys for Defendants

By:_____
[Insert atty name], Esq.

Dated:

Example 94: Release

Release

This Release, dated , is given

BY the Releasor(s)

referred to as "I,"
TO

referred to as "You."
If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. Release. I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

2. Payment. I have been paid a total of $, in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

3. Who is bound. I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. Signatures. I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

_____ _____ (Seal)

_____ (Seal)

STATE OF NEW JERSEY, COUNTY OF SS.
I CERTIFY that on

personally came before me and stated to my satisfaction that this person (or if more than one, each person):
(a) was the maker of the attached instrument; and,
(b) executed this instrument as his or her own act.

_____
(Print name and title below signature)

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(908) 272-0800

Example 94 - Continued

STATE OF NEW JERSEY, COUNTY OF SS.
I CERTIFY that on

personally came before me and stated under oath to my satisfaction that:
(a) this person was the subscribing witness to the signing of the attached instrument;
(b) this instrument was signed by

who is of
the entity named in this instrument, and was fully authorized to and did execute this instrument as the act of the entity; and
(c) the subscribing witness signed this proof under oath to attest to the truth of these facts.

_____
(Print name and title below signature)

Signed and sworn to before me on (date)

_____
(Print name and title below signature)

Release	***DATED:***
	RECORD AND RETURN TO:
TO	

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A Division of ALL-STATE International, Inc.
(908) 272-0800

Example 95: Letter filing Stipulation of Dismissal

Letterhead

January 5, 2000

Clerk's Office
Superior Court of New Jersey
Middlesex County
1 Kennedy Square
New Brunswick, New Jersey 08901

Re: ABC Corp. v. Acme, Inc.
Docket No.: **[insert]**

Dear Sir or Madam:

I have enclosed an original and two copies of a Stipulation of Dismissal with Prejudice. Kindly file the original and return a copy marked "filed" to me in the enclosed envelope. Thank you for your attention to this matter.

Very truly yours,

Benjamin Daniels

BD/cap
Enclosures
cc: Lawrence Lawyer, Esq. (w/encl.)

IX. PRE-TRIAL APPEALS

Most appellate practice occurs after a final judgment. However, there may be times that a pre-trial decision may become the subject of an appeal. Such appeals are known as interlocutory appeals (that is, appeals from decisions that are not final as to all parties and all issues). This Chapter outlines some of the principles that apply to interlocutory appeals. For a more detailed review of appellate practice, including interlocutory appeals and appeals from final judgments, see ICLE's *New Jersey Appellate Practice Handbook*. Some forms may be downloaded from the Judiciary website, www.njcourtsonline.com.

Interlocutory appeals are not favored. New Jersey has adopted a strong presumption in favor of a single, uninterrupted trial level proceeding through a final judgment, followed by an appeal if appropriate. *State v. Reldan*, 100 N.J. 187, 205 (1985). Therefore, there is no absolute right to an interlocutory appeal, unlike in some other states. Instead, leave to appeal must be sought. R. 2:2-4 (Appellate Division); R. 2:2-2 (Supreme Court). Accordingly, do not simply file a notice of appeal as you would from a final judgment. The Appellate Division has severely criticized counsel who "blatantly appealed on interlocutory order without seeking our leave." *Grow Company, Inc. v. Chokshi*, 403 N.J. Super. 443, 459 (App. Div. 2008).

A. APPELLATE DIVISION

A party aggrieved by an interlocutory order of a trial level court may seek leave to appeal that order to the Appellate Division. A motion for leave to appeal must be filed within 20 days of the date of service of the order being appealed from. R. 2:5-6(a). In addition to serving your adversary, you must file a copy with the judge whose ruling you seek to challenge, and that judge may then amplify his or her ruling. R. 2:5-6(c). The judge may also "comment on whether the motion for leave to appeal should be granted." R. 2:5-6(c), on two grounds listed in that Rule or otherwise. A notice of motion, which can largely follow the form of trial court notices of motion, must be filed, *id*., along with a brief and

appendix of supporting documents, R. 2:8-1(a) ("[e]very motion shall be accompanied by a brief ... and by an appendix"). For a sample notice of motion for leave to appeal, *see* **Example 96**. The brief may not exceed 25 pages of text. *Id.* Unlike in trial court motions, there is no reply brief on a motion for leave to appeal. The opponent of the motion gets the last word, in a brief that may not exceed 25 pages and must be filed within 10 days after service of the movant's papers. R. 2:8-1(a), (b). There is no oral argument unless the court orders it. R. 2:8-1(b).

There are special and detailed formatting rules that apply to appeals. Among the rules governing appellate briefs, in both the Appellate Division and the Supreme Court, are R. 2:6-2 (contents of appellant's brief), 2:6-4 (contents of respondent's brief), 2:6-6 (covers of briefs), 2:6-8 (references within briefs), 2:6-10 (general formatting requirements for briefs), and 2:8-1(a) (special rules for motion briefs). Appendices are discussed in R. 2:6-1 (appellant's appendix), 2:6-3 (respondent's appendix), 2:6-6 (covers), and 2:6-10 (formatting rules). You should review these rules carefully because the Appellate Division enforces them strictly. You should be particularly aware of the font requirements contained in R. 2:6-10. Briefs and other papers that do not conform to that Rule will be rejected and sent back to you.

The Appellate Division grants leave to appeal only "in the interest of justice." R. 2:5-6(a). This occurs only "very sparingly" and only in "exceptional cases." *Brundage v. Estate of Carambio*, 195 N.J. 575, 599-600 (2008); *Romano v. Maglio*, 41 N.J. Super. 561, 567 (App. Div.), *certif. denied*, 22 N.J. 574 (1956), *cert. denied*, 353 U.S. 923 (1957). Leave to appeal is "considered extraordinary relief and rarely granted." *Yueh v. Yueh*, 329 N.J. Super. 447 (App. Div. 2000). Thus, it is difficult to obtain leave to appeal, and such leave should not be sought routinely. Remember that adverse interlocutory decisions may be appealed as of right at the conclusion of the case. Every decision by a trial level judge disappoints one party and

his or her attorney. But it is often a waste of time and client funds to try to overturn that order immediately by seeking leave to appeal.

Interlocutory appeals from discovery orders rarely succeed. Trial courts have wide discretion over discovery. *Axelrod v. CBS Publications*, 185 N.J. Super. 359, 376 (App. Div. 1982). The Appellate Division is loath to involve itself in discovery issues. However, in very rare instances, the Appellate Division does grant leave to appeal from discovery orders where the issues are unique or have significance beyond the particular circumstances of the case at hand.

Other common contexts in which leave to appeal may be sought are the denial of a motion to dismiss a complaint, the denial of a motion for summary judgment, or a grant of partial summary judgment (either as to fewer than all claims or fewer than all parties). Again, however, unless there are circumstances that make those interlocutory rulings significant beyond the bounds of the particular case, or there are reasons why justice cries out for interlocutory appeal, leave will be denied.

A motion for leave to appeal does not stay the proceedings in the trial court unless a motion for such a stay is made and granted. R. 2:5-6(a). If leave to appeal is granted, however, the Appellate Division takes jurisdiction of the entire case and the trial court lacks any further power over it (except for limited purposes such as enforcement of its own prior orders) until the appeal is resolved. R. 2:9-1(a).

When a motion for leave to appeal is filed, a respondent on that motion may pursue a cross-appeal by filing a cross-motion for leave to appeal within 20 days after entry of the order being cross-appealed from. R. 2:5-6(b). If he does not do that, but the other party's motion for leave to appeal is granted, the respondent on that motion is afforded 10 days from the grant

of that motion for leave to appeal to file his own cross-motion for leave to appeal. *Id.* The respondent on a granted motion for leave to appeal may be able to cross-appeal as of right if (and only if) the cross-appeal relates to the same provision of the order as to which leave to appeal was granted. *Lanzet v. Greenberg*, 222 N.J. Super. 540 (App. Div. 1988). The formatting and other rules applicable to cross-motions for leave to appeal are the same as those that govern motions for leave to appeal.

Denial of a motion for leave to appeal does not constitute a decision on the merits. *Campbell v. Schlaifer*, 88 N.J. Super. 66, 68 (App. Div. 1965). The issue may normally be raised again, as of right, on an appeal after final judgment.

Once leave to appeal is granted, the matter proceeds as a regular appeal. No separate notice of appeal need be filed, since the order granting leave serves as the notice of appeal. R. 2:5-1(g). The appellant must file a Case Information Statement within 10 days of the grant of leave to appeal. *Id.* The court then issues a scheduling order for full briefing, under the rules governing briefs on appeals as of right. However, the briefing schedule on appeals resulting from leave granted is often accelerated, due to the importance of resolving the appeal quickly and returning the matter to the trial level for continued handling.

B. SUPREME COURT

The Supreme Court may grant leave to appeal from interlocutory orders "when necessary to prevent irreparable injury." R. 2:2-2(b). That standard differs from the "interest of justice" yardstick that applies to the Appellate Division. The prevention of irreparable injury standard, though, may be less a literal requirement than an expression of the immediacy and urgency that must be present to justify interlocutory review by the Supreme Court. *See State v. Marrero*, 148 N.J. 469, 480-81 (1997) ("Where irreparable injury cannot be demonstrated in a non-capital

case, *unless a broad public policy issue is presented*, a denial of leave to appeal by this Court is the rule rather than the exception.") (emphasis added).

Motions for leave to appeal to the Supreme Court in civil cases can come to that Court in two ways. First, if the Appellate Division denies leave to appeal, the losing party may ask the Supreme Court for leave. R. 2:5-6(a) and 2:8-1 govern that application, which must be made within 20 days of the date of the Appellate Division's denial. The Supreme Court permits counsel to rely on their Appellate Division briefs and appendices if the notice of motion is captioned in the Supreme Court and the papers adequately inform the Court about the current status of the matter. However, given the difference in standards for leave to appeal to the Supreme Court and the Appellate Division, discussed above, it is often wise to supplement your Appellate Division brief with a short brief to address that difference.

Second, if the Appellate Division has granted leave to appeal, and has ruled on the merits, the losing party in that court may wish to seek further review by the Supreme Court. Even though the Appellate Division granted leave to appeal and decided the merits, there is still no absolute right to immediate Supreme Court review. Instead, the standards for leave to appeal to the Supreme Court must be satisfied. R. 2:2-5(a).

As was true in the Appellate Division, a motion for leave to appeal to the Supreme Court does not stay the proceedings below absent a successful motion for a stay. If the Supreme Court grants leave, it takes jurisdiction over the entire case and proceedings below are automatically stayed.

Example 96: Notice of Motion for Leave to Appeal

LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 623-3000
Attorneys for Plaintiff-Movant

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
	:	Docket No.
Plaintiff-Movant,	:	
	:	Civil Action
vs.	:	
	:	Sat Below:
JOHN JONES,	:	
	:	Hon. Jennifer Jurist, J.S.C.
Defendant-Respo: dent.	:	Docket No. Below: ESX-L-00000-99
	:	
		PLAINTIFF-MOVANT'S NOTICE OF MOTION FOR LEAVE TO APPEAL

TO: Joseph Orlando
Clerk, Appellate Division
Hughes Justice Complex
25 West Market Street
P.O. Box 006
Trenton, New Jersey 08625

Lawrence Lawyer, Esq.
123 Main Street
Anytown, New Jersey 00000
Attorneys for Defendant

SIRS:

PLEASE TAKE NOTICE that, pursuant to R. 2:5-6(a) and 2:8-1(a), the undersigned, attorneys for plaintiff, hereby move before the Superior Court of New Jersey, Appellate Division, at the Hughes Justice Complex, Trenton, New Jersey, for leave to appeal the interlocutory order of the Law Division, Essex County, entered on **[date of entry of order below]**.

Example 96 - Continued

PLEASE TAKE FURTHER NOTICE that, in support of this motion, plaintiff will rely the accompanying brief and appendix.

LITE DEPALMA GREENBERG, LLC
Attorneys for Plaintiff

By: _____
BRUCE D. GREENBERG

Dated: April 7, 2000

Example 97: Civil Case Information Statement

New Jersey Judiciary
Superior Court - Appellate Division
CIVIL CASE INFORMATION STATEMENT

Please type or clearly print all information.

TITLE IN FULL

TRIAL COURT OR AGENCY DOCKET NUMBER

■ **Attach additional sheets as necessary for any information below.**

APPELLANT'S ATTORNEY EMAIL ADDRESS:

☐ PLAINTIFF ☐ DEFENDANT ☐ OTHER (SPECIFY)

NAME		CLIENT		
STREET ADDRESS	CITY	STATE	ZIP	TELEPHONE NUMBER

RESPONDENT'S ATTORNEY * EMAIL ADDRESS:

NAME		CLIENT		
STREET ADDRESS	CITY	STATE	ZIP	TELEPHONE NUMBER

* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? ☐ YES ☐ NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6) ☐ YES ☐ NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)) ☐ YES ☐ NO

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):

Example 97 - Continued

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ ☐ YES ☐ NO

2. Did the trial judge issue written findings or an opinion? If so, on what date? _____ ☐ YES ☐ NO

3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ YES ☐ NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: _____

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

   (A) Arises from substantially the same case or controversy as this appeal? ☐ YES ☐ NO

   (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☐ YES ☐ NO

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? ☐ YES ☐ NO

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name: Appellate Division Docket Number:

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. ☐ YES ☐ NO

Explain your answer:

_____ Name of Appellant or Respondent

_____ Name of Counsel of Record (or your name if not represented by counsel)

_____ Date

_____ Signature of Counsel of Record (or your signature if not represented by counsel)

X. AUTOMOBILE PERSONAL INJURY LITIGATION

A thorough familiarity with New Jersey's No-Fault Law, N.J.S.A. 39:6A-1 *et seq.*, is essential to the successful litigation of an automobile personal injury case. Significant changes to the No-Fault Law were implemented via the Automobile Insurance Cost Reduction Act of 1998 (AICRA), and N.J.A.C. 11:3-3.1 *et seq.*, AICRA's implementing regulations. AICRA applies to policies purchased or renewed on or after March 22, 1999. AICRA, by creating a new "lawsuit limitation," prevents a plaintiff from bringing a personal injury action unless a treating physician certifies that the plaintiff sustained an injury as defined by the statute. In addition, AICRA permits insurance companies to control the type and duration of medical treatment and diagnostic testing that will be compensated by the auto insurance's personal injury protection (PIP) provisions.

Although AICRA has provided insurance companies with the means to regulate medical services, it should be stressed that the exact coverage provided may differ from carrier to carrier. Each client's policy should be obtained to determine what precise limitations apply in a particular case. *See* **Example 98**.

A. COVERAGE

AICRA provides that automobile owners may satisfy their statutory duty to maintain automobile insurance by purchasing either a standard policy, pursuant to N.J.S.A. 39:6A-3 and -4, a basic policy, pursuant to N.J.S.A. 39:6A-3.1, or a special automobile policy pursuant to N.J.S.A. 39:6A-3.3.

1. The Standard Policy

A "standard" policy must provide:

(a) $15,000/$30,000 per accident split-limit liability insurance coverage against personal injury, and

(b) $5000 per accident liability insurance coverage for property damage.

[N.J.S.A. 39:6A-3.]

In addition, every standard policy must provide PIP coverage, as defined by N.J.S.A. 39:6A-4, for the benefit of the named insured; resident family members; and occupants and permissive users of the insured vehicle.

PIP coverage under a standard policy consists of:

(a) Medical expense benefits in an amount not to exceed $250,000 per person per accident, N.J.S.A. 39:6A-4a;

(b) Income continuation benefits, up to $100/week per person per accident, with a per person, per accident cap of $5200, N.J.S.A. 39:6A-4b;

(c) Essential services benefits, up to $12/day per person per accident, with a per person, per accident cap of $4380, N.J.S.A. 39:6A-4c;

(d) Death benefits, N.J.S.A. 39:6A-4d, and

(e) Funeral expenses, N.J.S.A. 39:6A-4e.

In addition, each standard policy must provide the following coverage options:

(a) Medical expense benefits deductibles of $500, $1000, $2000, and $2500 per accident;

(b) The option to exclude income continuation, essential services, death and funeral benefits;

(c) The option to select health insurance coverage as primary;

(d) Lesser medical expense benefits coverage in the amounts of $150,000, $75,000, $50,000, or $15,000 per person per accident, *except* that $250,000 shall under any option be paid for catastrophic injuries. Any option to reduce medical expense benefits coverage must be affirmatively elected in writing and, in the absence of an affirmative election, the default medical expense benefits option is $250,000.

[N.J.S.A. 39:6A-4.3a-e.]

Any of the coverage options elected under N.J.S.A. 39:6A-4.3 apply only to the named insured and resident relatives not otherwise insured, but not to any other person eligible for PIP benefits under the policy. N.J.S.A. 39:6A-4.3.

2. The Basic Policy

A "basic" policy must provide:

(a) PIP coverage, in an amount not to exceed $15,000, per person, per accident, for the benefit of the named insured; resident family members; occupants and permissive users of the insured vehicle, except that treatment for catastrophic injuries is covered up to $250,000;

(b) Liability coverage for property damage in the amount of $5000 per accident, and

(c) An option to purchase an additional $10,000 in liability insurance against a claim for personal injuries.

[N.J.S.A. 39:6A-3.1a-c].

In addition, an option to purchase comprehensive and collision insurance may be made available with a basic policy. N.J.A.C. 11:3-3.4(c). *No* other options, aside from the foregoing, may be offered with a basic policy. N.J.A.C. 11:3-3.4(d). Thus, a basic policyholder cannot carry uninsured (UM) or underinsured (UIM) motorist coverage.

PIP coverage for purposes of a basic policy consists *only* of medical expense benefits in an amount not to exceed $15,000 per person per accident, *except* that $250,000 of medical expense benefits must be paid "for all medically necessary treatment of permanent or significant brain injury, spinal cord injury or disfigurement or for medically necessary treatment of other permanent or significant injuries rendered at a trauma center or acute care hospital immediately following the accident and until the patient is stable." N.J.S.A. 39:6A-3.1.

Election of a basic policy must be in writing and signed by the named insured on a coverage selection form that clearly states that (a) election of a basic policy results in less coverage than the $250,000 required under former law, and (b) failure to purchase the optional $10,000 liability insurance under a basic policy may subject the insured to a claim or judgment for noneconomic loss that is not covered by the policy, that may place his assets at risk, and with respect to which the insurer has no duty to provide a defense. N.J.S.A. 39:6A-3.2a.

