

## **2022 NJSBA Annual Meeting**

### **What's All the com“MOTION” About? A Discussion of Prevalent Motion Topics and Issues**

Moderator/Speaker:

Hon. Lisa Perez Friscia, J.S.C., Bergen

Speakers include:

Hon. Robert J. Gilson, J.A.D.

Hon. Katie A. Gummer, J.A.D.

## What's All the ComMOTION About? Relevant Cases:

### Discovery motion seeking tax returns

1. Parkinson v. Diamond Chem. Co., 469 N.J. Super. 396 (App. Div. 2021)
2. Ullman v. Hartford Fire Ins. Co., 87 N.J. Super. 409 (App. Div. 1965)

### Permit a third party to accompany a plaintiff to a defense medical examination

1. B.D. v. Carley, 307 N.J. Super. 259 (App. Div. 1997)
2. Difiore v. Pezic, Approved for publication May 3, 2022

### Substituted Service

1. U.S. Bank Nat. Ass'n v. Curcio, 444 N.J. Super. 94 (App. Div. 2016)
2. City of Passaic v. Shennett, 390 N.J. Super. 475, 483 (App.Div.2007)
3. M & D Associates v. Mandara, 366 N.J. Super. 341, 354 (App.Div. 2004)

### Discovery motion for records prepared prior to litigation- work product

1. Paladino v. Auletto Enters., 459 N.J. Super. 365 (App. Div. 2019)
2. Miller v. JB Hunt Transport, Inc. 339 N.J. Super. 144 (App. Div. 2001)

### Enforcing a discovery subpoena served on a non-party for documents as opposed to a party

1. Trenton Renewable Power, LLC v. Denali Water Solutions, LLC. -Published Jan 24, 2022 A-3060-20
2. Beckwith v. Bethlehem Steel Corp. 182 N.J. Super. 376, 382 (Law Div. 1981)

### Motions for reconsideration- standards of review for a final order/judgment verse an interlocutory order

1. Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021)
2. Court investment Co. v. Perillo, 48 N.J. 334 (1996)
3. DEG, LLC v. Township of Fairfield, 198 N.J. 242 (2009)

### Interlocutory order – good faith mistake is enough

1. Lombardi v. Masso, 207 N.J. 517at 539 (2011)
2. Gonzalez v. Ideal Tile Importing Co., Inc., 371 N.J. Super. 349, 356, (App. Div. 2004),  
aff'd o.b. 184 N.J. 415, 877 A.2d 1247 (2005),

### Motions to dismiss

1. Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989).
2. NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006)
3. Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005).
4. Edwards v. Prudential Property and Cas. Co., 357 N.J. Super. 196, 202 (App. Div. 2003).

#### Cross motion to amend the pleadings

1. Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. 437, 456-57 (1998)
2. City Check Cashing, Inc. v. Nat'l State Bank, 244 N.J. Super. 304, 308-09 (App. Div. 1990)
3. Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 501 (2006).

#### Motion to Dismiss for Failure to Make Discovery

1. Thabo v. Z Transp., 452 N.J. Super. 359 (App. Div. 2017)

#### Spoilation of Evidence – dismiss or seeking adverse inference

1. Thabo v. Z Transp., 452 N.J. Super. 359 (App. Div. 2017)
2. Rosenblit v. Zimmerman, 166 N.J. 391, 401 (2001).
3. Robertet Flavors, Inc. v. Tri-Form Const., Inc., 203 N.J. 252, 284 (2010).
4. Washington v. Perez, 219 N.J. 338, 357 (2014)
5. Aetna Life & Cas. Co. v. Imet Mason Contractors, 309 N.J. Super. 358, 366 (App. Div. 1998)
6. Hirsch v. Gen. Motors Corp., 266 N.J. Super. 222, 250 (Law Div. 1993)
7. State v. Cullen, 424 N.J. Super. 566, 587 (App. Div. 2012).

#### Amend an answer to add affirmative and or general defenses?

1. Seoung Ouk Cho v. Trinitas Reg'l Med. Ctr., 443 N.J. Super. 461 (App. Div. 2019). (Trinitas II)
2. Buteas v. Raritan Lodge No. 61 F. & A.M., 248 N.J. Super. 351, 363 (App. Div. 1991)
3. Seoung Ouk Cho v. Trinitas Reg'l Med. Ctr., No. A-3070-16T4, 2019 N.J. Super. Unpub. LEXIS 397, at 27 (App. Div. Feb. 20, 2019).

