NEW JERSEY LAW REVISION COMMISSION

Tentative Report Addressing the Statute of Limitations for Medical Provider Claims in Workers' Compensation Cases

June 18, 2020

The New Jersey Law Revision Commission is required to "[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it" and to propose to the Legislature revisions to the statutes to "remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions." *N.J.S.* 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **August 20, 2020.**

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Executive Summary

Since 2012, the Division of Workers' Compensation (the Division) has maintained jurisdiction over all disputed claims brought by medical providers for the payment of services rendered to injured employees.[1] Complaints before the Division are subject to a two-year statute of limitations.[2] Suits predicated on contracts, however, have traditionally been subject to a six-year statute of limitations.[3]

Although exclusive jurisdiction for disputed claims by medical providers has been vested with the Division, the legislative history regarding the 2012 Amendment to the Workers' Compensation statutes is silent regarding which statute of limitations applies in these types of actions. The absence of any clear direction on this topic served as the issue in the Appellate Division matter of *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac*[4] and the basis for the Commission's work in this area.

Statutes Considered

N.J.S. 34:15-15. Medical and hospital service

> […] Exclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness shall be vested in the division. […]

N.J.S. 34:15-51 Claimant required to file petition within two years; contents, minors

> **Every claimant for compensation** under Article 2 of this chapter (R.S. 34:15-7 et seq.) **shall,** unless a settlement is effected or a petition filed under the provisions of R.S. 34:15-50, **submit to the Division of Workers' Compensation a petition filed and verified in a manner prescribed by regulation, within two years after the date on which the accident occurred,** or in case an agreement for compensation has been made between the employer and the claimant, then within two years after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by the employer, then within two years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition. […] (**Emphasis added**).

[1] N.J.S. 34:15-15.
[2] N.J.S. 34:15-51.
[3] N.J.S. 2A:14-1.
[4] *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019).

Background

Historically, a medical provider was entitled to file a collection action for payment of its services in the superior court and had no obligation to participate in the patient's pending compensation action.[5] A lawsuit brought by a medical provider against a patient is generally predicated upon an express or implied contractual arrangement.[6] Such actions are therefore governed by the statute of limitations set forth in N.J.S. 2A:14-1. This statute provides that "[e]very action at law for…recovery upon a contractual claim or liability, express or implied… shall be commenced within 6 years next after the cause of such action shall have accrued."[7]

In 2012, the Legislature amended N.J.S. 34:15-15 and vested the Division with "exclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness…." This statutory modification would sow the seeds for what would ultimately be the confrontation between the parties in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.* regarding the statute of limitations in such cases.

• *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*

In *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, a number of medical providers filed petitions for the payment of services rendered to the employees of each employer.[8] The petitions, filed by these providers, were all filed more than two years from the date of each employee accident but less than six years from the claim's accrual.[9]

The compensation judge interpreted the statute of limitations set forth in the Worker's Compensation statute, N.J.S. 34:15-51, to require "every claimant," including medical providers, to file a petition with the Division within two-years from the date of the accident.[10] Based upon this reading of the statute, each of the actions by the medical providers was determined to be filed beyond the statute of limitations and therefore dismissed.[11] Alleging that the compensation judge misconstrued the statute, each of the medical providers appealed the dismissal of their cases.[12]

Analysis

On appeal, the New Jersey Appellate Division was asked to determine whether, "through its silence, the Legislature intended… to apply the two-year statute of limitations… contained in

[5] *Id.* at 569.
[6] *Id.*
[7] N.J.S. 2A:14-1.
[8] *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565, 568 (App. Div. 2019). The five cases on appeal each set forth a common issue. The Appellate Division consolidated these appeals for purposes of addressing the statute of limitations issue. In addition, and in the interest of judicial economy, the specific facts of each case were omitted by the Appellate Division and the overview set forth herein is modeled upon the statement of facts and procedural history fashioned by the appellate panel.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

the Workers' Compensation Act [to medical claims]… or whether the Legislature intended to **leave things as they were and continue to apply the six-year statute of limitations** for suits on contracts. [emphasis added]"[13] In the absence of legislative clarity, the Court based its decision upon its interpretation of the workers' compensation statute.[14]

The Court acknowledged that the Division has exclusive jurisdiction over all disputed medical-provider claims arising from any claim for compensation for a work related injury.[15] The Court, however, was persuaded that the six-year statute of limitations applied to these types of claims because the "Legislature did not simply express that the Act's two-year time bar would apply to medical-provider claims."[16] In doing so, the Court expressly rejected the claim that pursuant to N.J.S. 34:15-51, "every claimant for compensation" is governed by the Act's two-year statute of limitations.