3. The Special Automobile Policy

In 2003, the Legislature created the "special" policy to enable certain qualifying low-income individuals to comply with the mandatory insurance laws. The policy is available to those eligible for and enrolled in Medicaid.

A "special policy" must provide:

(a) Emergency medical coverage, up to $250,000, for the benefit of the named insured and dependent resident family members, and occupants and permissive users of the insured vehicle. N.J.S.A. 39:6A-3.3(b)(1).

(b) A $10,000 death benefit. N.J.S.A. 39:6A-3.3(b)(2).

Emergency medical care includes all medically necessary care immediately following an accident, up to the time of discharge from acute care. Medical care within 120 hours of an accident that is initiated at a hospital is presumed covered. In addition, coverage is provided for both emergent and follow-up care for catastrophic or life-threatening injuries. No other routine or follow-up care is covered.

All special policyholders and their resident dependents are subject to the lawsuit limitation. N.J.S.A. 39:6A-3.3(b)(3).

No liability collision, comprehensive, uninsured or underinsured coverage may be offered in a special policy. N.J.S.A. 39:6A-3.3(c).

Special policyholders are by statute deemed to be "uninsured." N.J.S.A. 17:28-1.1(a)(2)(d). Accordingly, a plaintiff injured by a special policyholder immediately may resort to available uninsured benefits.

Election of a special policy must be in writing and contain a statement that the policy covers only emergency medical care, and that election of special insurance may subject the insured to an uncovered claim for damages with respect to which the carrier has no duty to provide legal counsel, and that may place the insured's assets at risk. N.J.S.A. 39:6A-3.2.

4. Exclusions

There are specified circumstances that will bar a client from seeking coverage for medical bills, from bringing a claim against a third party for personal injuries, or both. When interviewing a new client, it is essential to ensure that there are no statutory bars that would apply.

First, as discussed above, owners of vehicles registered in the State of New Jersey are required to carry a specified amount of coverage. Vehicle owners that fail to maintain the minimum coverage required by law are barred from bringing an action for economic or non-economic loss against a third-party tortfeasor. N.J.S.A. 39:6A-4.5. One appellate panel has held that the culpably uninsured are only barred from recovery against a tortfeasor when the loss accrues while the claimant is actually operating the uninsured vehicle. *Dziuba v. Fletcher*, 382 N.J. Super. 73 (App. Div. 2005). The owner of an uninsured vehicle is definitively barred, however, from seeking PIP benefits under any policy, even when the accident does not involve the uninsured vehicle. N.J.S.A. 39:6A-7b(1). Nor can the uninsured recover medical benefits in an action against the tortfeasor, even when the accident does not involve the uninsured vehicle.

There is also a statutory bar pursuant to N.J.S.A. 39:6A-4.5 that prohibits persons who are convicted or plead guilty to a charge of Driving While Intoxicated from maintaining an action for personal injury and economic loss. A driver convicted of DWI is not barred, however, from seeking personal injury protection (PIP) benefits to pay medical bills incurred as a result of the accident. *Walcott v. Allstate New Jersey Ins. Co.*, 376 N.J. Super. 384 (App. Div. 2005).

Finally, the statute also prohibits anyone acting with a specific intent to injure himself or others from bringing any claims for losses associated with the accident.

B. THE TORT THRESHOLD

Every insured person in New Jersey is subject to either a "tort threshold" or "no tort threshold." The tort threshold is a provision in an insured's own policy that, in exchange for a reduced premium, bars a plaintiff's right to sue unless he or she sustained an injury as described by statute. Prior to AICRA, the tort threshold was known as the "verbal threshold." Pursuant to AICRA, the "verbal threshold" of the former statute was replaced by a new "limitation on lawsuit option" for policies purchased or renewed on or after March 22, 1999. N.J.S.A. 39:6A-8a. Because most cases now pending fall under the new standard, this text will address only the requirements of the "limitation on lawsuit option."

Under the lawsuit limitation, in order to have a viable claim, the plaintiff must show that he or she has sustained an injury in one of the following six categories of injury:

- Death;
- Dismemberment;
- Significant disfigurement or significant scarring;
- Displaced fractures;
- Loss of a fetus; or
- A permanent injury, within a reasonable degree of medical probability, other than scarring or disfigurement.

AICRA also contains a procedural requirement for meeting the lawsuit limitation. Specifically, the Act requires the plaintiff to provide the defendant with a doctor's certification

that the plaintiff has sustained "one of the injuries described in the statute." N.J.S.A. 39:6A-8a. The statute on its face requires the certification for all six categories of injury, including death. *Ibid. See Thomasson v. McQuown,* 358 N.J. Super. 64 (Law Div. 2002) (holding claim of disfiguring scar subject to physician certification requirement). Non-displaced fractures may meet the standard only if the injury also meets the definition of a "permanent injury, within a reasonable degree of medical probability." *Kennelly-Murray v. Megill,* 381 N.J. Super. 303 (App. Div. 2005). The statute defines a permanent injury as existing when "the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment." *Ibid.* Notably, in the 2005 Supreme Court decision of *Diprospero v. Penn,* 183 N.J. 477 (2005), the Court held that the new "lawsuit limitation" statute does not require a showing of a serious lifestyle impact as a requirement of vaulting the tort threshold, so long as a permanent injury is proven. *Diprospero* thus eliminated a major hurdle for plaintiffs that had resulted in the dismissal of many claims under the former verbal tort threshold.

The physician's certification must be "provided to defendant" within sixty days following defendant's filing of an answer; however, the court, for good cause shown, may grant one sixty-day extension of time in which to file. *Ibid.* Failure to timely serve a physician's certification more appropriately falls under the broad umbrella of failure to make discovery, with attendant discovery type sanctions, up to dismissal, available. *Casinelli v. Manglapus,* 181 N.J. 354, 365-66 (2004). Where a defendant moves for dismissal after the expiration of the statute of limitations, however, the effect is to bar the refiling of the complaint. The courts have determined that a plaintiffs claim may be saved from such a dismissal by applying equitable doctrines such as equitable estoppel, *see Hernandez v. Stella,* 359 N.J. Super. 415 (App. Div.

2003); *Konopka v. Foster*, 256 N.J. Super. 223 (App. Div. 2002), or substantial compliance, *see Casinelli v. Manglapus*, 357 N.J. Super. 398 (App. Div. 2003). Notwithstanding, the best practice to avoid a potential dismissal of a client's claim is to defer filing until a physician's certification is obtained and attach a physician's certification to the Complaint.

The certification is a procedural mechanism designed to defer fraudulent claims. *Casinelli v. Manglapus*, 181 N.J. 354, 361-62 (2004). Supplying a physician's certification in a timely manner is necessary but not sufficient to defend dismissal of a claim based on the lawsuit limitation. The certification must be signed by either the licensed treating physician or "a board-certified physician to whom the plaintiff was referred by the treating physician." *Ibid.* A "physician," for purposes of the statute, is a physician as defined by N.J.S.A. 45:9-5.1. Under current case law, a chiropractor may provide the necessary certification. *Afram v. Heller*, 380 N.J. Super. 545 (App. Div. 2005); *Olarte v. Crocker*, 380 N.J. Super. 203 (Law Div. 2002); *Pensabene v. Straus*, 342 N.J. Super. 196, 201 (Law Div. 2001). In the absence of a definitive pronouncement, however, it remains wise if possible to obtain a certification from a medical doctor.

The certification must state, under penalty of perjury, that the plaintiff has sustained one of the "injuries" described in the statute. N.J.S.A. 39:6A-8a. It must be based on and specifically refer to objective clinical evidence, "which may include medical testing." *Ibid.* Any testing relied upon, however, must have been performed in accordance with the medical protocols set forth in N.J.S.A. 39:6A-4, discussed *infra*. Further, the certification may only rely upon diagnostic tests that have been deemed "valid" pursuant to N.J.S.A. 39:6A-4.7, *see* N.J.A.C. 11:3-4.5(b), discussed *infra*. Finally, the tests may not be "experimental in nature,"

nor may the results of such diagnostic testing rely entirely on "subjective" patient response. N.J.S.A. 39:6A-8a.

The Act provides for civil and criminal penalties against physicians who fraudulently misrepresent the nature of a patient's injuries and his/her entitlement to benefits. N.J.S.A. 39:6A-15.

Whether under the former verbal threshold or the new lawsuit limitation, N.J.S.A. 39:6A-8.1 provides that an election of the tort option pursuant to N.J.S.A. 39:6A-8 "shall apply to the named insured and any immediate family member" residing in the named insured's household. The statute defines an "immediate family member" as "the spouse of the named insured and any child of the named insured or spouse residing in the named insured's household, who is not a named insured under another automobile insurance policy." In addition, all basic and special policyholders are subject to the lawsuit limitation. N.J.S.A. 39:6A-3.l; N.J.S.A. 39:6A-3.3.

When the defendant was operating a commercial vehicle, however, the plaintiff may not be subject to the threshold under his or her policy. *But see Vamvikidis v. Peters*, 327 N.J. Super. 287 (App. Div. 2000) (holding that Mercedes Benz owned by corporation and used strictly in pursuit of corporate business not a commercial vehicle outside the scope of the no-fault law, noting definition of "private passenger automobile" includes "vehicles of a private passenger type 'owned and used in business pursuits'"). That is so because in order for the threshold to apply, there are two requirements: (1) the plaintiff must be subject to the threshold and (2) the defendant must be exempt as the owner of a private passenger automobile that carries PIP. Thus, the tort threshold generally applies if;

(1) the defendant is the owner, registrant, operator or occupant of a private passenger automobile or motorbus and therefore is required to carry PIP coverage,

and

(2) the plaintiff is

(a) a named insured who has elected the tort option, or a resident spouse, child, or child's spouse of that named insured

and is either

(i) required to maintain PIP coverage as the owner of an automobile registered or principally garaged in this State.

or

(ii) entitled to receive PIP benefits as a named insured, resident family member, or occupant, permissive user, or person injured as a pedestrian by the insured vehicle.

See Beaugard v. Johnson, 281 N.J. Super. 162, 167 (App. Div. 1995); *Vamvikidis v. Peters*, 327 N.J. Super. 287 (App. Div. 2000); *Weiss v. Thomas*, 274 N.J. Super. 37, 41-42 (App. Div. 1994).

C. PERSONAL INJURY PROTECTION (PIP) CLAIMS

Because New Jersey is a "no fault" state, medical bills for injuries sustained in an automobile accident are paid by the insured party's own automobile insurance carrier under the personal injury protection or "PIP" provisions of the auto policy. N.J.S.A. 39:6A-1.1 *et seq.* A claim for personal injury protection benefits, commonly known as a "PIP" claim, can be

initiated against a client's auto carrier for medical treatment that has not been authorized or for which payment has been denied.

The type and duration of medical services covered by PIP is governed both by the terms of the particular policy and by State law. Each policy contains a PIP dollar limit selected by the insured at the time he or she purchases the policy. In addition, for policies purchased or renewed on or after March 22, 1999 and thus subject to AICRA, the course of medical treatment, particularly for soft-tissue neck and back injuries, is closely regulated by the provisions of N.J.S.A. 39:6A-1 et seq., the Automobile Insurance Cost Reduction Act of 1998 (the Act), and N.J.A.C. 11:3-3.1 et seq., the Act's implementing regulations.

In enacting AICRA, the Legislature sought to remedy a perceived abuse of the personal injury protection (PIP) benefits mandated under this State's no-fault laws. Specifically, the Legislature found that since the 1988 enactment of the verbal threshold, "[PIP] benefits are being overutilized for the purpose of gaining standing to sue for pain and suffering." N.J.S.A. 39:6A-1.1. The Legislature found that certain measures were warranted in order to combat this perceived overutilization of benefits for the purpose of vaulting the tort threshold and thus enforce the "restriction on the right of persons who have non-permanent or non-serious injuries to sue for pain and suffering." *Id.* The primary means chosen by the Legislature to enforce the tort threshold was to control, both procedurally and substantively, the course of treatment for victims of automobile accidents.

1. Notice

If required by the policy (basic or standard), a treating health care provider must notify the insurer of a claim for medical expense benefits within 21 days following the commencement

of treatment. N.J.S.A. 39:6A-5a. Submission of a bill or invoice will satisfy the notice requirement. N.J.S.A. 39:6A-5b. Failure to provide timely notification may result in denial of the claim and the physician may not seek direct payment from the insured where the claim is denied for failure to provide timely notification. N.J.S.A. 39:6A-5c. The insurer must pay a claim for PIP benefits within 60 days, with a provision for a 45-day extension upon written notice to further investigate a claim. N.J.S.A. 39:6A-5g. Overdue payments are subject to interest as prescribed by the Rules of Court for judgments, awards and orders for the payment of money. N.J.S.A. 39:6A-5h.

2. Treatment Protocols

Under both the basic and the standard policy, the Act restricts an insured's access to medical care by requiring that medical treatments, diagnostic tests and services provided by the policy "shall be rendered in accordance with commonly accepted protocols and [commonly accepted] professional standards and practices" for treatment of the relevant injury. N.J.S.A. 39:6A-3.1a; N.J.S.A. 39:6A-4a. Commonly accepted protocols and professional standards and practices, for purposes of the statute, are *either* "those recognized by national standard setting organizations, national or state professional organizations of the same discipline as the treating provider," *or* those designated by the Commissioner of Banking and Insurance in consultation with the professional licensing boards. *Id.* Deviation from the standard protocols for treatment and/or administration of diagnostic tests may be allowed only when warranted "by reason of medical necessity." *Id.*

Regulations set forth at N.J.A.C. 11:3-4.1 *et seq.* identify reimbursable PIP medical expense benefits for purposes of either a standard or a basic policy. The PIP regulations apply to "those policies issued or renewed on or after March 22, 1999." N.J.A.C. 11:3-4.1(c).

As a starting point, the regulations provide that PIP shall reimburse a provider for "all medically necessary expenses for the diagnosis and treatment of injuries sustained from a covered automobile accident," up to the applicable limits. N.J.A.C. 11:3-4.3(a). "Medically necessary" treatment is that which is consistent with the clinically supported symptoms, diagnosis or indications of the injured person, and is:

(1) not primarily for the convenience of the injured person or provider;

(2) is the most appropriate standard or level of service which is in accord with standards of good practice and standard professional treatment protocols, as such protocols may be recognized or designated by the Commissioner of Banking and Insurance, in consultation with the professional licensing boards in the Division of Consumer Affairs in the Department of Law and Public Safety, or by a nationally recognized professional organization, and

(3) does not involve unnecessary diagnostic testing.

[N.J.S.A. 39:6A-2m; N.J.A.C. 11:3-4.2.]

3. Diagnostic Tests

N.J.A.C. 11:3-4.5 defines reimbursable and nonreimbursable diagnostic tests. N.J.A.C. 11:3-4.5(a) provides that PIP medical expense benefits coverage "shall not provide reimbursement for the following diagnostic tests, which have been determined to yield no data of any significant value in the development, evaluation and implementation of an appropriate plan of treatment for injuries sustained in motor vehicle accidents."

- Spinal diagnostic ultrasound
- Iridology
- Reflexology
- Surrogate arm mentoring
- Surface EMG
- Mandibular tracking and stimulation

N.J.A.C. 11:3-4.5(b) states that PIP shall provide reimbursement for the following diagnostic tests, "which have been determined to have value in the evaluation of injuries, the diagnosis and development of a treatment plan, when medically necessary and consistent with clinically supported findings":

- Needle EMG
- SSEP, VEP, BAEP, BEP, NCV, H-REFLEX
- EEG
- MRI
- CT scan
- Dynatron/cyber station/cybex
- Sonogram/ultrasound
- Videofluroscopy
- Thermography
- Brain Mapping

The physician's determination to administer any of the above tests is subject to decision point review, N.J.A.C. 11:3-4.5(d), with the exception of diagnostic tests rendered in the course of emergency care. N.J.A.C. 11:3-4.5(e).

4. Care Paths for Neck and Back Injuries

The Commissioner has designated by regulation certain medical treatment protocols, or "care paths," as "the standard course of medically necessary treatment, including diagnostic tests," for certain "identified injuries." N.J.A.C. 11:3-4.6. Specifically, there are six care paths that govern the provision of treatment and diagnostic testing, as follows:

Care Path 1: Cervical Spine/Soft Tissue Injury

Care Path 2: Cervical Spine/Soft Tissue Injury with Radiculopathy; Herniated Disc with or without Radiculopathy; Herniated Disc with Radiculopathy and Severe neurological compression or compromise

Care Path 3: Thoracic Spine/Soft Tissue Injury

Care Path 4: Thoracic Spine/Herniated Disc with or without radicular symptoms; Soft Tissue Injury with Radiculopathy; Herniated Disc with Radiculopathy and Severe neurological compression or compromise

Care Path 5: Lumbar-Sacral Spine/Soft Tissue Injury

Care Path 6: Lumbar-Sacral Spine/Herniated Disc with or without Radiculopathy; Soft Tissue Injury with Radiculopathy; Herniated Disc with Radiculopathy and Severe neurological compression or compromise

Flow charts of the care paths are included as **Example 101**.

Deviation from the care paths for the identified injuries is subject to close scrutiny and must be supported by documentation of special circumstances. *New Jersey Coalition of Health Care Professionals v. New Jersey Dept. of Banking & Ins.*, 323 N.J. Super. 207 (App. Div.), *certif. denied*, 162 N.J. 485 (1999). The care paths do not apply, however, to emergency treatment or to treatment rendered in the ten days immediately following the accident. *See* N.J.A.C. 11:3-4.6(d) (providing that the care paths do not apply to treatment administered during emergency care); *Bulletin No: 99-05 from Jaynee LaVecchia, Commissioner of Banking and Insurance re: Decision Point Review and Precertification Filings*, March 17, 1999 (directing that precertification and decision point review plans clearly state that treatment in the first ten days and emergency care do not require decision point review or precertification).

5. Decision Point Review

All policies must provide procedures for "decision point review." "Decision points" are "those junctures in the treatment of identified injuries where a decision must be made about the continuation or choice of further treatment." N.J.A.C. 11:3-4.2. A decision point in the care paths is represented by a hexagon or by reference to a second opinion, referral for a second independent consultative medical opinion, or development of a treatment plan or mandatory case management. N.J.A.C. 11:3-4.6(b). In addition, a determination to administer any of the diagnostic tests listed in N.J.A.C. 11:3-4.5(b) is subject to decision point review. N.J.A.C. 11:3-4.7.