#### Summary judgment motion filed as a motion in limine

1. Seoung Ouk Cho v. Trinitas Reg'l Med. Ctr., 443 N.J. Super. 461, 475 (App. Div. 2015).
2. State v. Cordero, 438 N.J. Super. 472(App.Div.2014), certif. denied, 221 N.J. 287, 112 A.3d 594 (2015).
3. Bellardini v. Krikorian, 222 N.J. Super. 457 (App. Div. 1988)

Motion to bar an expert's opinion as inadmissible. Expert Opinions – In re Accutane

1. In re Accutane, 234 N.J. 340, 388 (2018).
2. Landrigan v. Celox Corp., 127 N.J. 404, 417 (1992).
3. Suarez v. Egeland, 353 N.J. Super. 191 (App. Div. 2002)
4. State v. Harvey, 151 N.J. 117, 167 (1997), *cert. denied*, 528 U.S. 1085, 120 S.Ct. 811, 145 L. Ed.2d 683 (2000);
5. Vassallo v. American Coding & Marking Ink Co., 345 N.J. Super. 207, 217-18 (App.Div.2001).
6. Hisenaj v. Kuehner, 194 N.J. 6 (2008)
7. Crispin v. Volkswagenwerk AG, 248 N.J. Super. 540, 549 (App.Div. 1991)
8. State v. Torres, 183 N.J. 554 at 568-69 (2005)
9. State v. Kelly, 97 N.J. 178, 210 (1984).
10. State v. Harvey, 151 N.J. 117 at 174 (1997)
11. Lanzet v. Greenberg, 126 N.J. 168, 186 (1991)
12. James v. City of E. Orange, 246 N.J. Super. 554, 563 (App. Div.1991).

Motion to bar based in the inadmissibility of an expert opinion- net opinion.

1. In re Accutane, 234 N.J. 340, 388 (2018).
2. Daubert v. Merrel-Dow Pharms. Inc., 509 U.S. 579, 593-95 (1993).

Motion for Summary Judgment

1. Globe Motor Company v. Igdalev, 225 N.J. 469 (2016)
2. Sullivan v. Port Authority 449 N.J. Super. 276 (2017)
3. Judson v. Peoples Nank & Trust co. of Westfield, 17 N.J. 67 (1954)
4. Brill v. Guardian Life Insurance, 142 N.J. 520 (1995).

Motion for reconsideration and or a motion to stay the case pending appeal of an interlocutory decision/final order

1. Harris v. City of Newark, Docket No. A-59-20 (2022)
2. Pressler & Verniero, Current N.J. Court Rules, cmt. 1.1 on R. 2:2-3(a)(3) (2021).
3. Moon v. Warren Haven Nursing Home, 182 N.J. 507 (2005)

Motion to stay a civil action must first be made to the trial court. NJ Court R. 2:9-5

1. Moon v. Warren Haven Nursing Home, 182 N.J. 507 (2005)
2. Vitanza v. James, 397 N.J. Super. 516, 517-18 (App. Div. 2008)
3. House of Fire Christian Church v. Zoning Bd. of Adjustment of Clifton, 379 N.J. Super. 526, 531 (App. Div. 2005)

Timing of objections –necessity of a motion on evidence issue

1. Hemingway v. Balsamo, A-1110-17T3, 2019 N.J. Super. Unpub. LEXIS 814, 9 (App. Div. April 9, 2019).

Motion in an auto negligence action to amend the complaint to add a claim for first party bad faith under the New Jersey Insurance Fair Conduct Act

1. Ferrante v. N.J. Mfrs. Ins. Grp., 232 N.J. 460, 474 (2018)
2. Longworth v. Van Houten, 223 N.J. Super. 174 (App. Div. 1988),
3. Rutgers Casualty Insurance Co. v. Vassas, 139 N.J. 163 (1995),
4. Zirger v. General Accident Insurance Co., 144 N.J. 327(1996)).