A draft version of the bill that amended N.J.S. 34:15-15 would have imposed a duty upon the Division "to provide procedures to resolve […] disputes, including a system of binding arbitration and procedural requirements for medical providers or any other party to the dispute."[17] It was the opinion of the compensation judge that the omission of this language from the final draft of the legislation confirmed the Legislature's belief that medical-provider claims were subject to the statute of limitations found in N.J.S. 34:15-51.[18]

Explicitly rejecting the compensation judge's reasoning, the Appellate Division opined that, "[i]f anything, the belief that the Legislature was already satisfied with existing procedural requirements for these claims more logically suggests it intended that the six-year statute of limitations, which undoubtedly applied to medical-provider claims prior to the amendment, would continue to apply after the amendment was enacted."[19]

Next, the Appellate Division found it to be compelling that "…the Legislature made no alteration to N.J.S. 34:15-51 when it amended N.J.S. 34:15-15."[20] The Court reasoned that the word "claimant" in the phrase "*every claimant for compensation*," as set forth in N.J.S. 34-15-51 denotes an "employee" and "compensation" denotes "that to which the employee is entitled for a work related injury…."[21] The Court did not accept that the phrase "every claimant" might mean everyone with an action pending in the Division; or, that "compensation" could mean remuneration for medical services that were provided to an injured worker. Rather, the Appellate Division

[13] *Id.*
[14] *Id.* at 571-573.
[15] *Id.*
[16] *Id.* at 571.
[17] *Id. quoting* Sponsor's Statement to A2652 (May 10, 2012).
[18] *Id.*
[19] *Id.*
[20] *Id.* at 572.
[21] *Id.*

examined these terms in the context of other statutes found in Chapter 15 and provided a definition for these terms in the context of the statute of limitations.

Unable to reconcile the "timing" for the filing of a medical claim with the language found in N.J.S. 34:15-51, the panel rejected the statute of limitations utilized in employee compensation actions.[22] The statute of limitations in workers' compensation actions provides, in relevant part that, "[e]very claimant for compensation …shall … submit to the Division of Workers' Compensation a petition and verified complaint… within two years after the date on which the **accident occurred**…."[23]

The Appellate Division advanced two hypotheticals to bolster its rejection of the two year statute of limitations in workers' compensation for cases involving contested medical claims.[24] First, the Court posited that a medical provider may treat an individual for a period greater than the two-year following the accident.[25] The Court also suggested a situation in which an individual does not receive treatment until two years after work-related incident.[26.] In either situation, the Court deemed implausible an interpretation of the legislative amendment that would cause "a medical provider's right to pursue a legitimate claim might actually be extinguished before it even accrued."[27]

After a review of the statutes in question, the Court noted, "…we find nothing but legislative silence on the point in controversy…."[28] The panel rejected the respondent's arguments, reversed the judgments of the compensation court and remanded each matter for further proceedings of what they termed "timely claims."[29]

Subsequent History

The employers' petitions for certification were granted by the New Jersey Supreme Court on May 14, 2019.[30] In a per curium opinion, the Court affirmed the judgment of the Appellate Division for the reasons expressed in that court's opinion.[31]

The Court, however, took an opportunity to note that in, "the 2012 amendment to N.J.S.[ ] 34:15-15, the Legislature did not expressly address the statute of limitations."[32] Regarding the

[22] *Id.*
[23] N.J.S. 34:15-51.
[24] *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. at 573.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id* at 575.
[29] *Id.*
[30] *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019), *certif. granted*, 238 N.J. 30, (2019) and *certif. granted*, 238 N.J. 31 (2019) and *certif. denied*, 238 N.J. 57 (2019).
[31] *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 241 N.J. 112 (Feb. 03, 2020).
[32] *Id.*

clarification of the statute, the Court opined that "[t]he Legislature is, of course, free to do so in the future."[33]

Preliminary Outreach

On April 14, 2020, Staff contacted a Certified Workers' Compensation attorney to discuss the modification of the statute of limitations as discussed by the Supreme Court in *Plastic Surgery Center, PA v. Malouf Chervrolet-Cadillac, Inc.*[34]

In response to this inquiry, the Commission was advised that, "[…] the period of limitations should be covered by the language of the Act itself, instead of by implication from prior case law or by judicial edict in the *Malouf Chevrolet-Cadillac* case."[35]

In support of this recommendation, the stakeholder noted that, "[e]very other limitations period in Workers' Compensation is statutory, and it follows that the medical claim petitions created by Statute under Section 15 should, [be codified] as well."[36]

At the May 21, 2020, Commission meeting, Staff was asked to prepare a Draft Tentative Report containing proposed statutory language for the Commission's consideration.[37]

Conclusion

In its current form, N.J.S. 34:15-15 is silent regarding which statute of limitations applies in actions involving disputed medical claims. This statute may benefit from the addition of the language that clearly states that a six-year statute of limitations applies to these cases.