A qualified decision point review plan must identify the PIP vendors with whom the insurance company has contracted; identify any specific medical procedures, treatments, diagnostic tests or other services that are subject to precertification; provide copies of the

informational materials that will be provided to policyholders; identify any restrictions on the assignment of benefits to a provider; and set forth procedures for the prompt review and disposition of the request by the insurer; and, where necessary, the scheduling of a physical examination to resolve the claim. N.J.A.C. 11:3-4.7(c). The insurer must notify the injured party or his designee that a physical examination will be required as part of the decision point review. N.J.A.C. 11:3-4.7(e). Where an Independent Medical Examination will be required, it must be scheduled within seven calendar days of the receipt of the request for treatment unless the injured person consents to an extension. N.J.A.C. 11:4-7(e)(2). The examination must be "at a location reasonably convenient to the injured person." N.J.A.C. 11:4-7(e)(4). An injured party must cooperate with the review by providing the IME with medical records at the time of the examination or before the scheduled examination. The insurer must advise the injured person or his designee "whether reimbursement is authorized as promptly as possible but in no case later than three business days after the examination." N.J.A.C. 11:4-7(e)(6).

6. Precertification

The policy (basic or standard) may require precertification of treatment or diagnostic testing, except that no precertification may be required in the first ten days following the accident. N.J.S.A. 39:6A-3.1a; N.J.S.A. 39:6A-4a. A precertification plan may include provisions that an injured person must obtain designated medical services or durable medical equipment directly from a voluntary network under contract to the insurer, or be subject to a penalty copayment of up to 30 percent. N.J.A.C. 11:3-4.4(g).

Precertification and decision point review each require affirmative action by the insurer to deny based on the determination of a physician. N.J.A.C. 11:3-4.7(c)(4). Therefore, a

failure to deny in accordance with that rule means that the treatment or test may proceed until such time as a denial based on the determination of a physician is communicated by the insurer.

7. Assignment

Under either a basic or standard policy, assignment of medical expense benefits may only be made to a treating health care provider. N.J.S.A. 39:6A-3.1a; N.J.S.A. 39:6A-4a. The policy may place further restrictions on the assignment of medical expense benefits that are "consistent with the efficient administration of the coverage." N.J.A.C. 11:3-4.9.

8. Deductibles and Copays

Each insurer must offer a standard $250 deductible and 20% copayment on medical expense benefits between $250 and $5000, N.J.A.C. 11:3-4.4(a), with an option to select higher deductibles at appropriately reduced premiums. N.J.A.C. 11:3-4.4(b). If elected, a higher deductible applies only to the named insured and resident relatives. N.J.A.C. 11:3-4.4(b)(l). All deductibles and copays apply on a per accident basis. N.J.A.C. 11:4-4(c).

9. Dispute Resolution

Disputes regarding the recovery of medical expense or other PIP benefits under either a basic or a standard policy may be submitted, at the request of the injured person, the insurer, or a treating health care provider to dispute resolution before a "dispute resolution professional" (DRP). N.J.S.A. 39:6A-5.la-c; N.J.A.C. 11:3-5.2. All decisions by a DRP are binding. N.J.S.A. 39:6A-5.1c.

Among the matters that may be resolved in a PIP dispute are:

(1) Interpretation of the insurance contract's PIP provisions;

(2) Whether the medical treatment or diagnostic tests are in accordance with the provisions of applicable statutes and rules for the basic and standard policies and in compliance with the terms of the policy;

(3) Eligibility of the treatment or service for compensation or reimbursement, including whether the injury is causally related to the accident and the application of deductible and copay provisions;

(4) Eligibility of the provider performing the service to be compensated or reimbursed under the terms of the policy and the provisions of N.J.A.C. 11:3-4, and including whether the provider is licensed or certified to perform the treatment or service;

(5) Whether the treatment was actually performed;

(6) Whether the diagnostic tests performed are recognized by [the PIP regulations and] administered in accordance with their standards;

(7) The necessity and appropriateness of consultation with other health care providers;

(8) Disputes involving the application of, or adherence to, the automobile insurance medical fee schedule at N.J.A.C. 11:3-29;

(9) Whether the treatment is reasonable, necessary and in accordance with medical protocols adopted by the Commissioner at N.J.A.C. 11:3-4; or

(10) Amounts claimed for PIP income continuation benefits; essential services benefits, death benefits and funeral expense benefits.

[N.J.A.C. 11:3-5.2.]

Disputes regarding medical necessity may be referred, at the option of the DRP or either party, to a medical review organization (MRO). N.J.S.A. 39:6A-5.1d. The MRO may request

the injured party to submit to an independent medical examination. N.J.A.C. 11:3-5.6(c)(3).

Among the issues that may be determined by an MRO are:

(1) the medical necessity of the treatment or diagnostic test for which reimbursement is sought;

(2) whether the treatment is in accordance with medically recognized standard protocols, professional standards, and commonly accepted practice in the relevant discipline;

(3) whether the treatment is consistent with the symptoms or diagnosis;

(4) whether the treatment/diagnostic test is related/necessitated by the injury sustained in the accident;

(5) whether the treatment is of a palliative, rather than restorative, nature;

(6) the medical necessity of repeated procedures or treatment.

[N.J.S.A. 39:6A-5.2d.]

The MRO's determination shall be presumed correct by the DRP, which presumption may be rebutted by a preponderance of the evidence. N.J.S.A. 39:6A-5.1d. The DRP's decision must be in writing and set forth the issues in dispute, the MRO's findings, if any, the DRP's findings of fact and his or her legal conclusions. N.J.A.C. 11:3-5.6(d). The award shall apportion the costs of the proceedings without regard to who initiated it "in a reasonable and equitable manner consistent with the resolution of the issues in dispute." *Id.* The award may include attorney's fees to a successful claimant "in an amount consonant with the award." *Id.*

D. UNINSURED MOTORISTS(UM) AND UNDERINSURED MOTORISTS (UIM) CLAIMS

Uninsured and underinsured motorists coverage involves first-party coverage under a contract of insurance. The insured's entitlement to coverage and the procedures for pursuing

a claim are governed primarily by the contract, and those rights differ substantially from carrier to carrier. Some UM/UIM carriers, for instance, now include provisions permitting the carrier at its option to try UM/UIM matters in court rather than by way of arbitration. Therefore, as with any issue arising in auto litigation, it is absolutely essential to review the UM/UIM provisions of the particular policy before proceeding with a claim.

1. Uninsured Motorists Claims

Uninsured Motorist or "UM" coverage is first-party coverage that provides compensation to an insured under his or her own automobile policy for personal injury and other losses caused by an uninsured tortfeasor. New Jersey requires minimum UM coverage of $15,000/$30,000 for all motor vehicles, N.J.S.A. 17:28-1.1, with the exception of those covered by a "basic" policy, or a "special" policy, L.2003, c.89, under which UM is not available. N.J.S.A. 39:6A-3.1. Self-insured vehicles are deemed to provide minimum UM coverage. Insurers may not limit coverage to the statutory minimum and are required to offer additional UM coverage up to $250,000 per person/$500,000 per accident for bodily injury, $100,000 property damage, or $500,000 single limit per accident. An insured may not, however, purchase UM or UIM coverage that exceeds his or her liability limits. N.J.S.A. 17:28-1.1.

A tortfeasor's vehicle is considered "uninsured" triggering a right to coverage in four situations: (1) when it is not covered by a policy of insurance on the date of the accident; (2) when the tortfeasor's carrier disclaims coverage; (3) when the tortfeasor's carrier becomes insolvent or declares bankruptcy; (4) when the vehicle is a "hit and run" vehicle; or (5) when the vehicle is covered by a "special" automobile policy pursuant to 545 of L.2003 c. 89. N.J.S.A. 17:28-1.1(e)(2). Underinsured vehicles, uninsured vehicles owned by the claimant,

self-insured vehicles, vehicles covered by a "basic" policy, and publicly owned vehicles are *not* considered uninsured. *Id.*

A vehicle is uninsured when the tortfeasor's liability carrier denies coverage. Common reasons for a liability carrier's disclaiming coverage include the insured's vehicle being used without permission, the insured's failure to cooperate with the carrier, and the allegation that the accident involved intentional conduct. The UM carrier may dispute the validity of the disclaimer, potentially impeding a claimant's ability to proceed to the resolution of the UM claims. In that circumstance, the courts have held that a claimant need not await the resolution of the disputed disclaimer, but may proceed to UM arbitration, leaving the UM carrier later to pursue its subrogation rights against the liability carrier. *See Parks v. Colonial Penn Ins. Co.*, 98 N.J. 42, 49 (1984); *Schecter v. Selective Ins. Co.*, 264 N.J. Super. 299, 303-304 (App. Div. 1993).

A hit and run vehicle is one as to which "the identity of the motor vehicle and of the operator and owner thereof cannot be ascertained or it is established that the motor vehicle was, at the time said accident occurred, in the possession of some person other than the owner without the owner's consent and that the identity of such person cannot be ascertained[.]" N.J.S.A. 39:6-78. In order to assert a UM claim based on an accident caused by a hit and run driver, the claimant must demonstrate that he or she made reasonable efforts to determine the identity of the vehicle, its owner and its operator. *Scheckel v. State Farm Mut.*, 316 N.J. Super. 326, 332-334 (App. Div. 1998). "Hit and run" vehicles include "phantom" vehicles, or vehicles that force the claimant off the road without making physical contact with the claimant's vehicle.

An insured's entitlement to UM benefits and the procedures for enforcing UM coverage are governed by the contract with the UM carrier. The standard UM endorsement requires the submission of UM disputes to binding arbitration, usually before three arbitrators. The endorsement permits either party to reject an arbitration award and demand a trial of the issues if the arbitrators' damage award exceeds the statutory minimum limits of $15,000 per person and $30,000 per accident for bodily injury and $5000 for property damage.

The standard UM endorsement provides that UM arbitration may be sought to resolve disputes concerning whether the insured "is legally entitled to recover damages under the endorsement" and regarding "the amount of damages." Issues of coverage, such as the validity of an insurer's disclaimer of coverage based on lack of permission or whether the insured made reasonable efforts to ascertain the identity of a hit and run driver, are generally not arbitrable and must be litigated in court. *See, e.g., O'Connell v. New Jersey Mfrs. Ins. Co.,* 306 N.J. Super. 166 (App. Div. 1997), *certif. granted,* 153 N.J. 405, *appeal dismissed,* 157 N.J. 537 (1998); *Travelers Indemnity Co. v. Mongiovi,* 135 N.J. Super. 452, 459 (App. Div. 1975). However, that determination has been significantly undercut by the decision of *Ohio Cas. Ins. Co. v. Benson,* 87 N.J. 191, 198-99 (1981) (determining that the question of the existence of a hit and run driver can be submitted to an arbitrator). Where a coverage issue arises in the course of an arbitration, the party objecting to its consideration by the arbitrator can either institute a declaratory judgment action to preclude the arbitrator from deciding the issue or object to its inclusion in the UM proceeding, thereby preserving a right to subsequent judicial review of the coverage question. *See In re Matter of Arbitration Between Grover,* 80 N.J. 221 (1979). The question whether the plaintiff has satisfied the tort threshold has been held arbitrable. *See Cutitta v. Selective Ins. Co.,* 255 N.J. Super. 252 (App. Div. 1992).

A plaintiff invokes his or her right to UM by sending a written demand to the UM carrier. *See* **Examples 104 and 105.** The plaintiff and the UM carrier each designate a

"partial" arbitrator and the two partial arbitrators select a third "neutral" arbitrator. The designation of an arbitrator is typically included in the letter demanding arbitration. The demand letter ordinarily sets forth a time limit, usually 30 days, for a response. A declaratory judgment action may be initiated to compel compliance with the UM endorsement where the carrier fails to respond, or if the two partial arbitrators have not or cannot agree on a neutral. *See* **Examples 106 through 109.**

The UM endorsement governs the pre-hearing discovery to which the carrier is entitled. The discovery may include a statement under oath, the provision of medical releases and authorizations to submit to physical examination, and the provision of all legal documents from related suits against third parties.

The arbitration hearing is located in the county where the insured lives, unless otherwise agreed, and takes place at one of the arbitrators' offices. Each party bears its own expenses and split the expense of the neutral arbitrator. Standard fees for arbitrators are $300-$400 per arbitrator. There are no statutes specifically governing what rules of evidence apply at a UM arbitration. The standard UN endorsement states that "local rules of law as to evidence and procedure will apply." As a matter of practice, most arbitrators follow the rule applicable in non-binding mandatory court arbitration that the arbitrator will admit all relevant evidence without being bound by the formal rules of evidence. Thus, at a typical arbitration, reports from the plaintiff’s treating physicians and defense examiners are considered without requiring an appearance by the doctors.

Reference to the policy language is necessary, as the language will control. Therefore, if the language indicates that a decision of two of the arbitrators is binding if the damages do not exceed the statutory limits of $15,000/$30,000/$5,000, and indicates a period in which to file an

appeal, that language will control. However, if a policy simply says that a decision of two of the arbitrators is binding, with no additional language, there would be no right to appeal.

Either party within 90 days of delivery of the award may ask a court to confirm, vacate, modify or correct the arbitration award. Judicial review of the arbitrators' decision is, however, extremely limited. An award may be vacated only where (1) the award was procured by corruption, fraud or undue means, (2) there was evident partiality or corruption in the arbitrators, or any thereof, (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon good cause being shown therefor, or in refusing to hear the evidence, pertinent and material to the controversy, or of any misbehaviors prejudicial to the rights of any party, or (4) the arbitrators exceeded or so imperfectly executed their powers that a mutual, fmal and definite award upon the subject matter was not made. N.J.S.A. 2A:24-8.

2. Underinsured Motorists Claims

Underinsured Motorists or "UIM" coverage is first-party coverage that provides compensation to an insured under his or her own policy when the tortfeasor's liability coverage is insufficient to cover the insured's losses. UIM coverage is optional so not every policy provides it. N.J.S.A. 17:28-1.1(b). Purchasers of a "basic" policy do not have the option to carry UIM coverage.

A tortfeasor's vehicle is considered "underinsured" when

> the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies available [to the tortfeasor] is, at the time of the accident, less than the applicable limits for underinsured motorist coverage afforded under

> the motor vehicle insurance policy *held* by the person seeking...
>
> recovery.
>
> [N.J.S.A. 17:28-1.1e.]

In order to determine whether UIM coverage is triggered, it is thus necessary to compare the liability limits of any policies that the tortfeasor may look to for coverage (including his or her personal policy, the policy of a host vehicle, or any umbrella or general liability policies) with the UIM limits of any policies purchased by or providing coverage to the injured party (including his or her personal policy, the policy of a family member residing in the household, or the policy of a host vehicle). *See Magnifico v. Rutgers Casualty Ins. Co.*, 153 N.J. 406 (1998) (holding passenger "held" and was entitled to recover UIM benefits under $250,000 policy issued to driver of host vehicle); *New Jersey Manufacturer's Insurance Co. v. Breen*, 153 N.J. 424 (1998) (holding daughter of named insureds under business auto policy, who was injured in an auto accident while operating her own vehicle, "held" and was entitled to receive benefit of UIM coverage included in her parents' business auto policy that would not have been available pursuant to her personal policy); *Grant v. Arnica Mutual Ins. Co.*, 153 N.J. 433 (1998) (holding motorist who was injured in accident while driving his own car "held" and entitled to recover UIM benefits under automobile policy issued to his brother, with whom motorist lived).

Although an injured party may look to several different policies both to establish underinsured status and for recovery, the limits of those policies may not be added or "stacked" to create coverage in the combined amounts. N.J.S.A. 17:28-1.1(c).

It should be noted that AICRA created a new "basic" policy under which a purchaser may opt to carry no bodily injury liability coverage at all. Notwithstanding that, a "basic"

policyholder is not considered uninsured, even when he or she has no liability coverage. N.J.S.A. 17:28-1.1. Therefore, a plaintiff must resort to UIM coverage when injured at the hands of a basic policyholder.

A vehicle is not considered underinsured "unless all the limits of bodily injury liability insurance or bonds applicable at the time of the accident have been exhausted by payment of settlements or judgments." N.J.S.A. 17:28-1.1(e)(1). The UIM carrier is entitled to a credit against the amount that was recovered against the tortfeasor's liability policies. *Id.*

If, for example, the tortfeasor has $15,000/$30,000 liability limits, and the injured party carries $15,000/$30,000 in UIM, the tortfeasor would not be underinsured with respect to the injured party's policy and no UIM would be available. If, on the other hand, the tortfeasor has $15,000/$30,000 liability limits and the injured party has $100,000/$300,000 in UIM, then UIM coverage would be triggered and the injured party could seek an additional $85,000 in UIM benefits after exhausting the tortfeasor's policy limits.

3. UIM Arbitration

Assuming "underinsured" status is established, the next question is how to pursue a claim for UIM benefits. In order to assert a UIM claim, a plaintiff must provide proper notice to the UIM carrier at various stages in the litigation. *See* **Examples 110 and 111**. Specifically, the plaintiff must notify the UIM carrier when (1) when suit is initiated against the tortfeasor, (2) when it is clear that the tortfeasor's liability coverage is insufficient, and (3) when plaintiff receives an offer of the tortfeasor's policy limits. *Rutgers Ins. Co. v. Vassas*, 139 N.J. 163, 172 (1995); *Rivers v. Allstate*, 312 N.J. Super. 379 (App. Div. 1998). The UIM carrier is entitled to intervene in the third-party action if it wishes to, but failure to provide notice of suit may result in the UIM claim being barred. *See Zirger v. General Accident Ins. Co.*, 144 N.J. 327

(1996). Although verbal notice has been deemed sufficient where there is no prejudice to the UIM carrier, *Walsh v. State Farm Ins. Co.,* 301 N.J. Super. 619, 624-25 (Law Div. 1997), it is obviously far preferable to provide the UIM carrier with written notice of an offer to settle. Notice must be provided to all UIM carriers potentially liable to provide coverage.

Because the UIM carrier has a right of subrogation against the tortfeasor that would be extinguished by the claimant's issuance of a general release to the tortfeasor's carrier, the plaintiff cannot settle the underlying case against the tortfeasor without the permission of the UIM carrier. *Longworth v. Van Houten*, 223 N.J. Super. 174, 184 (App. Div. 1988). Once the plaintiff notifies the UIM carrier of the tortfeasor's carrier offer of its policy limits in settlement of the plaintiff's claims, the UIM carrier has two options. The carrier may consent to the settlement thereby waiving its subrogation rights. Alternatively, the UIM carrier may preserve its subrogation rights by tendering to the plaintiff the full amount of the tortfeasor's policy limits in exchange for an assignment of plaintiff's rights against the tortfeasor. *Id.* at 193-94.

If the UIM carrier within thirty days fails to respond to plaintiff's request for permission to settle, the plaintiff may file a declaratory judgment action seeking a determination of the issue. *Id.* at 194-95.

The procedures for initiating arbitration, choosing arbitrators, and paying the costs of arbitration are the same as those discussed above in the UM context.

Example 98: Client Fact Sheet (Automobile Injury)

"INITIAL INTERVIEW"
*For internal use only

DATE:_____
REF:_____
INTERVIEWED BY:_____

I – CLIENT INFORMATION:

Name:_____ Age:_____
Address:_____ DOB:_____
City, St., Zip:_____ Minor? YES / NO
Home Phone:_____ Social Security #:_____
Work Phone:_____ Other Phone:_____
Dependant(s):_____ M____ S____ SEP____ DIV____ WID____
Mother, Father, Husband, Wife:_____
Closest Relative: (Permanent Phone/Address)_____
_____
Driver's License Number:_____ STATE:_____

II – INJURY INFORMATION:

Injury Description:_____
_____
Anxiety; Difficulty Sleeping? YES / NO Headaches? YES / NO
Back? Upper / Middle / Lower Numbness? YES / NO Where?_____
Shoulder Pain? Left / Right Pain down Legs? Left / Right
Clicking Jaw / Pain in Jaw / Ringing in Ears Tingling?_____
Bruises?_____ Fracture/Broken?_____ Stitches/How Many?_____
Hospital:_____ Inpatient / Outpatient
Admission:_____ Discharge:_____
Doctors Currently Treating With:_____
Family Doctors:_____

III – MEDICAL/LEGAL HISTORY:

Previous Injuries YES / NO
**If client answered yes, please refer to supplemental worksheet on next page*.
Prior Convictions:_____

IV – ACCIDENT INFORMATION:

Accident Location:_____
Municipality:_____ County:_____ State:_____
Date:_____ Police Department:_____
Time:_____am / pm Have Police Report: YES / NO
Any Tickets Issued: YES / NO If Yes, To Whom:_____

Client Initials:_____

Example 98 – Continued

HAVE YOU HAD ANY PREVIOUS INJURIES AT ALL?

IF YES, WHEN:_____

WHAT TYPE OF INJURY (*E.G. WORK RELATED, CAR ACCIDENT OR OTHER):*

_____

PLEASE DESCRIBE:_____

_____

_____

NAME AND ADDRESS OF TREATING PHYSICIAN:

_____

_____

DID YOU HAVE ANY SURGERIES RELATED TO YOUR INJURY; PLEASE EXPLAIN:

_____

_____

DATE OF SURGERY:_____

NAME AND ADDRESS OF HOSPITAL:_____

_____

ANY FILMS OR EMG?

_____

Example 98 – Continued

Purpose & Destination of Trip:_____
Was Client in Course of Employment:_____
Weather Conditions:_____
Road Conditions:_____
Signals Used: Client:_____ Defendant:_____
Damage to Other Objects:_____
Description of Accident::_____
_____
_____
_____

V – CLIENT'S INSURANCE INFORMATION:

Insurance Company Name:_____
Name of Insured:_____ Policy No.:_____
If NONE, does resident relative have insurance?_____
Any other household policies?_____
If NONE, does host vehicle have insurance?_____
Other Insurance of Client:_____
Health Insurance of Client:_____
Limits: POLICY_____ UM/UIM_____ MED_____
Threshold: LAWSUIT NONE FULL TORT LIMITED TORT _____
Claim No.:_____ Adjuster:_____

VI – CLIENT'S EMPLOYMENT INFORMATION:

Employed By:_____ How Long?_____
Address:_____
Job Position:_____ Salary: $_____
Losing Time? YES / NO Eligible for Disability? YES / NO Applied for Disability? YES / NO
Carrier & Sum Received:_____

VII – OTHERS INVOLVED:

Defendant Driver #1:
Name:_____ _
Address:_____
_____
Phone:_____
Injured? YES / NO_____
Defendant Owner #1: Same:_____
Name:_____ _
Address:_____
_____
Ins. Co.:_____
Agent:_____
Policy No._____

Defendant Driver #2:
Name:_____
Address:_____
_____
Phone:_____
Injured? YES / NO_____
Defendant Owner #2: Same:_____
Name:_____
Address:_____
_____
Ins. Co.:_____
Agent:_____
Policy No._____

Client Initials:_____

Example 98 – Continued

Claim No:_____ Claim No:_____
BI Adjuster:_____ BI Adjuster:_____
Witness(es): Passenger(s):
_____ _____
_____ _____
Relationship to anyone involved in accident?_____
_____

VIII – PROPERTY DAMAGE INFORMATION:

Make & Year of Vehicle:_____
Damaged Areas:
Client Vehicle:_____ Def. Vehicle:_____
Deductible Amount: $_____ Amount for Repairs: $_____
Location of Auto(s):
Client Vehicle:_____ Def. Vehicle:_____
Photos: Scene:_____ Vehicles_____

IX – MISC. INFORMATION:

Did defendant make any statements to you/anyone?_____
Did you have seat belt on?_____
Was your car pushed – how far?_____
Did your seat belt fail?_____
Did your car seat fail/break?_____
Did your air bag(s) inflate?_____
Do you have transportation?_____
NOTES:_____
_____
_____
_____
_____

I have provided, read this interview and the above information is correct and accurate. I understand that the Law Offices of *MARESSA, GOLDSTEIN, PATTERSON & DRINKWATER P.C.* will be relying on this information and its accuracy in determining whether to pursue and how best to present my claim for me.

CLIENT'S SIGNATURE:_____

ATTORNEY INTERVIEWING CLIENT:_____

Example 99: Complaint and Jury Demand

DRINKWATER & GOLDSTEIN, L.L.P.
277 WHITE HORSE PIKE, SUITE 200
ATCO, NEW JERSEY 08004
(856) 753-5131
Attorneys for Plaintiffs: Tara L. Magitz

TARA L. MAGITZ	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION- CAMDEN COUNTY
	:	
Plaintiffs,	:	
	:	DOCKET NO. CAM-L-
vs.	:	
	:	**Civil Action**
BRYAN P. TELLMONARCHE,	:	
APOSTROPHE MANAGEMENT	:	
ASSOCIATES, LLC a/k/a APOSTROPHE	:	**COMPLAINT AND DEMAND**
ARCHIVE, j/s/a	:	**FOR JURY TRIAL**
	:	
Defendants	:	

Plaintiffs, Tara L. Magitz, residing at 123 Market Street, Borough of Pamplonia, County of Camden, and State of New Jersey, by way of complaint against the Defendant say:

FIRST COUNT

1. On or about May 16, 2011, Plaintiff, TARA L. MAGITZ, was the owner and operator of a vehicle traveling eastbound on White Horse Pike (Route 30), approaching the intersection of Gibbsboro Road (County Route 686) in the Borough of Clementon, County of Camden and State of New Jersey.

2. At the aforesaid time and place, defendant, BRYAN P. TELLMONARCHE, was the operator of a motor vehicle owned by defendant, APOSTROPHE MANAGEMENT ASSOCIATES, LLC, a/k/a Apostrophe Archive Associates Ltd. that was traveling westbound on White Horse Pike (Route 30) in the Borough of Clementon, County of Camden, and State of New Jersey, and failed to make observations of vehicles traveling, and attempted to make a left

Example 99: Continued

hand turn onto south bound Gibbsboro Road (County Route 686) when it was not safe to do so, thereby causing a collision with the plaintiff, TARA L. MAGITZ.

3. At the aforesaid time and place, defendant, BRYAN P. TELLMONARCHE, operated the aforesaid vehicle in a negligent and careless manner in that he failed to have his vehicle under proper control, failed to make proper observations, failed to keep proper attention, failed to yield the right of way, and was otherwise negligent.

4. As a result of the negligence and carelessness of defendant, BRYAN P. TELLMONARCHE, as aforesaid, that motor vehicle operated by said defendant, was caused to collide with the vehicle operated by plaintiff, TARA L. MAGITZ.

5. As a result of the aforesaid collision, plaintiff, TARA L. MAGITZ, sustained personal injuries of both a temporary and permanent nature. Endured and will endure great pain and suffering, and has been and will be compelled to expend large sums of money for physicians and medical treatment in an attempt to cure herself of her said injuries and has been prevented from attending to her normal business and affairs, and has suffered various other economic and non-economic damages, including but not limited to various damages.

WHEREFORE, plaintiff, TARA L. MAGITZ, DEMANDS judgment against the defendant, BRYAN P. TELLMONARCHE, for such sums as would be reasonably and properly compensate her in accordance with the laws of the State of New Jersey, together with interest and court costs.

SECOND COUNT

1. For the sake of brevity, all paragraphs of Count One are repeated herein and made part of the Second Count as though specifically set forth herein at length.

Example 99: Continued

2. At all times hereinafter mentioned, defendant, APOSTROPHE MANAGEMENT ASSOCIATES, LLC, also known as Apostrophe Archive Associates, Ltd., is a New Jersey limited liability company with a main business address at 140 Telford Drive, Voorhees, New Jersey.

3. At the aforesaid time and place, defendant, BRYAN P. TELLMONARCHE, operated a motor vehicle owned by defendant APOSTROPHE MANAGEMENT ASSOCIATES, LLC, as the agent, servant and/or employee of defendant, APOSTROPHE MANAGEMENT ASSOCIATES, LLC.

4. Defendant, APOSTROPHE MANAGEMENT ASSOCIATES, LLC, is responsible and liable for the aforesaid negligent acts of the agent, servant and/or employee, BRYAN P. TELLMONARCHE, under the doctrine of Respondeat Superior, agency, and/or vicarious liability and/or family purpose doctrine.

5. Defendant, APOSTROPHE MANAGEMENT ASSOCIATES, LLC, negligently entrusted the motor vehicle to defendant, BRYAN P. TELLMONARCHE, knowing of that defendant's careless driving habits.

6. As a result of the aforesaid collision, plaintiff, TARA L. MAGITZ, sustained bodily injuries of both a temporary and permanent nature. Endured and will endure great pain and suffering, and has been and will be compelled to expend large sums of money for physicians and medical treatment in an attempt to cure herself of her said injuries and has been and will be prevented from attending to her normal business and affairs, and has suffered various other economic and non-economic damages, including but not limited to various property damages.

Example 99: Continued

WHEREFORE, Plaintiff, TARA L. MAGITZ, demands judgment against the defendant, APOSTROPHE MANAGEMENT ASSOCIATES, LLC, for such sums as would reasonably and properly compensate her in accordance with the laws of the State of New Jersey, together with interests and court costs.

THIRD COUNT

1. For the sake of brevity, all paragraphs of Counts One through Two are repeated herein and made part of the Third Count as though specifically set forth herein at length.

WHEREFORE, plaintiff, TARA L. MAGITZ, demands judgment against the defendants, BRYAN P. TELLMONARCHE, APOSTROPHE MANAGEMENT ASSOCIATES, LLC, jointly, severally and/or in the alternative, for such sums as would reasonably and properly compensate her in accordance with the laws of the State of New Jersey, together with interest and court costs.

DRINKWATER & GOLDSTEIN, L.L.P.

_____
STANLEY N. DRINKWATER, III, ESQUIRE
Attorney for Plaintiffs

DATED: April 15, 2013

DEMAND FOR COMPLIANCE WITH RULES 4:10-2, 4:17 ET SEQ.AND 4:18-1

TAKE NOTICE that the undersigned attorney, counsel for Plaintiff(s), hereby demands, pursuant to the provisions of Rule 4:10-2(b), that each Defendant named in the caption of this Complaint provide certified answers to the Request for Insurance Information, attached hereto, within the time prescribed by the Rules of this Court.

TAKE FURTHER NOTICE that the undersigned attorney, counsel for Plaintiff(s), hereby demands, pursuant to the provisions of Rules 4:10-2 and 4:17 et seq., that each Defendant

Example 99: Continued

named in the caption of this Complaint provide certified answers to the Interrogatories prescribed by Form C and Form C.1 of Appendix II of the Rules of this Court and the set of Supplemental Interrogatories, attached hereto, within the time prescribed by the rules of this Court.

TAKE FURTHER NOTICE that the undersigned attorney, counsel for Plaintiff(s), hereby demands pursuant to the provisions of Rules 4:10-2 and 4:18-1, that each Defendant named in the caption of this Complaint provided certified answers to the Notice to Produce, attached hereto, within the time prescribed by the Rules of this Court.

PLEASE TAKE NOTICE that he Plaintiff hereby DEMANDS a trial by jury as to all issues in the within cause of action.

DRINKWATER & GOLDSTEIN, L.L.P.

_____
STANLEY N. DRINKWATER, III, ESQUIRE
Attorney for Plaintiffs

CERTIFICATION

I certify that the matter in controversy is not the subject of any other action pending in any Court and is not the subject of a pending arbitration proceeding. Further, there are no other parties who should be joined in this litigation of whom I am aware, other than those named herein.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DRINKWATER & GOLDSTEIN, L.L.P.

_____
STANLEY N. DRINKWATER, III, ESQUIRE
Attorney for Plaintiffs

Example 99: Continued

DESIGNATION OF TRIAL ATTORNEY

PLEASE TAKE NOTICE that Benjamin Goldstein, Esq. is hereby designated as trial counsel.

DRINKWATER & GOLDSTEIN, L.L.P.

_____
STANLEY N. DRINKWATER, III, ESQ.

DATED: April 15, 2013

Example 100: Certification of Licensed Physician

CERTIFICATION

1. I am a licensed physician of the State of New Jersey and was a treating physician for automobile related injuries incurred by John J. Doe resulting from an accident of May 9, 2009.

2. Based upon my professional education, training and experience and the findings in the attached report including reference to clinical objective findings and/or objective medical tests, it is my opinion that within a reasonable degree of medical probability my patient has sustained permanent injury that will have permanent residual sequelae. Permanent injury means a body part or organ or both has not healed to function normally and to medical probability will not heal to function normally with further medical treatment.

3. This certification is based upon the following objective clinical evidence including clinical findings and diagnostic findings:

> MRI of the Lumbar Spine – August 18, 2009
> Conclusion: L4-5 left foraminal annular fissure with mild annular bulge, L5-S1 small left paracentral disc protrusion, mild facet degenerative changes L4-5 and L5-S1.

My diagnosis is as follows:

1. Herniated disc at L5-S1.
2. Lumbar radiculopathy.

4. It is my further opinion that within a reasonable degree of medical probability, that although further treatment in the future may alleviate some symptomatology, the permanent residuals of the injury cannot be completely resolved by way of further medical treatment intervention and there will always be some aspect of residual permanent injury experienced for the balance of my patient's lifetime.

5. Any testing referred to above is not experimental in nature nor is it dependent entirely upon subjective response of the patient.

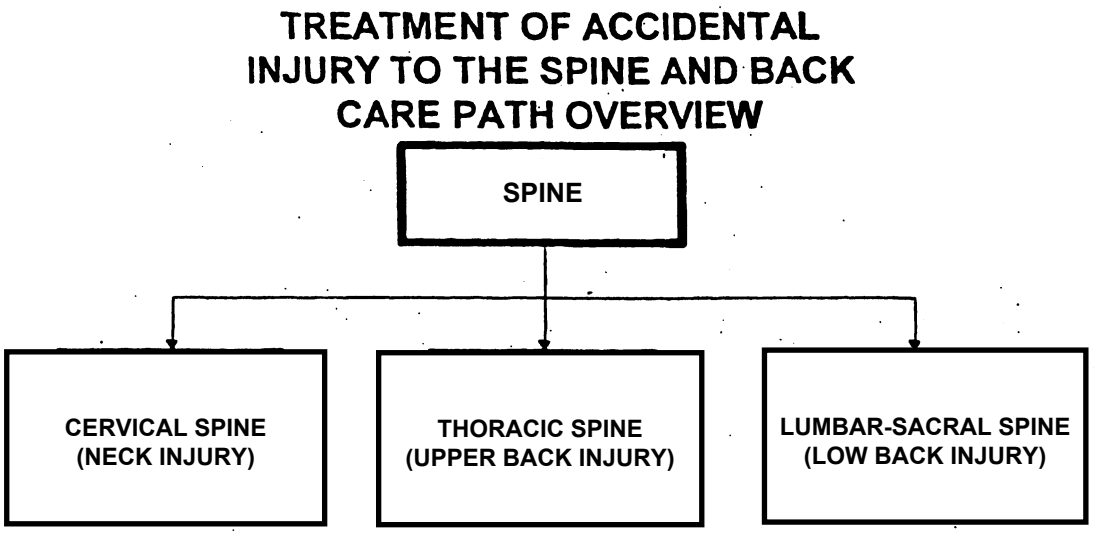
6. I have attached to this certification my report dated September 1, 2010, and incorporate that report by reference herein and attached hereto.

I affirm that the above conclusions are true to the best of my knowledge and belief and I am aware that I am subject to punishment as outlined in the automobile Insurance Cost Reduction Act if any statements are made with fraudulent intent to misrepresent the residual aspects of my patient's injury.