The following page proposes amendatory language for N.J.S. 34:15-15 based on the principles set forth in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac*.

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[33] *Id.*

[34] E-mail from Samuel M. Silver, Deputy Director, New Jersey Law Revision Commission to Richard Rubenstein, Esq., Rothenberg Rubenstein Berliner & Shinrod, LLC, (Apr. 14, 2020, 5:10 PM EST) (on file with the NJLRC). Mr. Rubenstein has practiced in the area of workers' compensation since 1985, representing both Petitioners and Respondents in every Court in New Jersey. He is the Vice President to the Council of Safety and Health of New Jersey, and the James Coleman Inns of Court. *See* https://www.rrbslawnj.com/About/Richard-B-Rubenstein.shtml (last visited Apr. 22, 2020).

[35] E-mail from Richard Rubenstein, Esq., Rothenberg Rubenstein Berliner & Shinrod, LLC, to Samuel M. Silver, Deputy Director, New Jersey Law Revision Commission (Apr. 15, 2020, 8:59 AM EST) (on file with the NJLRC).

[36] *Id.*

[37] New Jersey Law Revision Commission (2020) 'Statute of Limitations for Medical Providers in Workers' Compensation Cases'. *Minutes of NJLRC meeting 21 May 2020*, Newark, New Jersey.

Appendix

The proposed modifications to **N.J.S. 34:15-15** and **N.J.S. 34:15-51** (shown with ~~strikethrough~~, or underlining), follow:

N.J.S. 34:15-15 Medical and hospital service

a. (1) The employer shall furnish to the injured worker such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the worker of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible~~; provided, however, that~~.

(2) Pursuant to this Act, the employer shall not be liable to furnish or pay for physicians'~~, or~~ surgeons'~~, services in excess of $50.00 and in addition to furnish~~ or hospital service in excess of $50.00, unless:

(A) the injured worker ~~or~~, the worker's physician who provides treatment, or any other person on the worker's behalf, ~~shall~~ files a petition with the Division of Workers' Compensation stating the need for physicians'~~, or~~ surgeons'~~, services in excess of $50.00, as aforesaid, and such~~ hospital service~~,~~ or appliances in excess of $50.00~~,~~; ~~as aforesaid, and~~

(B) the Division of Workers' Compensation after investigating the need of the same and giving the employer an opportunity to be heard, ~~shall~~ determines that ~~such~~ the physicians' and surgeons' treatment and hospital services are or were necessary~~,~~; and~~,~~

(C) that the fees for the same are reasonable. ~~and~~

(3) The determinations of the division pursuant to this section shall ~~make an order requiring the employer to pay for or furnish the same~~ be set forth in an order.

(4) The mere furnishing of medical treatment or the payment thereof by the employer shall not be construed to be an admission of liability.

b. (1) If the employer shall refuse or neglect to comply with the foregoing provisions of this section, the employee may secure such treatment and services as may be necessary and as may come within the terms of this section, and the employer shall be liable to pay therefor~~; provided, however, that~~.

(2) ~~the~~ The employer shall not be liable for any amount expended by the employee or by any third person on the employee's behalf for any such physicians' treatment and hospital services, unless:

(A) ~~such~~ the employee or any person on the employee's behalf ~~shall have~~ requested the employer to furnish the same and the employer ~~shall have~~ either refused or neglected so to do~~, or~~;

(B) ~~unless~~ the nature of the injury required such services, and the employer or the superintendent or foreman of the employer, having knowledge of such injury ~~shall have~~ neglected to provide the same~~, or~~;

(C) ~~unless~~ the injury occurred under such conditions as make impossible the notification of the employer~~,~~; or,

(D) ~~unless~~ the circumstances are so peculiar as shall justify, in the opinion of the Division of Workers' Compensation, the expenditures assumed by the employee for such physicians' treatment and hospital services, apparatus and appliances.