_____
Dr. Marco Moe, M.D.

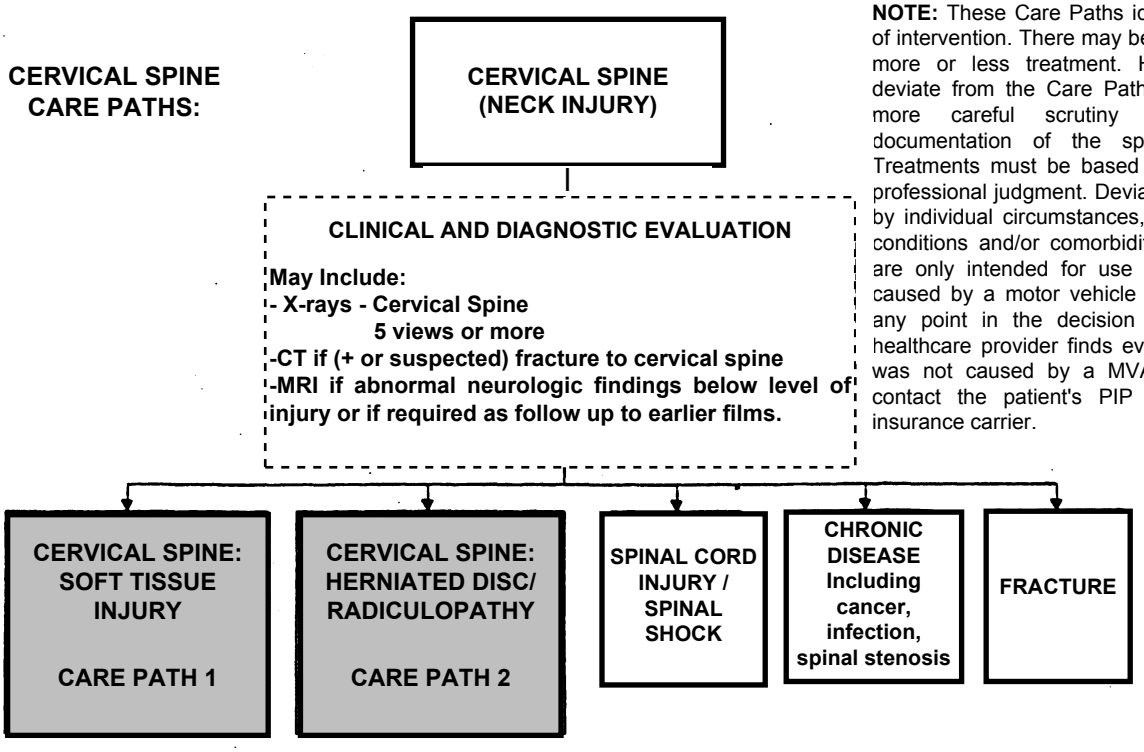
DATED:

Example 101: Care Paths



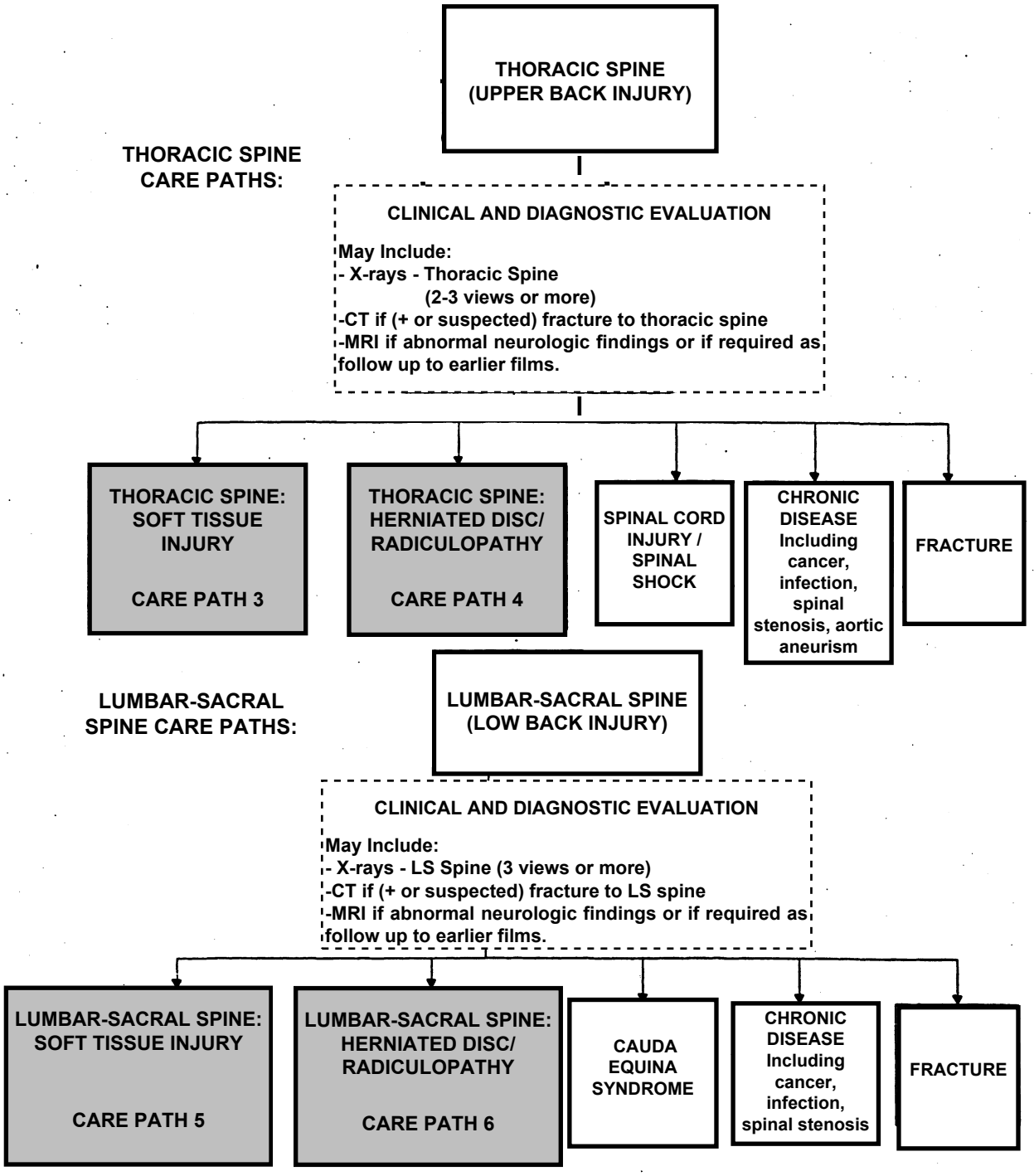
The following flow charts address the three anatomical areas of spinal injuries; Care Paths 1 through 6 have been developed for the conditions noted in the shaded boxes.

CERVICAL SPINE CARE PATHS:



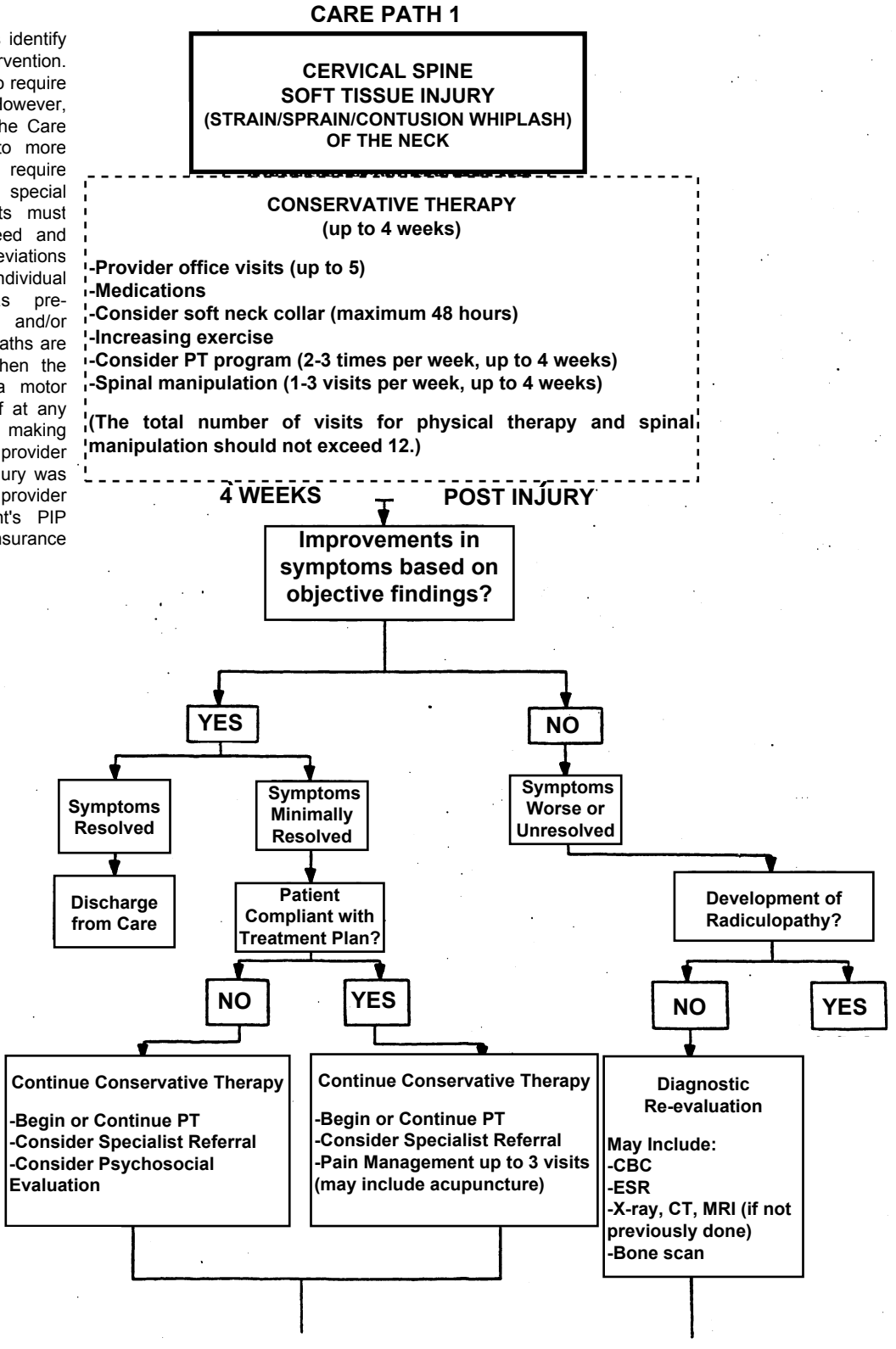
NOTE: These Care Paths identify typical courses of intervention. There may be patients who require more or less treatment. However, cases that deviate from the Care Paths may be subject to more careful scrutiny and may require documentation of the special circumstances. Treatments must be based on patient need and professional judgment. Deviations may be justified by individual circumstances, such as pre-existing conditions and/or comorbidities. The Care Paths are only intended for use when the injury was caused by a motor vehicle accident (MVA). If at any point in the decision making process the healthcare provider finds evidence that the injury was not caused by a MVA, the provider must contact the patient's PIP carrier and medical insurance carrier.

Example 101 - Continued

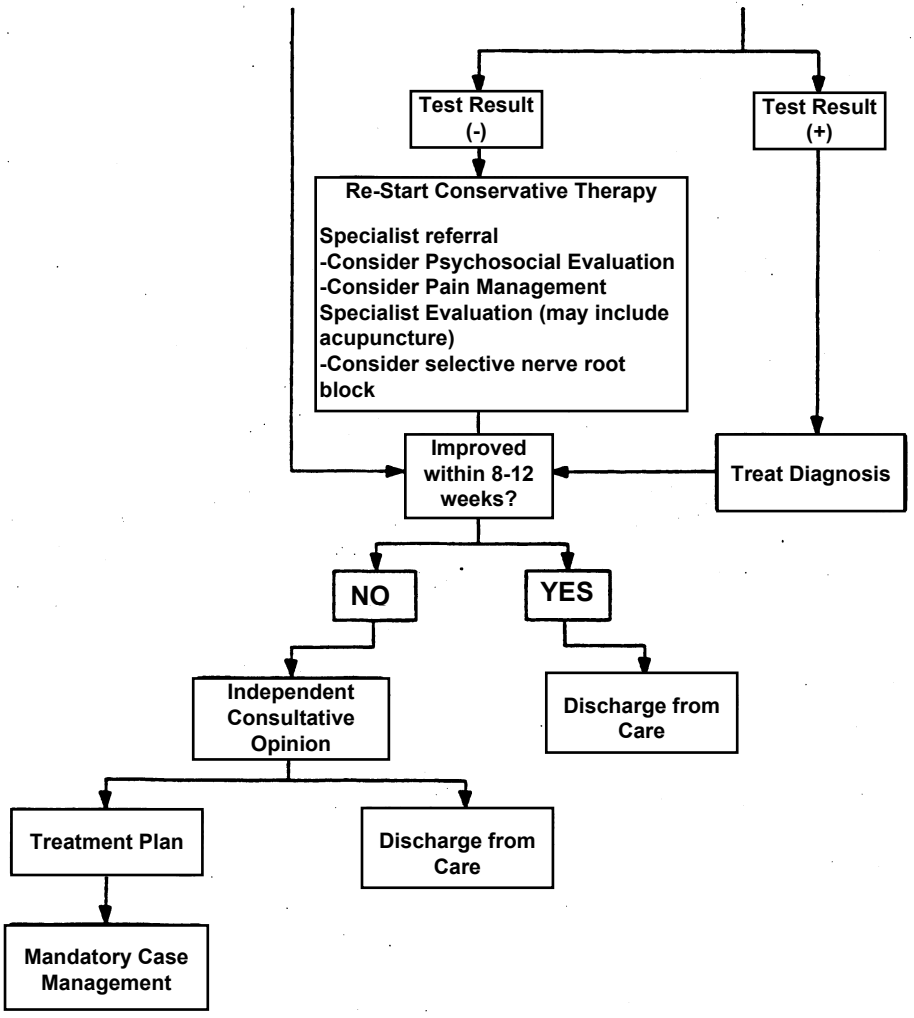


Example 101 - Continued

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Example 101 - Continued

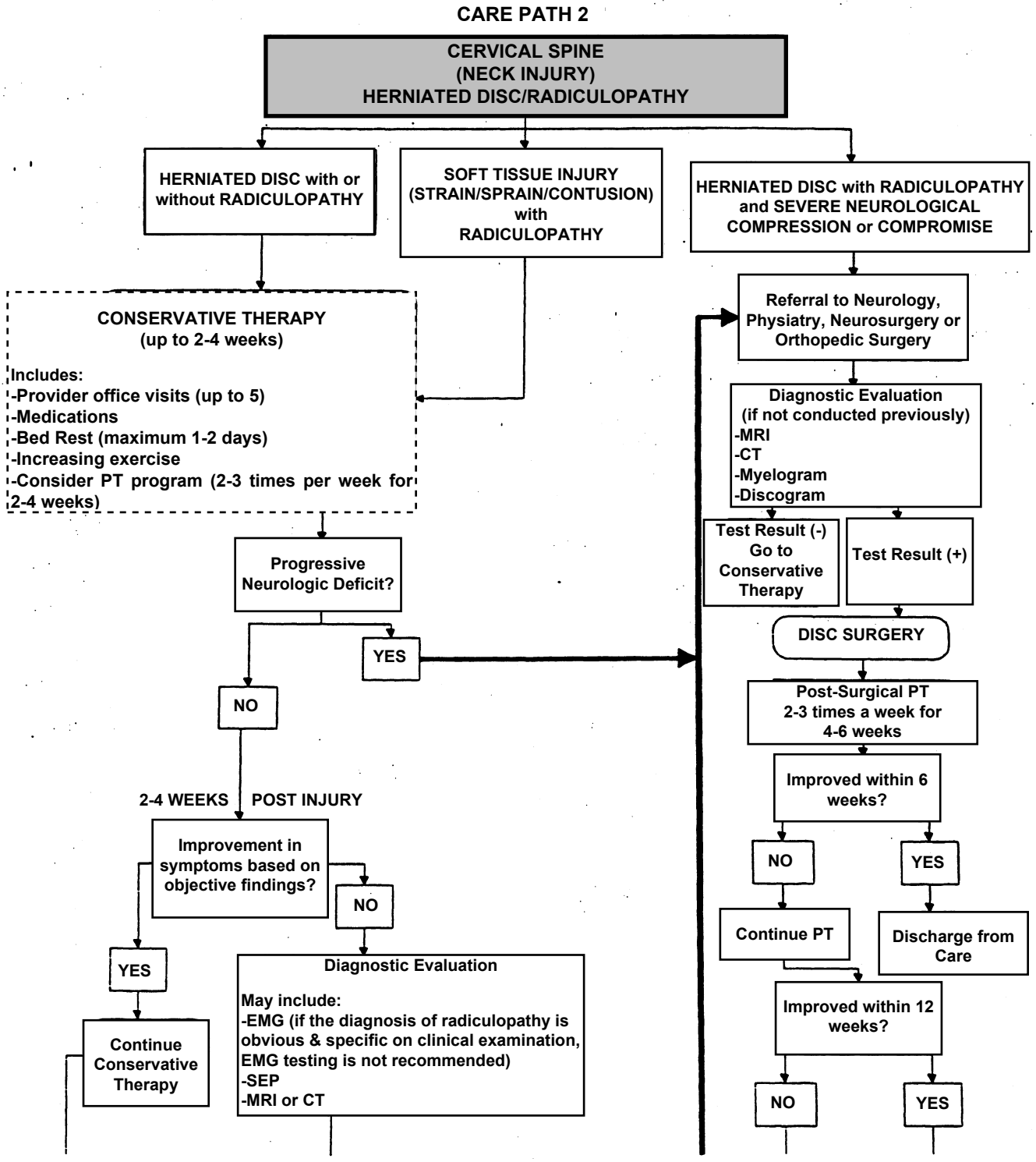


ICD-9 CODES

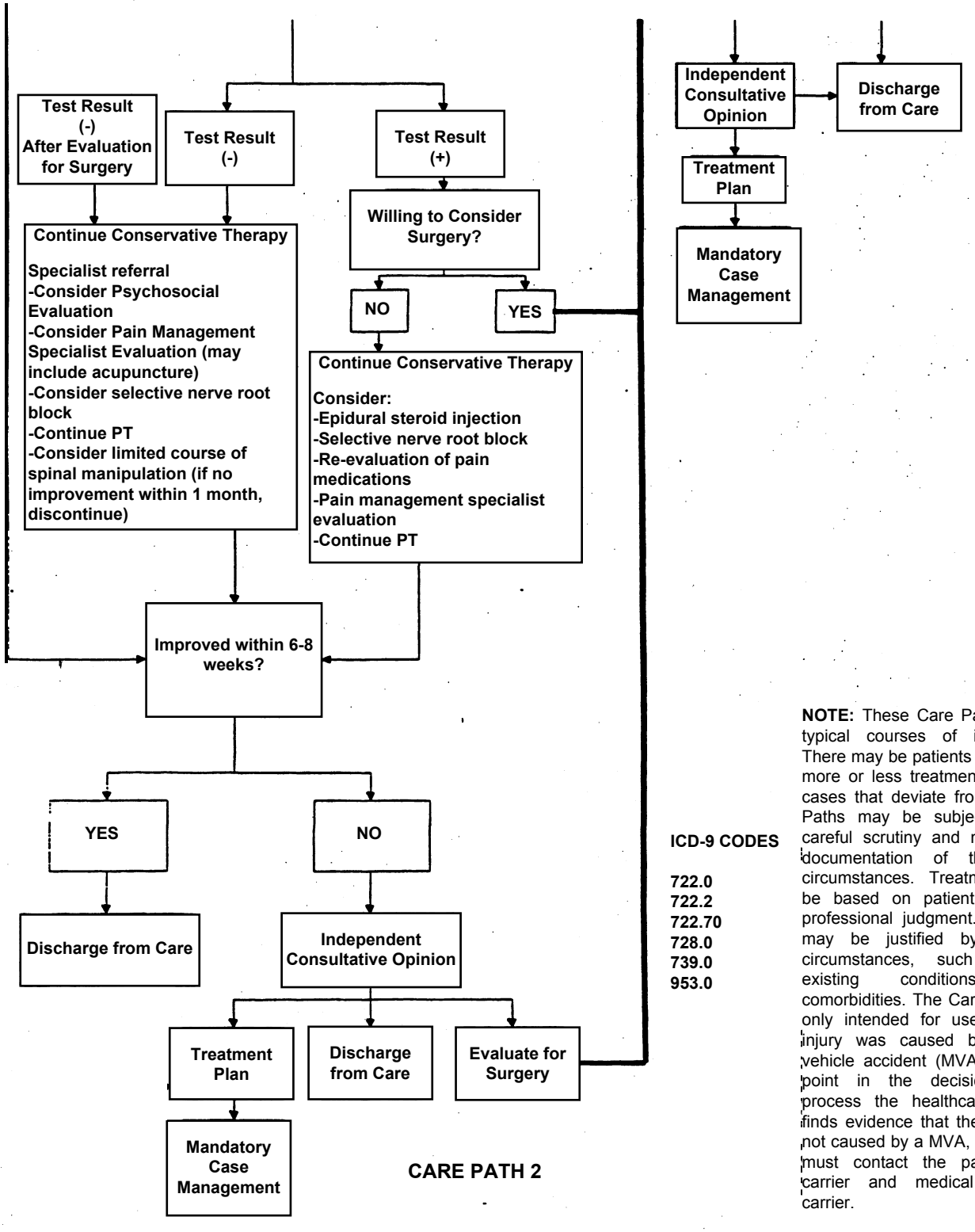
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953.0

CARE PATH 1

Example 101 - Continued



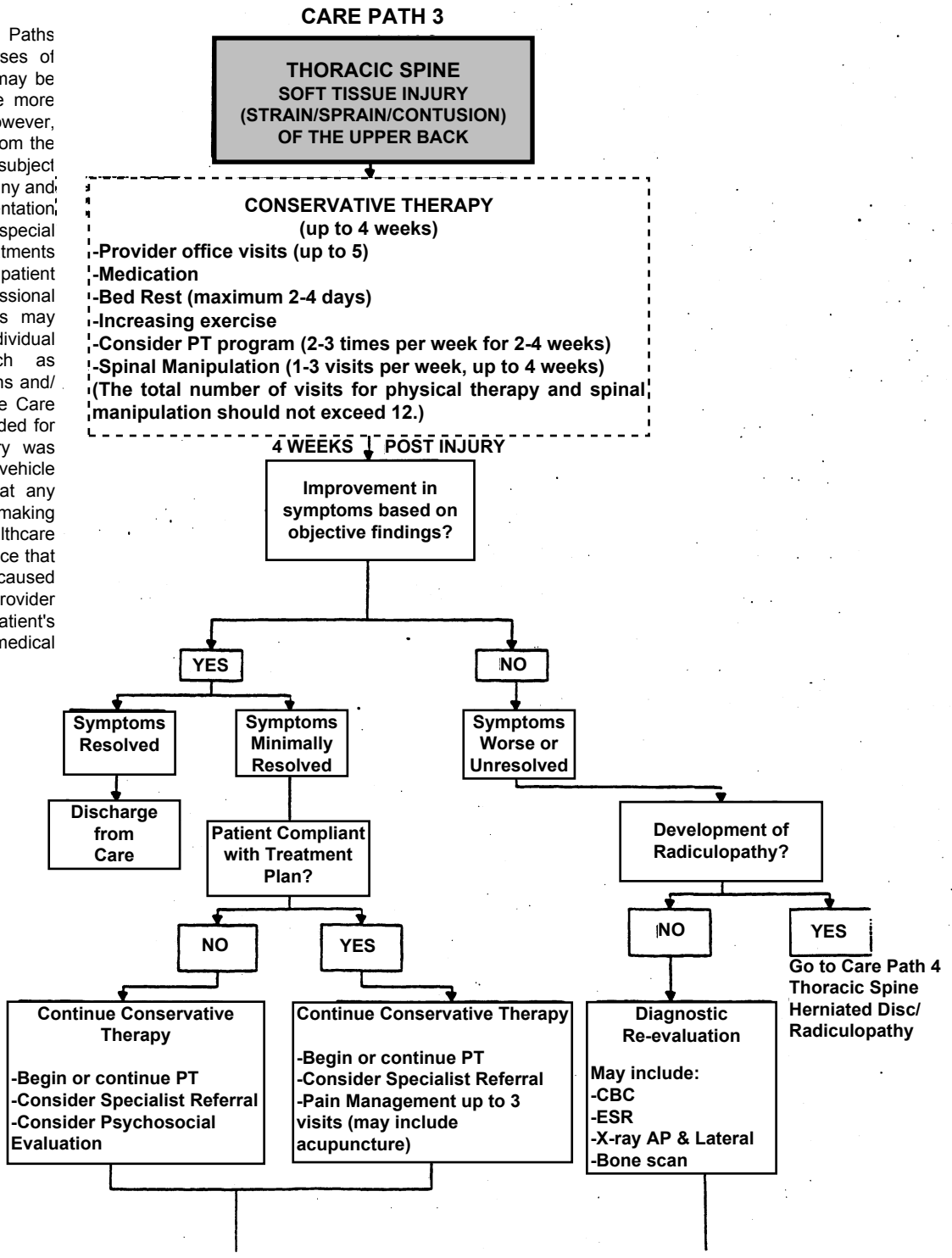
Example 101 - Continued



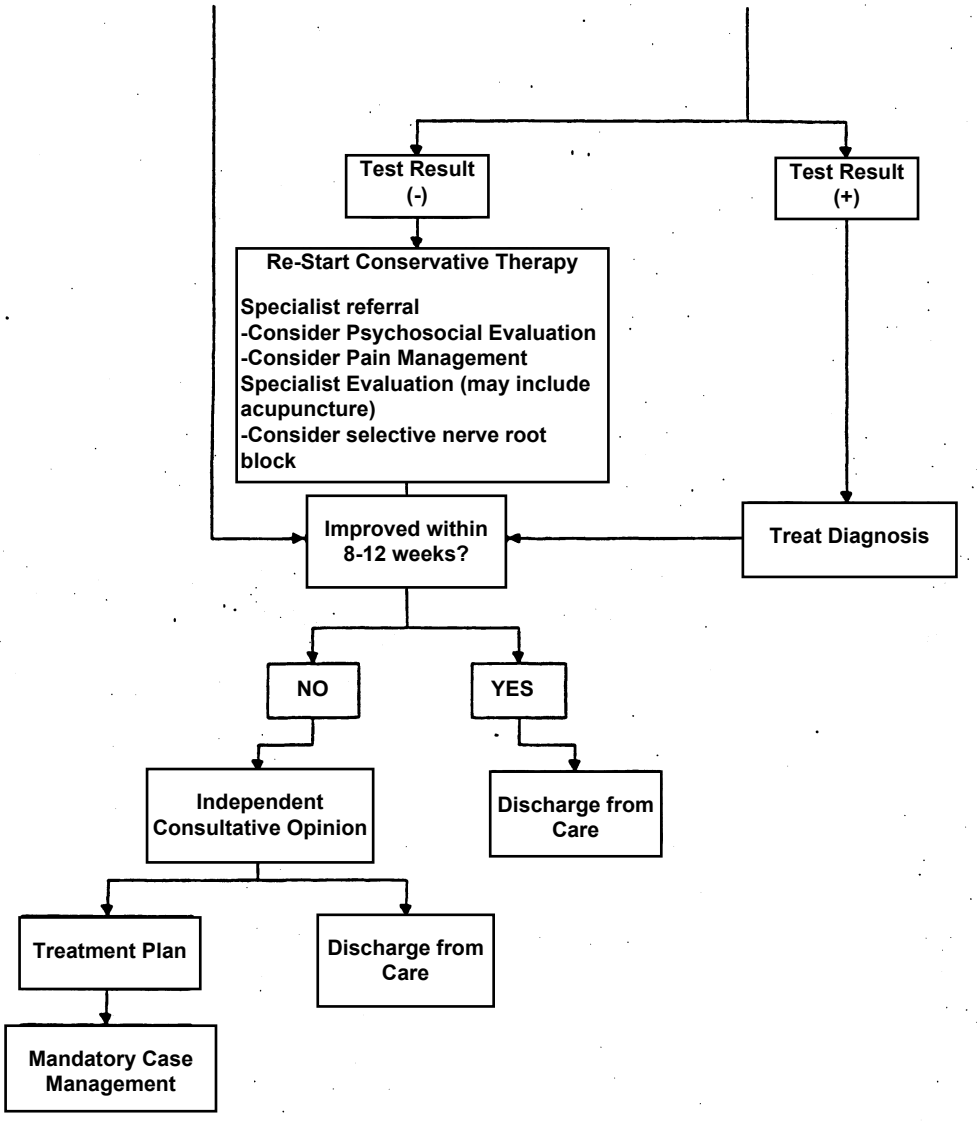
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Example 101 - Continued

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Example 101 - Continued

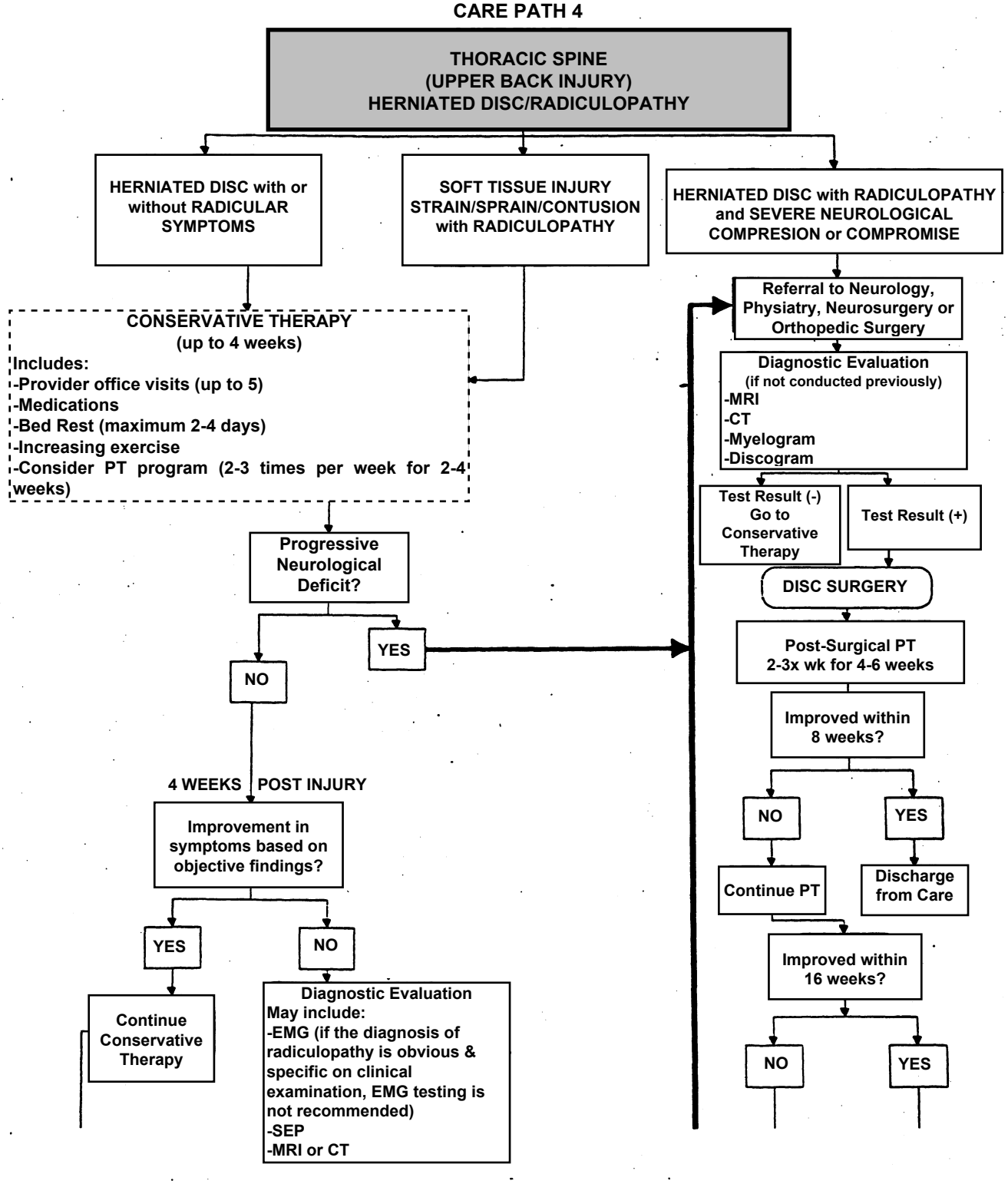


ICD-9 CODES

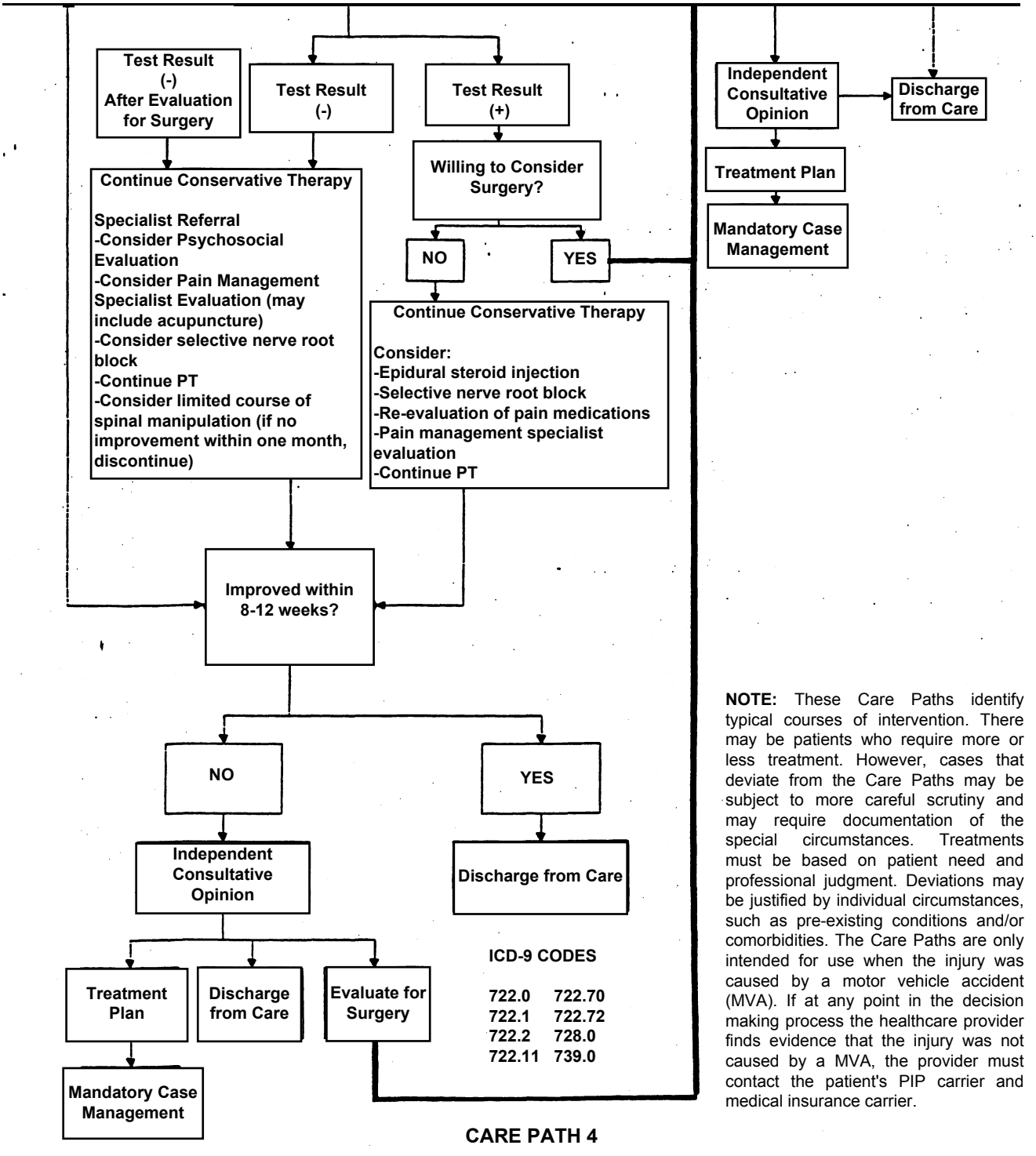
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922.33
953.2