c. All fees and other charges for such physicians' and surgeons' treatment and hospital treatment shall be reasonable and based upon the usual fees and charges which prevail in the same community for similar physicians', surgeons', and hospital services.

d. When an injured employee may be partially or wholly relieved of the effects of a permanent injury, by use of an artificial limb or other appliance, which phrase shall also include artificial teeth or glass eye, the Division of Workers' Compensation, acting under competent medical advice, is empowered to determine the character and nature of such limb or appliance, and to require the employer or the employer's insurance carrier to furnish the same.

e. Fees for medical, surgical, other treatment, or hospital services that have been authorized by the employer or its carrier or its third party administrator or determined by the Division of Workers' Compensation to be the responsibility of the employer, its carrier or third party administrator, or have been paid by the employer, its carrier or third party administrator pursuant to the workers' compensation law, R.S.34:15-1 et seq., shall not be charged against or collectible from the injured worker.

f. (1) Exclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness shall be vested in the division.

(2) Petitions pursuant to this section shall be filed within the time frame set forth in N.J.S 2A:14-1.

(3) The treatment of an injured worker or the payment of workers' compensation to an injured worker or dependent of an injured or deceased worker shall not be delayed because of a claim by a medical provider.

g. No provider to the injured worker of medical, surgical, other treatment, or hospital service pursuant to the workers' compensation law, R.S.34:15-1 et seq., shall report any portion of their charges which are alleged to be unpaid, to any collection or credit reporting agency, bureau, or data collection facility until:

(1) a judge of compensation within the Division of Workers' Compensation has fully adjudicated the rights and liabilities of all parties, including the rights of the claimant for payments pursuant to this section, section 1 of P.L.1953, c. 207 (C.34:15-15.1), and section 1 of P.L.1966, c. 115 (C.34:15-15.2), regarding the payment of these charges; or

(2) a notice of a stipulation settlement or an order approving settlement regarding the payment of these charges has been filed with the court.

Comments

In its current form, N.J.S. 34:15-15 is divided into six, undesignated paragraphs. This statute has been restructured and archaic language has been removed and replaced in an effort to promote the accessibility of the law.

The term "claimant" is found in 25 statutes in Title 34.[38] Twenty of these references are found in Chapter 15.[39] The term, however, is not defined in any of these statutes. The Appellate Division expressly rejected any interpretation of N.J.S. 24:15-51 that incorporates medical providers into the existing claimant-for-compensation category.[40] Although undefined in Title 34, claimant for compensation has traditionally been understood to refer only to employees.[41] Further, Chapter 15 contains provisions that the Appellate Division noted, "…clearly equate 'claimant' with 'employee'".[42] Thus, the term "claimant" as used in this Act does not include to "medical providers" and necessitates the clarification of the statute of limitations for disputed medical claims arising under N.J.S. 34:15-15.

The newly created subsection f. of N.J.S. 34:15-15 is based on the discussion of this issue in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019), *certif. granted*, 238 N.J. 30, (2019) and *certif. granted*, 238 N.J. 31, (2019) and *certif. denied*, 238 N.J. 57 (2019); 241 N.J. 112 (2020). Subsection f. reflects the Court's recognition that the Legislature did not express that the two-year time bar would apply to medical-provider claims. Prior to the 2012 amendment of this statute, the timeliness of medical-provider claims was governed by the general six-year statute of limitations in N.J.S. 2A:14-1. The proposed language in subsection f.(2) explicitly cross-references the general statute of limitations thereby clarifying that a disputed medical-provider claim must be commenced within 6 years next after the cause of any action shall have accrued.

N.J.S. 34:15-51 Claimant required to file petition ~~within two years~~; exceptions, contents, minors

a. (1) Except as provided for in this Act, ~~Every~~ every claimant for compensation under Article 2 of this chapter (R.S. 34:15-7 et seq.) shall, ~~unless a settlement is effected or a petition filed under the provisions of R.S. 34:15-50,~~ submit to the Division of Workers' Compensation a petition ~~filed and verified~~ in a manner prescribed herein or by regulation~~,~~. ~~within two years after the date on which the accident occurred, or in case an agreement for compensation has been made between the employer and the claimant, then within two years after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has~~