CARE PATH 3

Example 101 - Continued



Example 101 - Continued

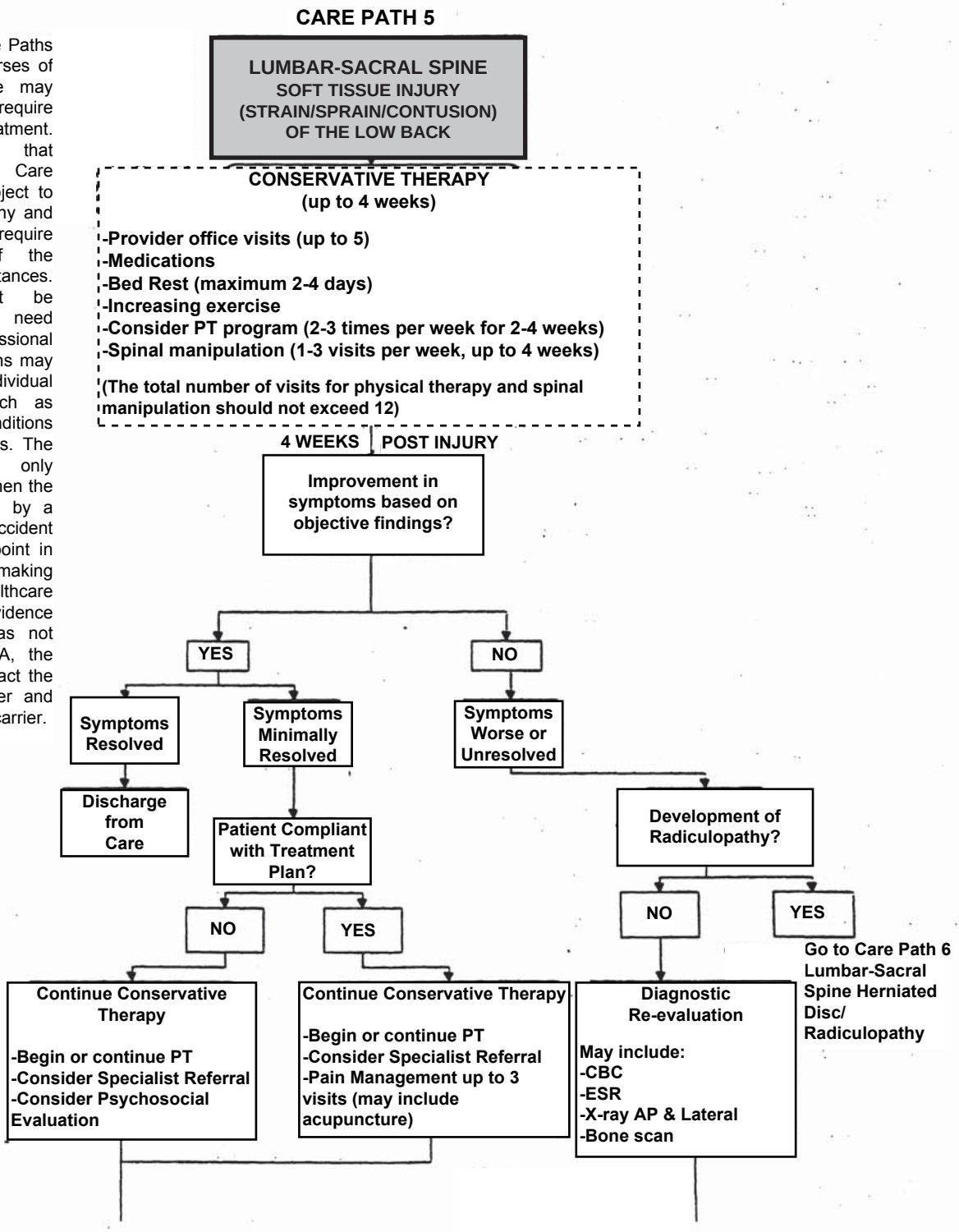


CARE PATH 4

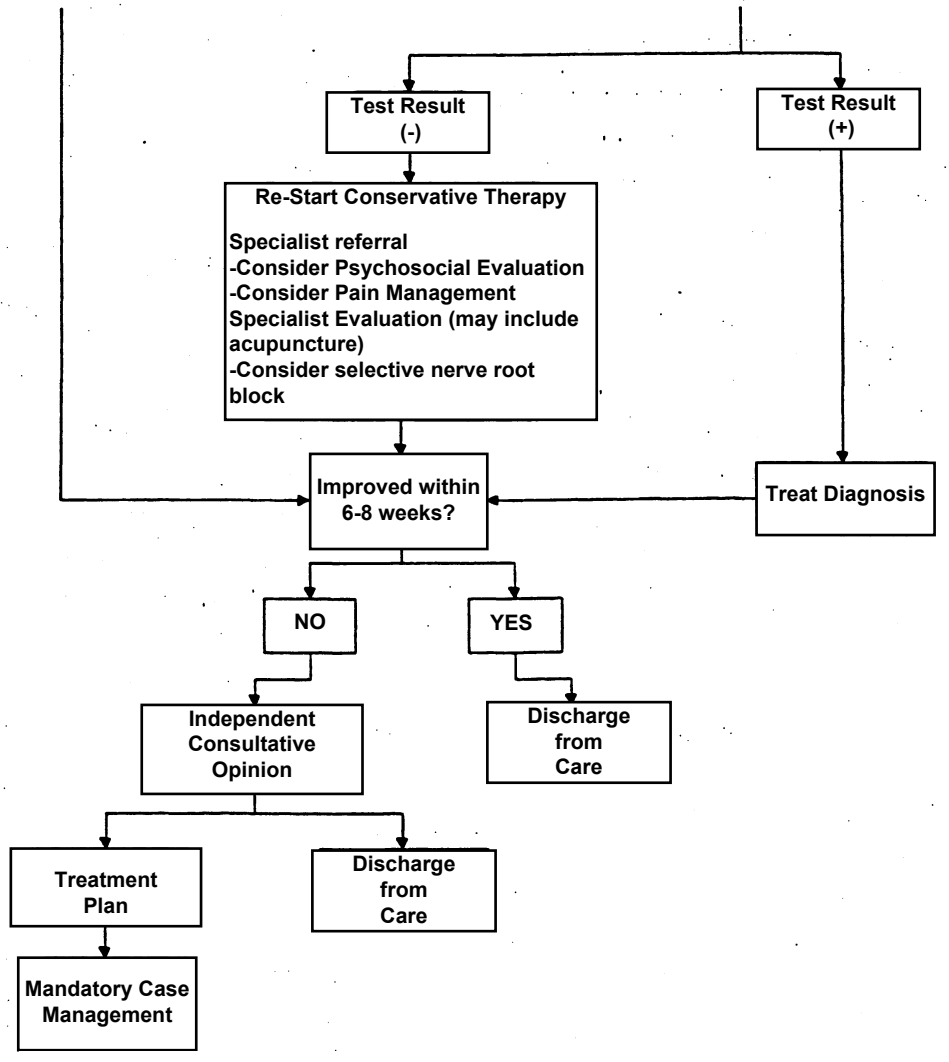
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Example 101 - Continued

NOTE: These Care Paths identify typical courses of intervention. There may be patients who require more or less treatment. However, cases that deviate from the Care Paths may be subject to more careful scrutiny and may require documentation of the special circumstances. Treatments must be based on patient need and professional judgment. Deviations may be justified by individual circumstances, such as pre-existing conditions and/or comorbidities. The Care Paths are only intended for use when the injury was caused by a motor vehicle accident (MVA). If at any point in the decision making process the healthcare provider finds evidence that the injury was not caused by a MVA, the provider must contact the patient's PIP carrier and medical insurance carrier.



Example 101 - Continued

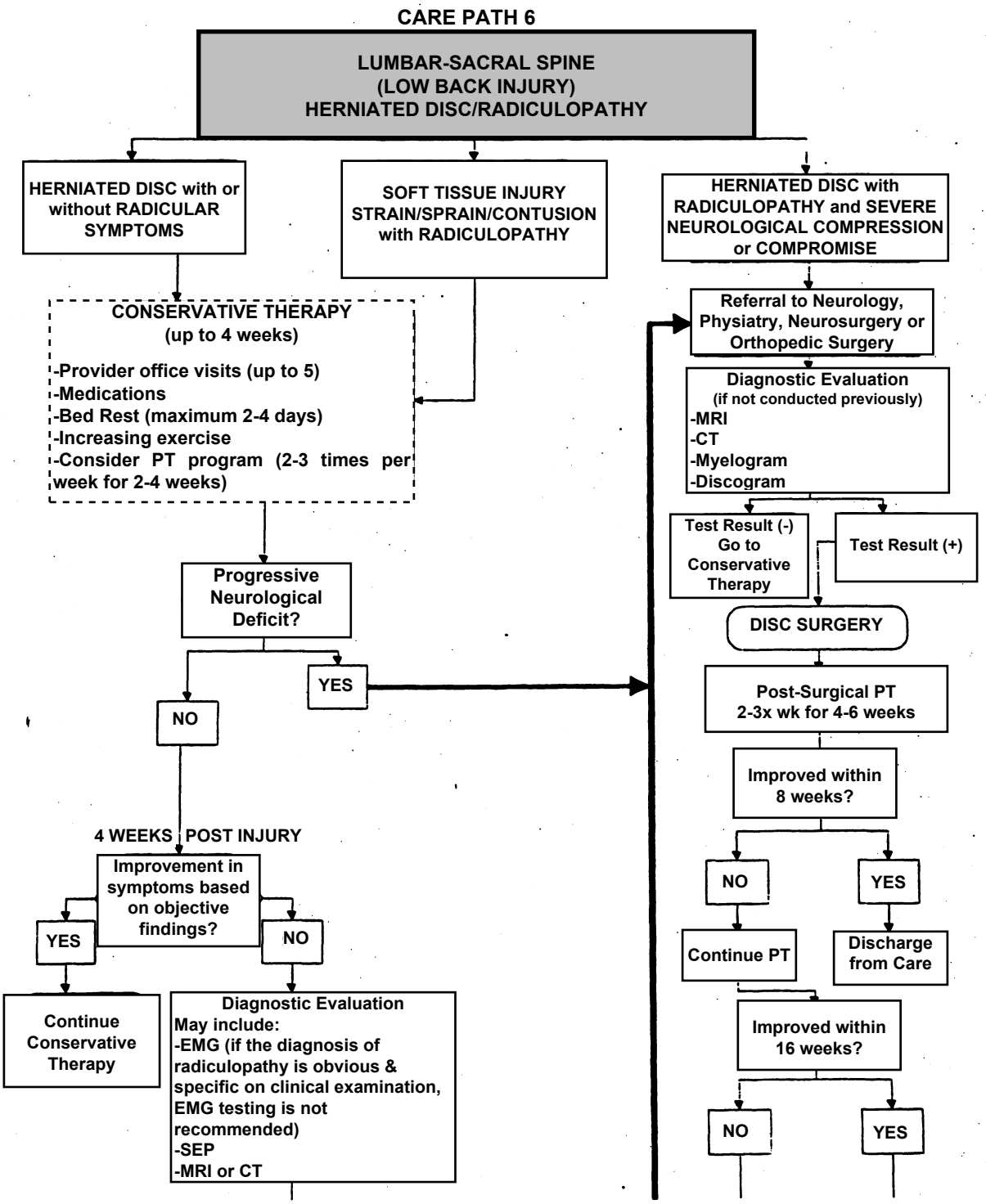


ICD-9 CODES

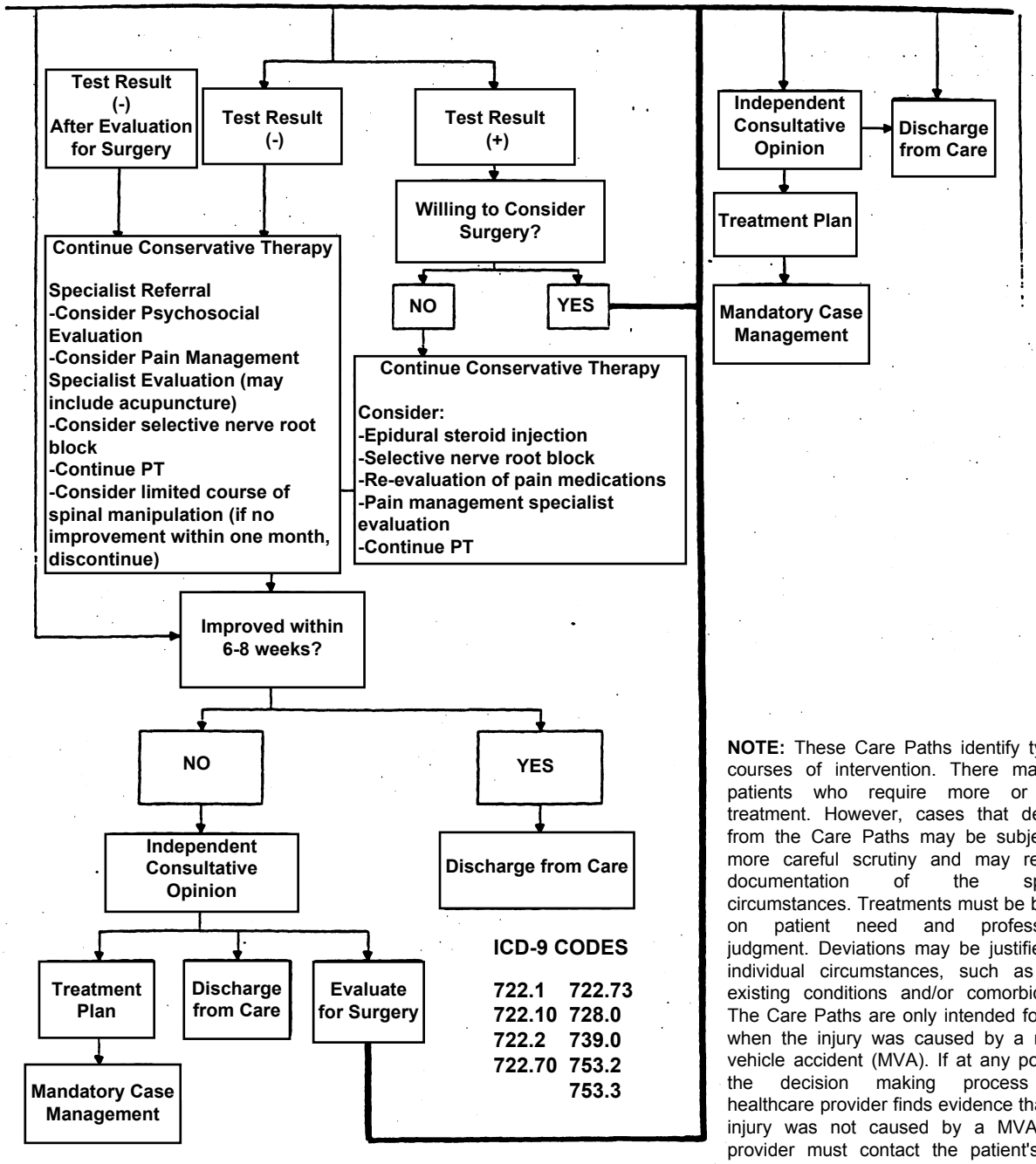
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728.85	846.9
739.0	847.2
739.3	847.3
793.4	847.4
846	847.9
846.0	922.3
846.1	922.31
846.2	953.2
846.3	953.3

CARE PATH 5

Example 101 - Continued



Example 101 - Continued



NOTE: These Care Paths identify typical courses of intervention. There may be patients who require more or less treatment. However, cases that deviate from the Care Paths may be subject to more careful scrutiny and may require documentation of the special circumstances. Treatments must be based on patient need and professional judgment. Deviations may be justified by individual circumstances, such as pre-existing conditions and/or comorbidities. The Care Paths are only intended for use when the injury was caused by a motor vehicle accident (MVA). If at any point in the decision making process the healthcare provider finds evidence that the injury was not caused by a MVA, the provider must contact the patient's PIP carrier and medical insurance carrier.

CARE PATH 6

Example 102: Demand for Arbitration

FORTHRIGHT

DEMAND FOR ARBITRATION

Pursuant to the No-Fault Laws of the State of New Jersey
(Effective April 15, 2013)

Date: _____

THE CLAIMANT herein demands dispute resolution of certain Personal Injury Protection Benefits pursuant to a policy of insurance issued by the named respondent(s) and in accordance with the Rules for No Fault Arbitrations in the State of New Jersey.

Case Name:

_____

v.

_____

Claimant(s)

Name:_____

Address:_____

Telephone: _____ Fax: _____

Email Address: _____

☐ Please check here if in lieu of providing e-mail address you are certifying that you will provide a copy of the final DRP determination to this claimant.

Attorney for Claimant

Firm Name: _____

Attorney Name:_____

Address: _____

Attorney File Number:_____

Telephone: _____ Fax: _____

Email Address: _____

Example 102: Continued

Assignment of Benefits

Is the Claimant assigned benefits? No _____ Yes _____
(*If yes, attach a copy of the Assignment of Benefits form)*

Respondent^

Name: _____

Address:_____

Telephone: _____ Fax: _____

Email Address: _____

Insurance Claim Number: _____

Policy Information^

Name of Policyholder: _____

Address: _____

Policy Number (if known):_____

Attorney for Respondent (*if known*)^

Firm Name: _____

Name: _____

Address:_____

Attorney File Number: _____

Telephone: _____ Fax: _____

Email Address: _____
^ *{please include the above information for each named respondent}*

Injured Person(s)

Name:_____

Address: _____

Accident Information

Date: _____ State in which the accident occurred:_____

Type of Proceeding

In-Person _____
On-the-Papers _____

In-Person Region

If In-Person proceeding, select one: North _____ Central _____ South _____

Example 102: Continued

Nature of Dispute:

_____
_____
_____

Claims Submitted
(Check all applicable claims)

☐ Medical Expense Benefits *{Consult Rule 7, ¶ 11 for calculation of amount claimed. Attach copies of all invoices in dispute}*

Name of Provider	Date(s) of Service	Date Claim Submitted to Insurer	Amount Claimed

_____

_____

_____

_____

Total Medical Expense Benefits Claimed $_____

☐ Death Benefits (*Amount with explanation and calculation)*
$_____ _____

☐ Essential Services Benefits (*Amount with explanation and calculation)*
$_____ _____

☐ Funeral Expenses *(Amount with explanation and calculation)*
$_____ _____

☐ Income Continuation *(Amount with explanation and calculation)*
$_____ _____

Total Personal Injury Protection Benefits Claimed $_____

☐ Interest (*Amount with explanation and calculation)*
$_____ _____

☐ Attorney's Fees (*Amount with explanation and calculation)*
$_____ _____

☐ Costs of Arbitration *(Amount with explanation and calculation)*
$_____ _____

Example 102: Continued

Emergent In-Person Hearing

(Check ONLY if requesting Emergent In-Person Hearing)

☐ Emergent In-Person Hearing Request *(Refer to Rule 34 for additional filing requirements and include the Emergent application fee).*

Expedited Medical Necessity Determination by MRO

(Check ONLY if requesting an Expedited Medical Necessity Determination by MRO)

☐ Expedited MRO *(Refer to Rule 14 for additional filing requirements and include the Expedited MRO application fee).*

Claim for the Medical Necessity of Future Treatment or Testing

(Check ONLY if submitting a claim for the medical necessity of future treatment or testing)

☐ Claim for the medical necessity of future treatment or testing *(Pursuant to Rule 6, a fully completed Future Treatment or Testing Claim Certification Form must be submitted with this Demand for Arbitration).*

Certification of Service and No Other Actions

I CERTIFY that I have served a true and complete copy of this *Demand for Arbitration* with copies of all attachments upon the respondent(s) as required by the Rules. To the best of my knowledge, there are no other actions pending in any court or arbitration proceedings that arise out of treatment to the same injured person(s), that arise out of the same accident, or that should otherwise be joined in this arbitration except as follows:

_____

_____

_____
Signature of Attorney or Claimant

Filing Instructions

Please send ONLY the original Demand and ONE copy of all attachments, along with the administrative fee set forth in Rule F-1:

Forthright
285 Davidson Avenue, Suite 502
Somerset, New Jersey 08873

Methods of Payment

Check in the amount of $_____ payable to Forthright enclosed.

Please charge my credit card on file with Forthright for $_____. *{If your credit card information is not on file, please contact Forthright at 732.271.6127 to provide it}*

Example 103: Assignment of Benefits to Treating Provider to Allow Provider to Pursue PIP Arbitration for Payment of Bills

ASSIGNMENT OF BENEFITS TO TREATING PROVIDER TO ALLOW PROVIDER TO PURSUE PIP ARBITRATION FOR PAYMENT OF BILLS

Dr. Sam Stone, D.C.
50 South Green Street
Westfield, NJ 07777

Dear Dr. Stone:

I hereby authorize you to release my full report, bills, examination, diagnosis, treatment, prognosis, etc. to attorney _____, with regards to the accident of _____, 2001. I am authorizing attorney _____ to pursue payment of the bills. I have provided a copy of this form to my attorney _____.

I fully understand that I am directly and fully responsible for all medical bills submitted by you for services rendered to me and that this agreement is made solely for your additional protection and in consideration of your awaiting payment. And I further understand that the above attorney will arbitrate my bills for payment.

I am assigning all my rights unconditionally to Dr. Sam Stone to pursue any medical bills, relating to treatment or care by his office in addition to the above.

Sincerely,

_____
Paula Patient

Example 104: Letter Demanding UM Arbitration and Requesting the Appointment of an Arbitrator

DRINKWATER & GOLDSTEIN, L.L.P.

Attorneys at Law

277 White Horse Pike
Suite 200
Atco, New Jersey 08004
Phone: 856-753-5131
Fax: 856-753-5132
E-mail: info@drinkwatergoldsteinlaw.com

BENJAMIN GOLDSTEIN
Certified By the New Jersey Supreme Court as a Civil Trial Attorney

STANLEY N. DRINKWATER III
N.J. and PA. Bars

TARA L. MAGITZ
N.J. Bar

of counsel for tax matters:
RICHARD G. HOLMES
N.J. and PA Bars

May 30, 2013

Herbert F. Martin, Esq.
Law Offices of Martin, Ross & Ross
16753 Haddon Ave.
Westmont, NJ

RE: Lee Smythe v. General Insurance Company of America
Claim No.: ABCD123
Your File No.: 0123-C
Date of Loss: October 24, 2008

Dear Mr. Martin:

As you are aware from prior correspondence, my office represents Lee Smythe for injuries sustained in a motor vehicle accident occurring on October 24, 2008. Please accept this letter as my formal Demand for Uninsured Motorist/Underinsured Arbitration on behalf of Mr. Smythe.

On behalf of Mr. Smythe, I hereby name Peter A. Jones, Esq., Law Offices of Michael L. Butler, 123 Main Street, Philadelphia, PA 19106, (215) 123-4567, as our arbitrator. Would you kindly name an arbitrator on behalf of your company so that a neutral arbitrator may be selected and an arbitration hearing scheduled.

I look forward to hearing from you.

Very truly yours,

STANLEY N. DRINKWATER, III

SND/tlm

Example 105: Letter Requesting Appointment of a Neutral Arbitrator

DRINKWATER & GOLDSTEIN, L.L.P.

Attorneys at Law

277 White Horse Pike
Suite 200
Atco, New Jersey 08004
Phone: 856-753-5131
Fax: 856-753-5132
E-mail: info@drinkwatergoldsteinlaw.com

BENJAMIN GOLDSTEIN
Certified By the New Jersey Supreme Court as a Civil Trial Attorney

STANLEY N. DRINKWATER III
N.J. and PA. Bars

TARA L. MAGITZ
N.J. Bar

of counsel for tax matters:
RICHARD G. HOLMES
N.J. and PA Bars

May 30, 2013

Peter A. Jones, Esq.
Law Offices of Michael L. Butler
123 Main Street
Philadelphia, PA 19106

RE: Lee Smythe v. General Insurance Company of America
Date of Loss: October 24, 2008

Dear Mr. Jones:

Please be advised that Hank Smith, Esq., has been appointed as Allstate's partial arbitrator for purposes of the above-captioned UM matter. Kindly contact Mr. Smith in order to select a neutral arbitrator.

Very truly yours,

STANLEY N. DRINKWATER, III

SND/tlm

Example 106: Order to Show Cause to Compel Uninsured Motorists Arbitration

DRINKWATER & GOLDSTEIN, L.L.P.
277 WHITE HORSE PIKE, SUITE 200
ATCO, NEW JERSEY 08004
(856) 753-5131
Attorneys for Plaintiffs: James Doe

JAMES DOE	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION- CAMDEN COUNTY
	:	
Plaintiff,	:	
	:	DOCKET NO. CAM-L-
vs.	:	
	:	**Civil Action**
ALL-STATE INSURANCE COMPANY	:	
	:	
	:	ORDER TO SHOW CAUSE TO
	:	COMPEL UNINSURED MOTORISTS
	:	ARBITRATION
Defendants	:	

This matter having been brought before the court upon the application for an Order to Show Cause brought by Drinkwater & Goldstein, LLP, attorneys for Plaintiff, James Doe, and the Court having considered the Verified Complaint and documentation annexed thereto, and for good cause shown;

IT IS on this day of 2013;

ORDERED that the Defendant All-State Insurance Company appear and show cause before the Superior Court of New Jersey, Law Division, Camden County at the Hall of Justice, 101 S. Fifth St., Camden, New Jersey, why the following relief should not be granted:

(a) Entry of an Order compelling Defendant All-State Insurance Company, to grant permission to Plaintiff's attorney to proceed to uninsured motorists arbitration pursuant to the terms of the policy issued to Plaintiff, James Doe; and

Example 106: Continued

(b) Entry of an Order providing that in the event the Defendant fails to name an arbitrator within 10 days, the matter will proceed to arbitration with the arbitrator named by the Plaintiff; and

(c) Entry of an Order providing that in the event Defendant fails to name an arbitrator within 10 days, the matter will proceed to arbitration with all issues to be determined by Peter A. Jones, Esq. serving as Plaintiff's partial arbitrator and Philip Marks, Esq. serving as a neutral arbitrator; and

(d) Entry of an Order scheduling the matter for arbitration on Friday, November 15, 2013 at 1:00 PM at the office of Drinkwater & Goldstein, LLP located at 277 White Horse Pike, Suite 200, Atco NJ 08004; and

(e) Entry of an Order awarding counsel fees and costs related to this action;

(f) Such further relief as the Court deems equitable and just; and

IT IS FURTHER ORDERED that a true copy of the Verified Complaint and this Order to Show Cause be served upon Defendants personally or by Certified Mail, Return Receipt Requested within _____ days of the date hereof; and

IT IS FURTHER ORDERED that service of the Verified Complaint and this Order to Show Cause shall be deemed to be service of process and that if Defendants should fail to answer or otherwise move within _____ days of the service of the Verified Complaint, it shall be subject to entry of judgment by default.

_____

J.S.C.

Example 107: Order

DRINKWATER & GOLDSTEIN, L.L.P.
277 WHITE HORSE PIKE, SUITE 200
ATCO, NEW JERSEY 08004
(856) 753-5131
Attorneys for Plaintiffs: James Doe

JAMES DOE	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION- CAMDEN COUNTY
	:	
Plaintiff,	:	
	:	DOCKET NO. CAM-L-
vs.	:	
	:	**Civil Action**
ALL-STATE INSURANCE COMPANY	:	
	:	
:		ORDER
	:	
	:	
Defendants	:	

This matter having been brought before the court upon the application for an Order to Show Cause brought by Drinkwater & Goldstein, LLP, attorneys for Plaintiff, James Doe, and the Court having considered the Verified Complaint and documentation annexed thereto, and for good cause shown;

IT IS on this day of 2013;

ORDERED that the Defendant All-State Insurance Company grant permission for Plaintiff's attorney to discontinue the underlying claim and proceed to uninsured motorists arbitration on November 15, 2013 at 1:00 PM at the office of Drinkwater & Goldstein, LLP located at 277 White Horse Pike, Suite 200, Atco NJ 08004, with Peter A. Jones, Esq. serving as Plaitniff's partial arbitrator, and

IT IS further ORDERED that Philip Marks, Esq. is hereby appointed as neutral arbitrator, and

Example 107: Continued

IT IS further ORDERED that in the event Defendant fails to name an arbitrator within ten days, the matter will proceed to arbitration with all issues to be determined by Peter A. Jones, Esq. serving as Plaintiff's partial arbitrator and Philip Marks, Esq. serving as a neutral arbitrator; and

IT IS further ORDERED that judgment is hereby entered against defendant, ALL-STATE INSURANCE COMPANY, for plaintiff's counsel fees and costs necessitated by this action in the amount of $_____; and

IT IS further ORDERED that a copy of this order shall be served on defendant within 7 days of the entry of this order.

_____

J.S.C.

Example 108: Verified Complaint

DRINKWATER & GOLDSTEIN, L.L.P.
277 WHITE HORSE PIKE, SUITE 200
ATCO, NEW JERSEY 08004
(856) 753-5131
Attorneys for Plaintiffs: James Doe

JAMES DOE	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION- CAMDEN COUNTY
	:
Plaintiff,	:
	: DOCKET NO. CAM-L-
vs.	:
	: **Civil Action**
ALL-STATE INSURANCE COMPANY	:
	:
:	VERIFIED COMPLAINT
	:
	:
Defendants	:

Plaintiff, James Doe, residing at 555 Central Avenue in the City of Camden, County of Camden and State of New Jersey, complaining of the Defendant, deposes and says:

FIRST COUNT

1. At all times relevant herein, Plaintiff, James Doe, was insured under a certain policy of automobile insurance issued by the Defendant, ALL-STATE INSURANCE COMPANY, bearing policy number CBA-555-123-0101-11, which policy was in effect at all times relevant herein.

2. On or about March 15, 2011, Plaintiff, JAMES DOE, was the operator of a certain motor vehicle which motor vehicle was insured by the aforementioned policy of insurance issued by the Defendant, ALL-STATE INSURANCE COMPANY.

Example 108: Continued

3. On or about March 15, 2011, aforesaid vehicle operated by the Plaintiff was involved in an accident with a vehicle operated by Marcus Smith. The vehicle operated by Marcus Smith was insured under a policy of insurance issued by GEICO with policy limits of 15,000.00/30,000.00.

4. As a direct and proximate result of the aforesaid accident of March 15, 2011, the Plaintiff, JAMES DOE, was caused to sustain and did sustain serious and permanent personal injuries requiring the care and treatment of a physician, hospitalization and medication and has sustained damages for his personal injuries well in excess of the available liability coverage on the vehicle in question.

5.A Complaint was filed in the Superior Court of New Jersey, Law Division, Camden County against Marcus Smith for the injuries sustained by the Plaintiff as a result of the aforesaid automobile accident. Thereafter, GEICO, as the insurance carrier for Marcus Smith, tendered the full policy limits of its policy in settlement of Plaintiff's claim. Pursuant to the procedure enunciated in Longworth vs. Ohio Casualty Insurance Company, 223 N.J. Super. 174 (App. Div. 1988), notice of the aforesaid offer and Plaintiff's intention to pursue a UIM claim was given to the Defendant, ALL-STATE INSURANCE COMPANY, by certified mail, return receipt requested, and by regular mail on July 23, 2013. The notice further indicated that unless an objection was received within thirty (30) days, the Plaintiff would accept the tendered policy limits from GEICO and provide a General Release to its insured. No objection to the proposed settlement with Marcus Smith was received from either the Defendant, ALL-STATE INSURANCE COMPANY and accordingly, the settlement offer was accepted.

Example 108: Continued

6. Thereafter, Plaintiff, through his attorney, demanded Underinsured Motorist (UIM) Arbitration on August 31, 2013. The Defendant having ignored Plaintiff's demand for Underinsured Motorist Arbitration, a subsequent demand was made on September 30, 2013, which demand has also been ignored.

7. Defendant, ALL-STATE INSURANCE COMPANY, has wrongfully failed to respond to Plaintiff's demand for Underinsured Motorist Arbitration and has consequently delayed a just adjudication of the Plaintiff's claim.

WHEREFORE, Plaintiff, JAMES DOE, demands judgment against Defendants, [NAME OF UIM CARRIER], as follows:

A. Compelling Defendant to name an arbitrator within ten (10) days;

B. Scheduling Arbitration on November 15, 2013;

C. Awarding Plaintiff counsel fees and costs necessitated by Defendant's failure to arbitrate; and

D. Such other relief that the Court deems equitable and just.

DRINKWATER & GOLDSTEIN, LLP
Attorneys for Plaintiff

by:_____
TARA L. MAGITZ, ESQUIRE

DATED:

Example 109: Verification of Affidavit of Plaintiff

DRINKWATER & GOLDSTEIN, L.L.P.
277 WHITE HORSE PIKE, SUITE 200
ATCO, NEW JERSEY 08004
(856) 753-5131
Attorneys for Plaintiffs: James Doe

JAMES DOE	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION- CAMDEN COUNTY
	:	
Plaintiff,	:	
	:	DOCKET NO. CAM-L-
vs.	:	
	:	**Civil Action**
ALL-STATE INSURANCE COMPANY	:	
	:	
	:	VERIFICATION BY PLAINTIFF
	:	
	:	
Defendants	:	

JAMES DOE, hereby certifies as follows:

1. I am the Plaintiff in the above captioned matter. I have read Paragraphs 1, 2, 3, and 4 of the Verified Complaint and I am personally familiar with the matters set forth therein. The aforesaid Paragraphs of the Verified Complaint are true based upon my personal knowledge. Annexed hereto and incorporated by reference is a copy of my insurance declaration page with the Defendant covering the time period including the subject accident (see **Exhibit "A"**) together with a copy of the police report filed as a result of the accident for which arbitration has been demanded (see **Exhibit "B"**).

I hereby certify that the foregoing statements made by me are true. I am aware that if any statements made by me are willfully false, I am subject to punishment.

JAMES DOE

DATED:

Example 110: Verification of Counsel

DRINKWATER & GOLDSTEIN, L.L.P.
277 WHITE HORSE PIKE, SUITE 200
ATCO, NEW JERSEY 08004
(856) 753-5131
Attorneys for Plaintiffs: James Doe

JAMES DOE	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION- CAMDEN COUNTY
	:	
Plaintiff,	:	
	:	DOCKET NO. CAM-L-
vs.	:	
	:	**Civil Action**
ALL-STATE INSURANCE COMPANY	:	
	:	
	:	VERIFICATION OF COUNSEL
	:	
	:	
Defendants	:	

I, TARA L. MAGITZ, ESQ. hereby certifies as follows:

1. I am the attorney for Plaintiff in the above captioned matter. I have read Paragraphs 5, 6, and 7 of the Verified Complaint and I am personally familiar with the matters set forth therein. The aforesaid Paragraphs of the Verified Complaint are true based upon my personal knowledge. Annexed hereto and incorporated by reference is a copy of my letter giving notice of the proposed settlement in the underlying tort litigation, my initial demand for UIM arbitration and my final demand for UIM arbitration. (See **Exhibits "A", "B" & "C"**).

I hereby certify that the foregoing statements made by me are true. I am aware that if any statements made by me are willfully false, I am subject to punishment.

DRINKWATER & GOLDSTEIN, LLP

_____
TARA L. MAGITZ, ESQ.

DATED:

Example 111: Letter Advising UIM Carrier of Institution of Suit Against Third Party

DRINKWATER & GOLDSTEIN, L.L.P.

Attorneys at Law

277 White Horse Pike
Suite 200
Atco, New Jersey 08004
Phone: 856-753-5131
Fax: 856-753-5132
E-mail: info@drinkwatergoldsteinlaw.com

BENJAMIN GOLDSTEIN
Certified By the New Jersey Supreme Court as a Civil Trial Attorney

STANLEY N. DRINKWATER III
N.J. and PA. Bars

TARA L. MAGITZ
N.J. Bar

of counsel for tax matters:
RICHARD G. HOLMES
N.J. and PA Bars

October 3, 2013

GEICO
Buffalo/NJ Claims
PO Box 9515
Fredericksburg, VA 22403-9515
Attn: Margaret Allen

Re: Our Client: Judy Sparkels
Your insured: Judy Sparkels
Claim Number: 05555555-0101-055
Date of Loss: May 29, 2009

Dear Ms. Allen:

As you are aware, this office represents the interest of Judy Sparkels for injuries and damages she sustained in an automobile accident occurring on May 29, 2009. This office has instituted litigation on behalf of Judy Sparkels, as a result of the above mentioned accident, naming as defendant, Tracey L. James. This matter is currently pending in New Jersey Superior Court, Camden County, and a copy of same is attached hereto.

At the time of the above mentioned accident, defendant Tracey James, was insured under an automobile policy issued by Personal Service Insurance, and had available to them liability insurance in the amount of $15,000.00 per person. As you are also aware, Judy Sparkels, sustained extensive injuries as a result of the accident, which have caused her to experience severe pain and suffering and a substantial financial loss. Therefore, it is apparent that the damages sustained by Mrs. Sparkels are well in excess of defendant, Tracey James' available liability coverage limits.

At the time of the above mentioned accident, our client/your insured, Judy Sparkels, was a named insured under an automobile insurance policy issued by GEICO with underinsured motorist coverage limits of $50,000.00. Therefore, defendant Tracey James is considered an underinsured motorist and in accordance with the applicable underinsured motorist provisions of her Personal Service insurance policy, Judy Sparkels, is entitled to compensation up to the limits of her policy for any and all damages sustained as a result of defendant Tracey James' negligence over and above her applicable liability policy limits.

Example 111: Continued

Page 2
Judy Sparkels
October 3, 2013

In accordance with the New Jersey Supreme Court's ruling in Zirger v. General Accident Insurance Co., 144 N.J. 322 (1996), any such judicial adjudication of the liability of defendant Tracey James and the damages sustained by Judy Sparkels as a result of this accident, will collaterally estop GEICO from relitigating these issues in Judy Sparkel's underinsured motorist claim.

Please review this matter to determine if you wish to intervene in the Sparkels v. James, action, currently pending in New Jersey Superior Court, Camden County. Additionally, you have my express authority to review Judy Sparkel's PIP file and medicals. Please contact me with your decision or proceed with the appropriate motion as soon as possible.

Should you have any questions or wish to discuss this matter, please do not hesitate to contact me.

Very truly yours:

Tara Magitz, Esquire

TLM
Enclosures