[38] N.J. STAT. §34:1A-1.6 (2020); N.J. STAT. §34:1A-1.8 (2020); N.J. STAT. §34:1B-21.2 (2020); N.J. STAT. §34:11-56.8 (2020); N.J. STAT. §34:11-66 (2020); N.J. STAT. §34:15-7.2 (2020); N.J. STAT. §34:15-12 (2020); N.J. STAT. §34:15-15 (2020); N.J. STAT. §34:15-28.2 (2020); N.J. STAT. §34:15-33.3 (2020); N.J. STAT. §34:15-34 (2020); N.J. STAT. §34:15-41.1 (2020); N.J. STAT. §34:15-43 (2020); N.J. STAT. §34:15-50 (2020); N.J. STAT. §34:15-51 (2020); N.J. STAT. §34:15-64 (2020); N.J. STAT. §34:15-79 (2020); N.J. STAT. §34:15-111 (2020); N.J. STAT. §34:15-120.2 (2020); N.J. STAT. §34:15-120.4 (2020); N.J. STAT. §34:15-120.12 (2020); N.J. STAT. §34:15-120.13 (2020); N.J. STAT. §34:15-120.18 (2020); N.J. STAT. §34:15-120.23 (2020); N.J. STAT. §34:15-128 (2020).
[39] *Id. See* n.38.
[40] *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565, 572 (App. Div. 2019).
[41] *Id.*
[42] *Id. See also* n.4 citing N.J. STAT. §34:15-7.2 (2020); N.J. STAT. §34:15-12(c)(23) (2020); N.J. STAT. §34:15-28.2 (2020); N.J. STAT. §34:15-33.3 (2020); N.J. STAT. §34:15-34 (2020); N.J. STAT. §34:15-41.1 (2020); N.J. STAT. §34:15-43 (2020); N.J. STAT. §34:15-50 (2020); and, N.J. STAT. §34:15-64(a)(2)(a) (2020).

~~been paid by the employer, then within two years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition. A payment, or agreement to pay by the insurance carrier, shall for the purpose of this section be deemed payment or agreement by the employer.~~

(2) Unless a settlement is effected or a petition filed under the provisions of R.S. 34:15-50, ~~The~~ a paper copy of the petition shall be filed and verified by the oath or affirmation of the petitioner and state:

(A) the respective addresses of the petitioner and of the defendant,

(B) the facts relating to employment at the time of injury,

(C) the injury in its extent and character,

(D) the amount of wages received at the time of injury,

(E) the knowledge of the employer or notice of the occurrence of the accident~~,~~; and,

(F) such other facts as may be necessary and proper for the information of the division and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. ~~A paper copy of the petition shall be verified by oath or affirmation by the petitioner. Proceedings on behalf of an infant shall be instituted and prosecuted by a guardian, guardian ad litem, or next friend, and payment, if any, shall be made to the guardian, guardian ad litem, or next friend.~~

(3) The division shall prepare and print forms of petitions and shall furnish assistance to claimants in the preparation of such petitions, when requested so to do.

b. For purposes of this Act, a petition, shall be filed:

(1) within two years after the date on which the accident occurred;

(2) within two years after the failure of an employer to make payment pursuant to the terms of an agreement for compensation has been made between the employer and the claimant;

(3) within two years after the last payment of compensation in a case in which a part of the compensation has been paid by the employer, except that the repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition; or,

c. A payment, or agreement to pay by the insurance carrier, shall for the purpose of this section be deemed payment or agreement by the employer.

d. Proceedings on behalf of an infant shall be instituted and prosecuted by a guardian, guardian ad litem, or next friend, and payment, if any, shall be made to the guardian, guardian ad litem, or next friend.

~~The division shall prepare and print forms of petitions and shall furnish assistance to claimants in the preparation of such petitions, when requested so to do.~~

Comments

In its current form, N.J.S. 34:15-51 was enacted as one, undesignated paragraph. This statute has been restructured and archaic language has been removed and replaced in an effort to promote the accessibility of the law.

In *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565, 572 (App. Div. 2019), the Appellate Division determined that the amendment to part of the Workers' Compensation Act governing medical and hospital service did not change the statute of limitations for filing "medical-provider" claims from six years to two years.

The statute of limitations for disputed "medical-provider" claims is not set forth in N.J.S. 34:15-15 or clearly established by N.J.S. 34:15-51. The proposed modifications to the statutes have been drafted in accordance with the holding of the Supreme Court in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc*.[43]

[43] *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019), *certif. granted*, 238 N.J. 30, (2019) and *certif. granted*, 238 N.J. 31, (2019) and *certif. denied*, 238 N.J. 57 (2019); 241 N.J. 112 (2020).